

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1738 OF 2016

Dr.Sadhana Sunil Mahashabde, Age 52 years,
Occ.Lawyer, R/o.9, Meghdoot, Taikalwadi,
Mahim, Mumbai-400 016.

Petitioner

versus

The State of Maharashtra

Respondent

Mr.Jagdish Choudhary with Shailesh Salvi I/by Jasmin Shah for
petitioner.

Mr.A.R.Patil, Additional Government Pleader, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th July 2018

PC :

1. The petitioner is aggrieved by the order passed by Sessions Court dated 6th November 2015 rejecting Criminal Revision Application No.1181 of 2015, as well as the order dated 7th November 2017 framing charge against the petitioner.

2. The petitioner is an advocate by profession. She was arraigned as accused no.3 in CR No.366 of 2011, dated 8th December 2011, registered with RAK Marg Police Station, Mumbai, for offences under Sections 353 read with Section 34 of Indian Penal Code. The investigation was completed and charge sheet was filed.

3. The prosecution case is that on 8th December 2011, at about 11.30 a.m; the complainant and his staff along with police personnel

came to Bhoiwada Village for evicting 22 persons from their residential premises. In the process they evicted the occupants of room nos.1 to 5 from chawl no.596. Thereafter they proceeded towards chawl no.644/1/1-A and told accused no.1 to evict the premises, which he refused. The petitioner and one Pushpalata Gawand restrained the complainant and staff from evicting the occupants from the premises. Smt.Pushpalata Gawand poured kerosene on herself. Hence, first information report was registered on 8th December 2011 under Section 353 r/w Section 34 of IPC.

4. The petitioner preferred application for discharge before the Trial Court which was rejected on 6th July 2015. The petitioner thereafter preferred Criminal Revision Application No.1181 of 2015 challenging the order of Trial Court and sought discharge which was also rejected on 6th November 2015. Thereafter charge was framed against petitioner and other accused for offence u/s 353 r/w section 34 of IPC on 7th April 2017.

5. Learned advocate for petitioner submitted that the petitioner is an advocate by profession. The occupants of the said premises were senior citizens and apprehending dispossession at the hands of developer and Municipal Corporation of Greater Bombay. The petitioner had merely visited the site to verify the situation. She had informed the public servants that they should follow due process of law before evicting her clients, which was not appreciated by them. The petitioner then left the place and returned to her office. Subsequently the FIR was lodged against the petitioner and others. The petitioner had filed Notice of Motion No.575 of 2011 on behalf of her clients in Writ Petition No.1790 of 2011, wherein order was

passed granting status-quo by the High Court on 9th December 2011. The occupants of the disputed premises also filed another Writ Petition (L) No.2722 of 2011 before this Court through the petitioner. In the said writ petition order dated 13th December 2011 was passed by this Court continuing the status-quo. The High Court also passed order dated 21st December 2011 to shift the occupants to transit camp. On 5th January 2012 the petitioners in the said petition were allowed to withdraw proceedings with liberty to take out appropriate proceedings for challenging the eviction notices. It is submitted that learned Magistrate as well as the Sessions Court erroneously rejected the applications preferred by the petitioner. No case u/s 353 of IPC is made out against the petitioner. She was an advocate for the residents senior citizens residing there prior to independence and regularly paying taxes. The petitioner had rendered professional services to her clients and had only convinced the officers to follow the procedure of law. No offence u/s 353 of IPC has been made out against petitioner. She has been falsely implicated in this case as she had questioned the action of the officers. Taking the prosecution case as it is, the intention required to constitute offence u/s 353 of IPC is not spelt out in the charge sheet.

6. Learned APP submitted that investigation was completed and charge sheet was filed before the competent Court. The petitioner had preferred applications for discharge before the Trial Court and the order rejecting the application for discharge was challenged before the Sessions Court. Both the Courts below have delivered concurrent findings.

7. I have gone through the documents annexed to the petition. I have also perused the charge sheet filed against the petitioner. Learned Magistrate observed that the informant was on public duty. The petitioner's act would not fall within the purview of obstructing the public servants while discharging the duty.

8. From the record it is apparent that the petitioner is an advocate and was defending her clients who were occupants of the disputed property. Section 353 of IPC relates to offence of assault or criminal force to deter public servant from discharge of duty. The requisite ingredients to constitute offence u/s 353 of IPC would be that there should be assault, or use of criminal force by accused, that the person assaulted should be a public servant, that the person was acting in exercise of his duties as such public servant, that the assault or criminal force used against such public servant was with an intention to prevent or deter him from discharge of his duty as public servant, or as a consequence of anything done or attempted to be done by public servant in the lawful exercise of his duties as such public servant. In the present case, there is no allegation of criminal force nor of the assault by the petitioner. No offence u/s 353 of IPC is made out against the petitioner. After examining the charge sheet along with documents, it is clear that the charge against the petitioner is groundless. None of the ingredients mentioned above are present in the instant case as against petitioner. There were several orders passed by the High Court in the proceedings initiated by the parties. The petitioner at the most acted as an advocate, has intervened and informed the officers to follow due process of law. Thus, there is no evidence to justify the charge under the said provision against the petitioner and it would be an abuse of process

of law to continue such proceedings against her. In the circumstances, the impugned orders and proceedings against the petitioner are required to be set aside.

9. Hence, I pass following order :

ORDER

- (i) Criminal Writ Petition No.1738 of 2016 is allowed;
- (ii) The impugned order dated 6th July 2015 passed by learned Metropolitan Magistrate, 13th Court, Dadar, Mumbai below Exhibit-9 in CC No.1811/PS/2012 as well as order dated 6th November 2015 passed by Sessions Court for Greater Mumbai in Revision Application No.1181 of 2015, and order dated 7th April 2017 passed by learned Magistrate framing charge and the entire proceedings arising out of CC No.1811/PS/2012 are hereby quashed and set aside.

(PRAKASH D. NAIK, J.)

MST