IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1541 OF 2016

1. Sharad Bansilal Modi,
R/o.Guruwar Peth, Ambejogai, presently
R/o.CIDCO N-4, Aurangabad.

2. Manoharprasad Ganeshprasad Khanpuriya,
R/o.Satara Parisar, Beed Bye-Pass, Aurangabad.

3. Ravindra Bansilal Modi,
R/o.Guruwar Peth, Ambejogai.

4. Manisha Ravindra Modi,
R/o.as above. Petitioners

versus

1. The State of Maharashtra.

2. Shafiya Begum Shahanawaz Qureshi,
Occ.Business-Milap Gadi Ghar, Shivaji Chowk,
R/o.Khatik Galli, Ambejogai,
Tal.Ambejogai, Dist.Beed. Respondents

Mr.V.D.Salunke, Advocate, with Mr.

Mr.G.O.Wattamwar, APP, for State.

Mr.S.R.Choukidar with Irfan D. Maniyar for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 28th November 2017

Date of pronouncing the judgment : 20th December 2017

JUDGMENT :

1. Heard learned counsel for the parties. Rule. Rule is made returnable forthwith. With the consent of parties, the petition is taken up for hearing and final disposal.

2. The petitioners are arraigned as accused in Regular Criminal Case No.121 of 2014. A private complaint was filed by respondent no.2 alleging offences under Sections 420, 465, 468, 471 read with Section 34 of Indian Penal Code.

3. Brief facts, as alleged in the complaint, are as follows :

(a) The complainant is conducting the business of preparing mattresses in her shop by name Milap Gadi Ghar. Earlier the said business was being conducted by her late husband and father-in-law Tajoddin. The father-in-law of the complainant had taken electricity connection in his name which exists till date;

(b) The Shop Act license is procured by the father-in-law of the complainant in order to manufacture the mattresses. No other person has a right over the said property. The complainant is the owner and possessor of the property. The accused in order to grab the property, had acted in collusion and prepared false documents with the help of employees of Municipal Council, Ambejogai. The accused have also in collusion with one Shivaji Rapatwar prepared a false leave and license agreement dated 7th October 1972 on a plain paper. The accused tried to claim that the petitioner no.1 has given the said property to the complainant on leave and license basis;

(c) The complainant alleged that she has never entered into any such agreement with the accused. She has not signed or put her thumb impression on the document. The accused have no concern with the house property and that he is the absolute owner and in possession of the said property. The accused have prepared false documents and used the same in evidence in Regular Civil Suit No.72 of 2010. The accused has committed the said act with a view to cause wrongful loss to the complainant and to benefit themselves. The accused have mislead the Civil Court and obtained interim injunction. The private complaint was filed on 29th April 2014.

(d) The learned Magistrate directed an inquiry under Section 202 of the Code of Criminal Procedure, 1973 (`Cr.P.C for short') vide order dated 1st September 2015. While passing the said order it was observed that the statements of the complainant and her witnesses are to some extend at variance with each other. It is necessary to get the investigation carried out by police and to receive the report. It is, therefore, proper to direct the police officer to investigate into the allegations in the complaint u/s 202 of Cr.P.C. The Police Inspector, Ambejogai City Police Station was directed to investigate and submit a report under Section 202 of Cr.P.C..

(e) The police conducted an inquiry in accordance with Section 202 of Cr.P.C and submitted a report dated 27th November 2015. In pursuant to the report, the learned Judicial Magistrate, First Class, Ambejogai issued process against the accused under Sections 420, 465, 468 and 471 read with Section 34 of Indian Penal Code. The complaint was dismissed for the offences under Sections 463,

and 464 of Indian Penal Code. The petitioners have, therefore, filed this petition challenging the impugned order and the proceedings.

4. The petitioners case is based on the following factual matrix :

(a) The father of petitioner nos.1 and 3 namely Bansilal Ramchandra Modi had purchased the subject property, which now bears municipal house number 8-456 (Old) and new number is 8-556 situated within the municipal limits of Ambejogai from the previous owner on 28th November 1963 vide registered sale deed for a consideration of Rs.3,000/-. The said house property admeasures 30 feet in North-South direction and 60 feet in East-West direction;

(b) After the death of Bansilal Modi in 1968, the said property was inherited by his legal heirs. Petitioner no.2 is the Karta of Hindu Undivided Family and managing the house property along with other properties. In 1972, on account of cordial relations with Tajoddin @ Papaseth, a portion of the house property admeasuring 15x30 sq.ft. Was let out on leave and license basis to widow and daughter-in-law of Tajoddin i.e. respondent no.2/complainant for running a gadi ghar i.e. shop for preparation of mattresses and cushions. The leave and license agreement was entered into between petitioner no.1 and respondent no.2 on 15th October 1972. The said leave and license agreement bears the signature of petitioner no.1 and Manoharprasad Khanpuria as well as Shivaji Rapatrao as witnesses. The agreement was scribed by Rambhau Kundalikrao Shep. The agreement bears the signature of petitioner no.1 and the thumb impression of respondent no.2. The licensor had permitted the licensee to obtain electricity connection and rent was Rs.500/- per month;

(c) In 1997 the family partition took place between petitioners and the house property came to the share of petitioner no.3, who accordingly entered his name as the owner in the records of municipal council. Petitioner no.3 was in continuous ownership and occupation of the property and his name is also recorded in the property tax register as the owner and possessor of the house property;

(d) In 2005, the petitioner no.3 transferred the said house property to the name of his wife Manisha i.e. petitioner no.4 by following requisite legal procedure. Pursuant to that, petitioner no.4 is the owner of the said property. The municipal record depicts her name as the owner and also she has been regularly paying the municipal taxes;

(e) The portion of the house property in Southern side was in possession of one Ganeshlal Sharma and Dinesh Sharma. They were the licensees of petitioner no.3. The Southern portion of the house was returned by the said licensees to the petitioner on 19th September 2005. The consent deed and possession receipt was executed to that effect;

(f) The shop adjoining the house property of the petitioner belonging to Mahendra Pardeshi and others caught fire on account of short circuit. The complainant's son and Mr.Mahendra Pardeshi lodged a complaint against petitioner no.3 with Ambejogai Police Station alleging that he has set the fire to the shop. Petitioner no.3 was tried for the said offence and was acquitted by the judgment and order dated 21st April 2007 passed by Additional Ad-hoc Sessions Judge in Sessions Case No.38 of 2006;

(g) Petitioner no.3 asked the complainant to hand over the vacant possession of the property or to pay him the license fee as per the existing market rate. However, the complainant refused to act on the request. The petitioner nos.3 and 4 through their advocate sent a legal notice to the complainant asking her to give vacant and peaceful possession of the premises to them. The complainant, however, did not hand over the possession of the property and therefore was not willing to pay the license fee as per the current market rate;

(h) The petitioners filed civil suit being Special Civil Suit N0.72 of 2010 which was thereafter numbered as Civil Suit No.77 of 2012 against respondent no.2 seeking possession, recovery of license fee and for declaration and permanent injunction. The respondent no.2 filed her written statement on 28th March 2011 raising various grounds and contentions. Petitioner nos.3 and 4 also filed an application seeking temporary injunction in the said suit. The Trial Court vide order dated 25th September 2012 passed below Exhibit-5 was pleased to restrain the defendant-complainant or anybody acting on her behalf from transferring or alienating or creating third party interests over the suit property till the disposal of the suit;

(i) The complainant then filed a criminal case on 29th April 2014 which is the subject matter of this petition. The learned Magistrate called for the report u/s 202 of Cr.P.C and although the report did not support the case of the complainant, the order issuing process was passed by the Court.

5. Learned counsel for petitioners submits that the complainant has filed a false and frivolous complaint. The civil litigation between the accused and the complainant is pending before the competent Civil Court. The leave and license agreement forms part of the civil dispute which is initiated by the petitioners and pending in the Court. The complainant is trying to convert the civil litigation into criminal prosecution. It is further submitted that the Civil Court has passed an order restraining the complainant from alienating the disputed property or creating any third party interest therein. The complaint is filed with a view to harass and pressurize the petitioners. There is considerable delay in lodging the complaint. The civil suit was filed in the year 2010. The complainant had filed her written statement contending that the agreement is false. The private complaint was filed on 29th April 2014. There is no document to support the claim of the complainant. The inquiry u/s 202 of Cr.P.C did not support the complaint. Although report u/s 202 of Cr.P.C was negative, the Trial Court issued the process without assigning any reason as to why the Court had deferred with the inquiry conducted by police. The records of the municipal council supports the ownership of the petitioners. There is no document in favour of complainant to establish ownership of the property. It is, therefore, submitted that the prosecution launched by respondent no.2-complainant deserves to be quashed and set aside.

6. The learned counsel for petitioners relied on following decisions :

(i) State of Haryana and others Vs. Ch. Bhajan Lal and others[1];

1 AIR-1992-SC-604

(ii) State of Goa Vs. Shri Siluvai Gnanenthira Roche & others[2];

(iii) Rajib Ranjan and others Vs. R.Vijaykumar[2];

(iv) Wasudeo Mahadeo Masurkar Vs. Ashok Motiramji Admane[3];

(v) B.H.Patil and others Vs. Chandrashekhar Lomdeoji Titarmare[4].

7. The learned counsel for respondent no.2 supported the complaint and the order of issuance of process. It is submitted that the accused are relying upon forged document of leave and license agreement. The agreement is purportedly executed in 1972 on a plain paper. The genuineness of the said document is under doubt. The learned Magistrate has recorded the verification statement, considered the evidence of the witnesses, perused the averments in the complaint and also perused the report of police under Section 202 of Cr.P.C and issued process. It is submitted that assuming that the report of the police is negative, that does not preclude the Trial Court from issuing the process. The learned Magistrate has applied the mind to the facts of the case and issued the order of process. At the stage of issuance of process, only prima facie opinion is required to be expressed on the basis of material on record and there was sufficient material before the Court to pass order of process. The petitioners are relying on several documents and have raised several defenses, which cannot be appreciated at this stage in the present proceedings. The accused can agitate the said submissions before the Trial Court during the course of trial. The proceedings need not be quashed at the inception before recording of the evidence and permitting the complainant to prove her case by adducing evidence before the Trial Court. Merely because civil suits are pending, the

2 2017-ALL.M.R. (Cri) - 504
2 2014-DGLS (SC)-865
3 2017-ALL.M.R. (Cri) - 2172
4 2014-ALL.M.R. (Cri) - 188

criminal prosecution is not barred, if the penal offences are prima facie made out in the complaint. It is submitted that even before the Civil Court, the complainant has taken a stand that the document on the basis of which the entire claim of the accused is based, is false and fabricated document. The complainant is in possession of the property. It is difficult to believe that the leave and license agreement was executed in the year 1972. Prior to filing of the private complaint, the complainant had approached the police but cognizance was not taken. Prima facie case was made out in the complaint which does not call for interference. It is, therefore, submitted that the petition may be dismissed. The learned counsel for respondent no.2 has relied upon following decisions :

(i) Ganga Dhar Kalita Vs. State of Assam and others[6];

(ii) Daga Enterprises and others Vs. State of Maharashtra & Anr[7];

(iii) Mohd. Raza Hasan s/o Sufi Abdul Azia Durani Vs. State of Maharashtra and another[8];

(iv) HDFC Securities Ltd. And others Vs. State of Maharashtra and another[9].

8. I have perused the documents on record. The dispute relates to the leave and license agreement which is claimed to have been executed in 1972. The documents indicate that the father of petitioner nos.1 and 3 had purchased the house property in 1963. The property inherited by the legal heirs. The contention of the petitioners is that the leave and license agreement was executed on 15th October 1972, which is disputed by the complainant. It also

6 2015-DGLS (SC)-484
7 1989(1)-Bom.C.R.-467
8 2011-ALL.M.R. (Cri)-3666
9 2016-DGLS (SC)-1352

appears that the name of respondent no.3 is reflected in the property tax register and was entered in the records of municipal council which is evident from the documents annexed to the petition. Although the complainant claims that the documents were created in connivance with the office of municipal council, the report under Section 202 of Cr.P.C, however, does not support the contention of the complainant. In the said report it has been stated that there are no documents of ownership in favour of the complainant. Also the complainant's name in respect of the property does not find mention in the record of municipal council. The report also mentions that Regular Civil Suit No.72 of 2010 in respect of the property in question is pending in the Civil Court. Several other findings were reflected in the said report, which is against the complainant. The name of the petitioner no.4 is also reflected as the owner in the municipal records and that she is regularly paying the municipal taxes etc which is fortified by the documents annexed to the petition. The petitioners have also contended that a false case was lodged at the instance of complainant's son and one another person, alleging setting up fire to the adjacent premises, which case has resulted in acquittal. Admittedly the civil proceedings are pending in the Court. The petitioners have filed a suit in which the complainant has been restrained from creating third party interests. The agreement which is purportedly forged, according to the complainant, is the subject matter of civil proceedings. The suit was filed in the year 2010. The complaint was filed by respondent no.2 in 2014. One of the contention of the complainant is that the accused have used the said documents in civil proceedings. The genuineness of the disputed document would be tested in the civil proceedings. Prima facie no case was made out for issuance of process. The order of process does

not indicate application of mind to the negative report submitted by police after conducting inquiry under Section 202 of Cr.P.C except stating that the Court has perused the said report. The Court had dismissed the complaint in relation to offence under Sections 463 and 464 of Indian Penal Code. The respondent no.2 had filed a reply refuting the claim of petitioners. It is contended that respondent no.2 had never given any license fee to the petitioners till date as she has never executed the agreement, which shows that the said document is bogus. There was no reason for the complainant to execute the alleged document. The complainant is pardanashin woman and question does not arise to execute the alleged leave and license agreement. It is also contended that the agreement of leave and license is dated 7th October 1972 and the same was given to police and produced before the Civil Court, however, the petitioners have used the said document in the civil proceedings, which shows that they have fabricated the record. The agreement is on a blank paper which is unregistered document without any stamp or verification. The accused has produced the photocopy of the document before the Court and contended that the original is lost. The respondent no.2 has lodged the complaint after knowledge about the alleged leave and license agreement which is fabricated by the accused. However, the police refused to take cognizance and, therefore, the complaint was filed.

9. It is pertinent to note that the claim of the complainant is that she is owner of the house property. During the course of inquiry conducted by the police in pursuant to the order directing inquiry under Section 202 of Cr.P.C, they did not find any document to support her claim. The said fact is indicated in the police report. On

the contrary, the claim of the petitioners is supported by records of municipal council that the concerned petitioners are the owners of the house property in question. In any case, the issue with regards to the genuineness and/or the validity of the leave and license is subject matter of the civil proceedings which is pending prior to the filing of private complaint. The continuation of criminal proceedings would be an abuse of the process of law and the same deserves to be quashed and set aside.

10. In the decisions referred to above, which were cited by both the parties, it has been observed that the criminal complaint cannot be filed with mala fide intentions to cause harassment. The dispute which is of civil nature cannot be converted into criminal complaint. If the complaint does not make out penal offences, the proceedings should be quashed. If the report under Section 202 of Cr.P.C is negative, the Trial Court should apply its mind and record reasons for deferring with the said report while issuing process. The Courts have also observed that in case criminal complaint makes out a prima facie case for issuance of process, the Trial Court would be justified in passing such order, which cannot be set aside. If the allegations are not frivolous, mala fide or vexatious, the proceedings cannot be simply quashed for the reason that civil proceedings are also pending in the matter.

11. Taking into consideration the observations made in all the decisions cited by the parties, applying the observations in the facts and circumstances of the present case, for the reasons stated hereinabove, the criminal proceedings are required to be quashed and set aside.

12. Hence, I pass following order :

ORDER

(i) Criminal Writ Petition No.1541 of 2016 is allowed;

(ii) The order issuing process dated 5th November 2016 passed by learned 4th Judicial Magistrate, First Class, Ambejogai in Regular Criminal Case No.121 of 2014 issuing process against the petitioners and proceedings in the said complaint are quashed and set aside;

(iii) Rule is made absolute in above terms.

(PRAKASH D. NAIK, J.)

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