

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1363 OF 2015

Ex.Lt.Col. R K Rai & Ors.

..Petitioner

vs.

Mr.Ravindra Kumar Singh & Ors.

...Respondents

Mr.R.K. Rai – Petitioner in person.

Mr.K.V. Saste, APP for State.

CORAM : RANJIT MORE & S.C. GUPTE, JJ.

22 JANUARY 2016

P.C. :

Heard Petitioner in person and learned APP for the State.

2 The petition is filed for quashing of the charge sheet and criminal proceedings in R.C.C. proceeding No.1149 of 2011 pending on the file of JMFC, Nashik Road.

3 We have perused the charge sheet and especially, the FIR. The FIR is filed at the instance of Respondent No.1. We have gone through the FIR. The FIR reveals that the Petitioner is working as a gardner and cleaner in the house of Colonel V.C. Mathai. Respondent No.1 has further alleged that on 20 November 2008 at about 10.30 p.m., after finishing his work of cleaning, he went to sleep in the verandah of the said bungalow. In between, he felt like urinating and beside the gate, he started urinating. He has also alleged that Major Rai, i.e. Petitioner No.1, his wife and two children came out and they started beating him. Petitioner No.1 hit him on his left eye and thereafter, Major Rai, wife and two children started boxing him and his mate. The FIR also alleges that the Petitioner abused and threatened wife of Col. V.C. Mathai. The charge sheet *prima facie* discloses commission of the cognisable offence and therefore, the proceedings cannot be quashed.

4 The Petitioner in person submitted that the FIR is concocted and false. In support of his submission, he relied upon decision of the Apex Court in Criminal Appeal No.360-377 of 2011 in **Harshendra Kumar D. vs. Rabatilata Koley Etc.** and especially observations of the Apex Court in para 21 thereof. The Apex Court reiterated settled position of the law that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 in a case where complaint is sought to be quashed, it is not proper for the court to consider the defence of the accused or embark upon an inquiry in respect of the merits of the accusations. The Apex Court also observed that in an appropriate case, if on the face of documents, which are beyond suspicion of doubt, placed by the accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to defend the case before the trial court. Relying upon the observations, the Petitioner in person invited our attention to photographs at pages 46, 47 and 48 and submitted that had the incident been occurred truly, it would have been heard by the residence of the neighbouring bungalow.

5 We are unable to accept the submissions. We fail to understand how these photographs will prove, that too at this preliminary stage, that accusations are fabricated or false. This is a matter of evidence and requires to be proved at trial.

6 Taking into consideration the totality of the facts and circumstances of the case, we are not inclined to entertain the petition. We do not find any merit in the petition and the same is, accordingly, dismissed.

(S.C. GUPTA, J.)

(RANJIT MORE, J.)