

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 224 OF 2017

Mr. Sohail Salim Ansari and anr. ..Applicants
Versus
The State of Maharashtra and anr. ..Respondents

Mr. Prashant Pandey, advocate for the applicants.
Mrs. Aruna S. Pai, APP for the State.
Mr. A. A. Gore, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, JJ.**

DATE : 1st NOVEMBER, 2017.

P. C. :

Heard learned counsel for the applicants, learned counsel for the respondent No.2 and learned APP for the State.

2. The application is filed for quashing and setting aside the FIR bearing CR. No. 100 of 2017 registered with Dindoshi Police Station at the instance of the respondent No.2 for the offences punishable under Sections 195(A), 506 and 507 of the Indian Penal Code, 1860. A copy of the FIR is annexed at "Exhibit A". The statement of the first informant recorded on 9th February, 2017, is annexed at page 14. We have perused the FIR as well as the statement of the first informant. The FIR disclosed that the respondent No.2/first informant's nephew was murdered in the year 2014 and the FIR bearing CR No.497 of 2014 accordingly came to be registered under Sections 302, 324, 323, 506(II), 143, 144, 147, 148 and

149 of the Indian Penal Code, 1860. The FIR further disclosed that the respondent No.2 received calls on 23rd January, 2017, 28th January, 2017 and 4th February, 2017 from various mobile numbers threatening him not to take interest in the murder case of his nephew. He was told that he will be given Rs.5,00,000/- to settle the case and, he was threatened that he would be implicated in another case if he disagreed to settle the matter. The FIR disclosed that on 13th November, 2016, when the informant's son - Rajesh Jadhav had gone to attend the date in the Sessions Court at Dindoshi in respect of CR No.497 of 2014, the present applicants/accused who are on bail were also present in the premises of the Sessions Court. It is further alleged that they met the informant's son and offered him an amount of Rs.5,00,000/- for withdrawing from the case. The informant's son was also told that the applicant No.1's maternal uncle has given the matter to J. D. Bhai and the respondent No.2 will have to face serious consequences, if he does not listen.

3. The learned counsel for the applicants, in support of his prayers, submitted that the FIR is liable to be quashed on the following grounds:

1. Delay.
2. 13th January, 2016 was not the date of hearing in respect of CR No.497 of 2014 in the Sessions Court at Dindoshi.
3. The FIR is mala fide.

4. The present FIR being second FIR, it is not maintainable.
5. The offence under Section 195-A of the IPC is not made out.

4. The learned APP opposed the application vehemently. She submitted that since the investigation is in progress, the FIR cannot be quashed at this stage.

5. Having heard the learned counsel for the applicants and learned APP for the State, we do not find any merit in the matter.

The subject FIR is filed on 9th February, 2017. The last threatening call was received only on 4th February, 2017. We, therefore, do not find any delay in lodging the FIR.

So far as the argument regarding the discrepancy in date of hearing in the Sessions Court viz. 13th November, 2016 is concerned, the applicants relied upon the roznama at page 76. The roznama revealed that the dates of hearing in the Sessions Court in respect of the CR No.497 of 2014 were 11th November, 2017 and 12th November, 2017. The Roznama showed that there was no hearing on 13th November, 2017. In our opinion, the discrepancy in the date, can be explained at later stage even by recording a supplementary statement. We are not inclined to accept this ground, since investigation is in progress.

So far as ground of mala fide is concerned, the present FIR cannot be quashed inasmuch as the allegation of mala fide is required to be pleaded and proved by leading evidence in the Trial Court.

As far as ground that the present FIR is second FIR is concerned, we find that the present FIR is independent and separate FIR and, therefore, the ratio of the decision of the Supreme Court in the case of *T.T. Antony Vs. State of Kerala & Ors. (2001) 6 SCC 181* is not applicable in the present case.

The last argument that the ingredients of Section 195-A of the IPC are not made out is concerned, we have gone through the FIR and we find that such ingredients are made out.

6. Taking the totality of the facts and circumstances of the case into consideration, we find that the application is devoid of any merits and the same is dismissed as such.

7. It is made clear that the observations made hereinabove are in support of the impugned order and the Trial Court shall not be influenced by the same at the time of trial.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]