

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

CRIMINAL APPLICATION NO.573 OF 2017

Lawrence s/o Francis Fernandes : Applicant.
Versus
The State of Maharashtra and ors. : Respondents.

**Mr. Vinod Sangvikar a/w Ms. Madhavi Ayyappan i/by Talekar &
Associates for the Applicant.**
Mrs. S D Shinde, APP for the Respondents/State.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE JJ.**
DATE : 21st AUGUST, 2016

PC.

1 Rule. Considering the nature of the relief sought the above Criminal Application is taken up for hearing forthwith.

2 By the above Criminal Application, the Applicant seeks quashing and setting aside of the FIR being Crime No.264 of 2015 registered at Bandra Police Station, Mumbai at the behest of the Respondent No.3 for the offences punishable under Sections 323, 324, 506 and 34 of the Indian Penal Code.

3 The genesis in filing of the FIR lies in the entitlement to the allotment of the premises under the Slum Rehabilitation Scheme. The Slum Rehabilitation Scheme is being implemented in respect of the plot of land wherein the structure of one Mary Rodrigues was existing. The

said Mary Rodrigues was the grand-mother of the Applicant herein. The first informant i.e. the Respondent No.3 is the brother in law of Sandra D'souza who claims to have purchased the rights of the said Mary Rodrigues by virtue of the affidavit allegedly executed by the said Mary Rodrigues in her favour.

4 Having got wind of the said fact, that the Applicant herein made a complaint to the Deputy Commissioner of Police, Zone-9, Bandra (West), Senior Inspector of Police, Bandra Police Station and Chief Executive Officer, Slum Rehabilitation Authority vide his letter dated 01/01/2014. It was the case of the Applicant in the said letter that the said Sandra D'souza has forged and fabricated documents on the basis of which she is claiming to have purchased the rights of the said Mary Rodrigues as regards her entitlement to the allotment of the permanent alternate accommodation in the Slum Rehabilitation Scheme. It seems apart from the said letter dated 01/01/2014, the Applicant had addressed other letters also to the police including the notice through his advocate Mr. Prashant Gurav, however, to no avail.

5 The Respondent No.3 herein lodged an FIR with Bandra Police Station on 28/04/2015 alleging therein that on the said day at 14.30 whilst he was proceeding towards his residence and as he neared

Gurunanak Park, Bandra (W) Mumbai his distant relative one Lawrence Fernandes i.e. the Applicant herein was coming on his white motorcycle and along with his motorcycle there was another motorcycle on which two unidentified persons had come. It was further stated that the said Lawrence Fernandes removed a blunt weapon from his motorcycle and started assaulting him at which time the first informant raised his hand and tried to protect himself as a result of which an injury was caused to his right hand. It is further stated that thereafter the said Lawrence Fernandes and his accomplices on the other motorcycle escaped from the spot. As indicated above, the offences registered are under Sections 323, 324, 506 and 34 of the Indian Penal Code. The said FIR is lodged on 28/04/2015, though the incident is of 22/04/2015, there is no explanation for the delay.

6 The learned APP Mrs. S D Shinde submits for our perusal, the Injury Certificate issued by the Bhabha Hospital, Bandra (West) which is the hospital of the Municipal Corporation for Greater Mumbai. The said Certificate discloses that the tenderness at the elbow and forearm were found in so far as the first informant is concerned. The aforesaid injury therefore belies the case of the first informant of the first informant being attacked by a weapon which was blunt by the Applicant/Accused. Pertinently no weapon has been recovered.

7 As indicated above, the dispute primarily appears to be on account of the entitlement to the permanent alternate accommodation in the Slum Rehabilitation Scheme and the filing of the FIR by the Respondent No.3 is therefore obviously an attempt to pressurize the Applicant who is the grand son of the original slum dweller i.e. Mary Rodrigues and who has taken exception to the claim made by the first informant on behalf of his sister in law Sandra D'souza. The dispute therefore is a civil dispute arising out of the said claim. The continuation of the said proceeding would therefore be an abuse of the process of the Court. In our view, therefore the interest of justice requires that the FIR be quashed and set aside. The above Criminal Application is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Application is accordingly disposed of.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]