

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2223 OF 2006

Lt. Col. Selvan Adik Thiruvfarul,
Age 54 years, Occu. Service,
R/o. 108, Juinagar, Navi Mumbai.

**....Petitioner.
(Ori. Accused)**

Versus

1. Prabhusingh Suravansing Chaudhary,
Age 50 years, Occu. Business,
R/o. Proprietor of M/s. HAN'S Security
Service, Plot No. 179, Gupta Building
Aurangabad Road, Ahmednagar.
2. Digamber C. Desai,
Age 52 years, Occu. Nil,
R/o. Ahmednagar.
(R.No. 2 is deleted as per Court's
Order dated 10.4.2007)

3. State of Maharashtra

**....Respondents.
(R- 1 Ori. Complainant)**

Mr. V.V. Bhavthankar, Advocate for applicant.

Miss. S.S. Raut, APP for respondent No. 3/State.

CORAM : T.V. NALAWADE, J.
DATED : 13th January, 2017.

ORAL JUDGMENT :

- 1) The application is filed for relief of quashing and setting aside of the order of issue process made by the learned Judicial Magistrate, First Class, Ahmednagar in S.T.C. No. 2396/2005. Heard the learned counsel for applicant and the learned APP.

2) Notice of this proceeding was served on respondent, original complainant after admission. But, respondent, original complainant has not turned up.

3) In the complaint, respondent Prabhusingh has made allegations that on 22.4.2005 between 17.45 hrs. and 18.30 hrs. the accused abused in vulgar language to him on mobile phone. He has given mobile number of the complainant and mobile number of the accused and he has mentioned the abuses and the threats given in para No. 5 of the complaint.

4) It appears that complainant was working for security agency of applicant at Ahmednagar Branch and he was incharge of that branch. Due to his activities, which caused loss to the security agency, complainant has filed Criminal Case No. 728/2004 in the Court of Chief Judicial Magistrate, Nevi Mumbai for offences punishable under sections 420, 408, 34 etc. of Indian Penal Code. Smt. Sonali Edke, lady staff working with the present complainant is also made accused in that case.

5) The submissions made and the record show that only after filing of the Criminal Case No. 728/2004 by the present

applicant against the original complainant, the present complaint came to be filed for offences punishable under sections 504, 506 (II) r/w. 34 of Indian Penal Code not only against the present applicant, but also against one Digambar C. Desai, who was working as Field Officer with security agency. Said Desai has not come before this Court to challenge the order. In the complaint, vague allegations are made that accused gave threat and abuses. When there are two accused persons, no specific allegations are made against the present applicant. Further, in the list of witnesses only one Police Officer and Smt. Sonali Edke are shown as witnesses and nothing is mentioned about the call details of the aforesaid two mobile phones. Thus, the complainant was making allegations that on phone the accused persons had given abuses and threat to him. The verification copy the complaint which is available shows that in verification there was no mention of use of mobile phone for communication. These circumstances are not at all considered by the learned J.M.F.C. This material is not sufficient to make out prima facie case for issuing process as against the present applicant. The matter was filed in the year 2006 to challenge the order made in 2005. In view of these circumstances, this Court holds that application needs to be allowed.

6) So, the application is allowed. The order of issue process made by the learned J.M.F.C., Ahmednagar to the extent of present applicant is hereby set aside.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/