

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1109 OF 2018**

Rajaram Bacharam Yesre	...Petitioner
Versus	
State of Maharashtra & Anr.	...Respondents

Ms. Mallika A. Ingale for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondent-State

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 25th JUNE, 2018***

P.C. :

1 Rule. Considering the challenge raised, Rule made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked for quashing and setting aside the proceedings being Chapter Case No. 3 of 2018 initiated by the Charkop Police Station against the Petitioner. The Petitioner is a member of the Society, known as Renuka SRA Cooperative Housing Society Ltd., which is a society of the erstwhile slum dwellers. It seems that there are disputes *inter se* between the members of the said society and

there are as many as five proceedings pending in various Forums between the parties. There is a dispute as regards the redevelopment of the land on which the structures of the members of the said Society are situated. The Petitioner, it seems, is propounding a particular course of action which is found unpalatable by the developer who has been appointed to carry out the development of the said property. The FIR came to be registered against the Petitioner being C.R. No. 30 of 2018 for the offences punishable under Sections 277 and 34 of the Indian Penal Code. It seems that prior thereto an FIR was registered against the Petitioner being C.R. No. 94 of 2016 for offences punishable under Sections 324, 323, 509, 504 and 34 of the Indian Penal Code. It is premised on the said FIR that chapter proceedings were initiated against the Petitioner, which chapter proceedings became infructuous in view of the fact that they did not culminate within the time stipulated in Section 110 of the Cr.P.C.

3 It is now based on the subsequent C.R. that the chapter proceedings have once again been initiated against the Petitioner. The same has been triggered off by the notice dated 7th February 2018 issued by the Special Executive Magistrate, Malvani Division, Mumbai. The said

notice refers to the FIR being C.R. No. 30 of 2018 as also in the concluding para refers to the earlier FIR being C.R. No. 94 of 2016 as also the alleged act of the Petitioner in trying to contaminate the source of the drinking water of society by pouring black oil into it.

4 Insofar as the proceedings which have been initiated pursuant to the said show-cause notice dated 7th February 2018, we are informed by the learned A.P.P that about three hearings have taken place before the Special Executive Magistrate, Malvani Division i.e. the concerned Assistant Commissioner of Police, Mumbai. The learned A.P.P further informs us that the proceedings are kept for hearing tomorrow i.e. 26th June 2018. However, the fundamental issue that arises for consideration is whether the provisions of Section 110(e) of the Cr.P.C could have been invoked against the Petitioner. The said provision is for the sake of ready reference reproduced hereunder:

“110. Security for good behaviour from habitual offenders-

When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) to (d)

(e) habitually commits, or attempts to commit, or abets the Commission of, offences, involving a breach of the peace, or

(f) & (g) ”

Hence, the reading of the said provision discloses that the said provision can be invoked in respect of an habitual offender.

5 As indicated above, insofar as the Petitioner is concerned, apart from the FIR bearing C.R. No. 30 of 2018, there is an earlier FIR being C. R. No. 94 of 2016. Insofar as the said FIR is concerned, proceedings were initiated against the Petitioner premised on the said FIR which, as indicated above, were turned infructuous on account of passage of time. Hence, two FIRs have been registered against the Petitioner in total. That, by no stretch of imagination, can qualify the Petitioner as being an habitual offender so as to enable the Authorities to invoke Section 110(e) of the Cr.P.C.

6 There seems to be some merit in the submission of the learned counsel for the Petitioner that the said proceedings are not bonafide but have been initiated at the behest of the persons who are opposing the view propounded by the Petitioner. Hence, though in the instant case, three

hearings have taken place and the Petitioner has approached this Court at the show-cause notice stage, having regard to the logical corollary of an order being passed against the Petitioner, namely, that the Petitioner would then be left with no choice but to give a good conduct bond, we have deemed it appropriate to interdict at the show-cause notice in the peculiar facts and circumstances of the present case.

7 For the reasons aforestated, the above Petition is required to be allowed and is accordingly allowed in terms of prayer clause(A). Rule is accordingly made absolute.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.