

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 151 OF 2015

IN

WRIT PETITION NO. 4106 OF 2013

Priyesh Bheda

.....Applicant

V/s.

1. Jawhar Nadar and Ors.

.....Respondents

* * * * *

Mr. Sunny Punamiya, Advocate for the applicant.

Ms. Sakina Kothari, i/by. Kranti S.S. Anand, Advocate for respondents no.1 and 2.

Ms. Anamika Malhotra, APP for State, respondent no.3.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 27TH FEBRUARY, 2017.

P.C. :-

1). The applicant herein is the original petitioner. By the present application, he seeks action against the respondents under Sections 195(b)(i) read with Section 340(1) Criminal Procedure Code and direction for “registration of a case against respondents no.1 and 2 for the offences punishable under Section 193 Indian

Penal Code as defined in Sections 191, 199 and 200 Indian Penal Code read with Sections 34 and 120B”. The second relief sought by him is for, action for “civil contempt” within the meaning of Section 2(b) of the Contempt of Courts Act, 1971 against them for willful breach of Undertaking given to this Court.

2). The applicant, contends in his application that, he had lent by cheque, a sum of Rs.59,400/- to respondent no.2. Because she did not return the money advanced to her, he has filed proceedings against her. One day, while he was at Dadar Railway Station, Mumbai, accompanied by his wife and child, respondents no.1 and 2 happened to meet him. They attacked him brutally. Consequently, FIR No. 234 of 2007 was lodged against them on 14th November, 2007 for the offences punishable under Sections 323, 506(Part II) Indian Penal Code. As a counter-blast, the respondents filed FIR vide C.R. No.244 of 2007 against the applicant.

3). The applicant alleges further that, the respondents somehow managed to delay the investigation in FIR No. 234 of 2007. The police tried to close the case by submitting a B-Summary Report. The Learned Magistrate, however, twice ordered re-investigation. Thereafter report under Section 173 Criminal Procedure Code was not submitted, until the applicant approached

this Court. Upon the report filed later, the learned Magistrate has taken cognizance and the case has been numbered as C.C. No. 11/PS/2009. In the meanwhile, the applicant had filed a private complaint on the same facts and that was numbered as C.C. No.14/SS/2009. Process had been issued against respondents no.1 and 2 in that complaint for the offences punishable under Sections 324, 504, 506 Indian Penal Code. Subsequently, i.e. upon submission of the police report, the private complaint has been merged with the police case vide order dated 7th October, 2009.

4). The applicant alleges that, in order to delay the trial in the complaint, respondents no.1 and 2 have been adopting various tactics. They filed a Writ Petition in November, 2013. It is drafted in such a way that it would come before the Bench presided over by a Single Judge. During its pendency, they filed another Writ Petition on the same facts in such a way that it would fall within the assignment of Division Bench of this Court. This act of respondents no.1 and 2, according to the applicant, is “the worst kind of forum shopping”. It is further contended in the application that, the second petition filed by respondents no.1 and 2 contained an averment at para-43 that no other petition relating to the subject matter has been filed either in this Court or in the High Court or in

the Supreme Court of India. This averment, according to the applicant, in view of the pendency of the earlier Writ Petition is a false averment. Subsequently, both the writ petitions have been dismissed by this Court. On these facts, the applicant seeks action in terms of the two reliefs against respondents no.1 and 2.

5). Mr. Punamiya, who appears for the applicant has produced copies of the two Writ Petitions filed by respondents no.1 and 2. Bare perusal of the reliefs sought therein is sufficient to know that the first Writ Petition is maintainable before a Bench of Single Judge and the second Writ Petition is maintainable before the Division Bench. Consequently, though the facts alleged in the two petitions are same, it cannot be said that there is a forum shopping by respondents no.1 and 2. For the same reason, the averment made in the second petition that, there is no other petition filed in any other Court adopting the subject matter of the second petition, is not false. Hence, the Application is dismissed.

(SMT. R.P. SONDURBALDOTA, J)