

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.765/2016

Mr. Gajanan s/o Balkrishna Hemke

...Versus...

State of Maharashtra, Through Police Station Officer, Police Station,
Hudkeshwar, Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Vyas, Advocate for applicant
Shri V.A. Thakare, Addl. P.P. for non-applicant no.1 – State
S/Shri S.K. Paunikar & A.S. Joshi, Advs. for non-applicant no.2

CORAM : PRASANNA B. VARALE AND
ARUN D. UPADHYE, JJ.

DATE : 11.10.2017

1. Heard.
2. The learned Counsel for the applicant submitted that the applicant is before this Court seeking quashment of F.I.R. No.441/2016 dated 18/10/2016 registered with Hudkeshwar Police Station for alleged commission of offences punishable under Sections 448, 452, 143, 147, 323, 504 and, 506 of Indian Penal Code.
3. It was the submission of learned Counsel for the applicant that the applicant, who is by profession a lawyer and was representing one of his clients, is falsely implicated in a crime with an ulterior motive. Learned Counsel invited our attention to the documents placed on record. He submitted that there were

certain transactions in respect of property situated at village Pipla, Tq. Nagpur, District Nagpur. It was a transaction between one Angir Kamble and Rajendra Raut. By inviting our attention to the documents placed on record at Annexure - I, learned Counsel for the applicant submitted that the parties agreed between themselves for sale and purchase of property for a sum specified in the document and certain amount as a part of payment was handed over by cash and certain amount by negotiable instrument. Learned Counsel for the applicant submitted that seller of the property Mr. Rajendra Raut had instituted a civil suit against the purchaser Mr. Angir Kamble and one Bhaktapralhad Shembekar. The plaintiff Rajendra Raut sought for declaration that the sale-deed dated 12/4/2016 be declared null and void and not binding upon the plaintiff. Learned Counsel for the applicant submitted that defendant no.1 - Angir Kamble is represented through the present applicant. On instructions, the applicant filed his power and submitted written statement – reply to the application filed at the instance of the plaintiff seeking temporary injunction. Learned Counsel for the applicant submitted that the applicant was purely discharging his professional duty and had no role to play personally in the transaction of the parties, namely, plaintiff and the defendant. He then submitted that an application was submitted by plaintiff for grant of *status quo*, but the learned 9th Jt. Civil Judge Senior Division, Nagpur finding no favour with the applicant rejected the application by order dated 30/7/2016. The plaintiff again had filed application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for grant of *ad interim* relief. The application was also rejected by the learned 9th Jt. Civil Judge

Senior Division by order dated 12/8/2016. Being aggrieved by the said order an appeal was preferred by the plaintiff bearing Misc. Appeal No.214/2016 on 29/8/2016. Learned Counsel submitted that the said appeal was posted on 19/10/2016 and on 18/10/2016, non-applicant no.2 lodged a report with Hudkeshwar Police Station. Learned Counsel for the applicant submitted that the fact of appeal being posted on 19/10/2016 is mentioned in the report itself and then it is alleged in the report that the transaction and the sale-deed was an act under threat and pressure. Learned Counsel for the applicant then submitted that it is further alleged that on 18/10/2016 at about 12:30 hours while complainant and her other family members were in the house, accused no.1 - Angir Kamble along with 5 to 6 unknown lady members and 10 to 15 unknown male members along with applicant forcibly entered in the house and when the complainant Sarita and the family members made an attempt to resist these persons, Angir Kamble and the lady members, who were with Angir Kamble, started beating complainant Sarita and her mother and they also abused Sarita. Then it is alleged that Angir Kamble and his associates gave threats of life, forcibly driven out the family members from the house, locked the house, damaged the name-plate and affixed the name-plate/name-board of his name and forcibly took possession of the house property. This incident was immediately informed to police control room by way of telephonic communication. Police reached on the spot. The complainant and her mother were referred to hospital for medical treatment. Then it is alleged that it was informed to the complainant through her brother that the vehicle involved in the

incident was one Scorpio jeep bearing registration No.MH-49-U-2876. Then it is stated in the report that since the date of incident the husband of the complainant had not returned back to his home due to fear. Learned Counsel for the applicant vehemently submitted that the report insofar as the applicant is concerned, is nothing but a designed attempt to involve the applicant falsely who was only discharging his professional duty. Learned Counsel then submitted that the ill-motive of the complainant is writ large on the face of her immediate application on the next day to the police station authorities. Learned Counsel submitted that in the said application on 19/10/2016 the complainant conveniently takes a somersault and makes a statement that though Shri Angir Kamble has not taken any forcible possession of the house property but it is stated in the report. Learned Counsel for the applicant then submitted that the complainant makes allegations against the police authorities about the mischief by changing the statement. The complainant stated in the application that her signature was obtained on some other statement and she was not permitted to read the statement. Learned Counsel for the applicant submitted that in the statement it is further stated that Angir Kamble was carrying sword and he was chasing her family members with sword in his hand and the complainant was to rush to the neighbouring house to save her life. It is stated that the police authorities are in connivance with Angir Kamble and they are acting *mala fide* only with an intention to help Angir Kamble. Learned Counsel for the applicant then submitted that this application dated 19/10/2016 and time chosen by the complainant to lodge report, i.e., report is lodged on 18/10/2016

when the appeal was posted on 19/10/2016 and then the change of stand by the complainant on 19/10/2016 clearly show that the report lodged against the applicant is nothing but a bundle of misrepresentation of facts and designed attempt with *mala fide* to rope and implicate the applicant in an offence. Learned Counsel for the applicant submitted that even bare perusal of the report would show that the report is lodged with an ulterior motive and the ill-intention is then fortified by the application dated 19/10/2016. Learned Counsel for the applicant then submitted that on 23/10/2016 a supplementary statement of the complainant is recorded. In this statement, the complainant again improves her version and exaggerated the events of the alleged incident dated 18/10/2016. Learned Counsel for the applicant submitted that in view of the settled law reflecting in the judgment of the Hon'ble Apex Court in the case of *State of Haryana and others...Versus...Ch. Bhajan Lal and others*, reported in *AIR 1992 SC 604*, the report lodged against the applicant and the initiation of proceedings would nothing but an abuse of process of law. He then submitted that the application needs to be allowed so as to protect the applicant from abuse of process of law.

4. Learned Additional Public Prosecutor for non-applicant no.1 – State made an attempt to oppose the application. Learned Additional Public Prosecutor by inviting our attention to the reply filed on behalf of the State through non-applicant no.1 submitted that there is specific mention about the applicant in the report. Learned Additional Public Prosecutor submitted that the investigating agency on receiving the report recorded the

statement of the witnesses. He then stated that the applicant had approached the Court below for seeking anticipatory bail and the anticipatory bail application was allowed. He then submitted that there is a *prima facie* material against the applicant to connect him with crime. He then submitted that the statements of the witnesses, namely, Shubham Raktate and Akshay Raktate are recorded by the police authorities. These are the neighbours of the first informant. Learned Additional Public Prosecutor made available the statements of these witnesses for our perusal. On a perusal of these statements, we find that the presence of the applicant in these statements is by way of hearsay information.

5. Non-applicant no.2 has also filed written statement. Learned Counsel appearing for non-applicant no.2 also opposes the application. Interestingly enough, the non-applicant no.2 in her written statement is now making a case that the applicant is the main instigator and he was provoking his client and other associates to get the house vacated from non-applicant no.2 and her family members. Least to say that non-applicant no.2 is making an attempt to shift the ill-act from Angir Kamble to the present applicant like a pendulum.

6. Be that as it may, on a perusal of the material placed on record as well as on a perusal of the material, namely, the statements of the witnesses collected by the investigating agency, in our opinion, the learned Counsel for the applicant has made out a case. The report insofar as the applicant is concerned, is an outcome of an ill-intention and oblique motive. The complainant is changing her stand and stance as per her whims, fancy and convenience against the applicant. Learned Counsel for the

applicant was justified in submitting that the report lodged against the applicant and the proceedings initiated against him is nothing but an abuse of process of law. Learned Counsel was also justified in placing reliance on the judgment of the Hon'ble Apex Court in the case of **State of Haryana and others...Versus...Ch. Bhajan Lal and others** (supra).

7. Considering all these aspects, the criminal application is allowed. F.I.R. No.441/2016 dated 18/10/2016 registered with Police Station Hudkeshwar for the offences punishable under Sections 448, 452, 143, 147, 323, 504 and 506 of Indian Penal Code against the present applicant is quashed and set aside.

JUDGE

JUDGE

Wadkar