

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

CRIMINAL WRIT PETITION NO. 3017 OF 2018

Arshad Siddique

... Petitioner

Vs.

The State of Maharashtra & Anr.

... Respondents

...

Mr. Ganesh Gole I/by Mr. Sagar J. Ruparel for the Petitioner.

Mrs. N.S. Jain, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 8th AUGUST, 2018.

P.C.

1. This petition preferred by invoking Article 227 of Constitution of India and inherent powers under Section 482 of Code of Criminal Procedure, 1973 takes exception to the order issuing process passed by the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate as well as the order dated 24th July, 2015 passed by Sessions Court, Greater Bombay rejecting the Criminal Revision Application No. 74 of 2015.

2. The brief allegations spelt out in the complaint filed by the Respondent No.2 are as follows:-

(a) The complainant is a proprietor of M/s Tainwale Enterprises and conduct the business of repairing and reconstruction of

buildings. The complainant have been granted the registration certificate dated 14th October, 2011 by Mumbai Building Repair Reconstruction Board.

(b) The complainant knows one Akbar Babu Sheikh who is owner of several premises in Musafir Khana area. Mr. Babu had contacted the complainant and contracted to repair his premises situated at 1-14, Palton Road, 41A - 41B, 43-45, Karnak Road, CS No. 3366 (1-4). Having received the contract from Mr. Sheikh, the complainant applied for no objection as well as work order before the concerned department. Being satisfied by the documents and other material Mumbai Building Repair and Reconstruction Board Unit of MHADA issued no objection certificate as well as the work order dated 11th April, 2014. On completing legal formalities, the complainant started work in the premises of Mr. Akbar Sheikh which work is in progress.

(c) The complainant knows the accused No.1 since several years and the accused had also some premises in the locality. The accused No.2 is a driver of accused No.1. The other accused who were hired goons of accused No.1. The relations between the the complainant and accused No.1 were not cordial, as he had made several complaints against the complainant.

(d) On 9th June, 2014 at about 1 p.m the complainant and his workers were working in the premises of Akbar Sheikh. At that time accused No.1 (petitioner) entered in the premises without permission and directed the complainant and his worker to stop the work. The complainant showed his inability to follow his directions. They continued to carry out the work. The accused no.1 was annoyed with the stand of the complainant and his workers. He then contacted the accused No.2 on phone. The accused No.2 was directed to visit the said place alongwith others. Thereafter accused No.2 came at the place of incident alongwith four companions and forcibly entered the premises. Thereafter, accused No.1 assaulted the complainant by fist blows. He also slapped him on his face. The other persons who had visited the premises on instructions of accused No.1 caught hold of the complainant from back side and accused No.1 assaulted him. The other accused picked up the wooden plank lying on the ground and threatened the workers of the complainant asking them to leave the premises. Resultantly, the complainant and his workers left the premises. Later on the complainant contacted the representative of his contractor and narrated the incident. The representative came on the spot. Subsequently, both of them

visited the MRI Marg Police Station. The complainant narrated the incident to the duty officer who directed him to bring all the documents relating to his business. Pursuant to his directions, the complainant handed over all the documents to duty officer. The complainant was asked to sit at the police station and after a long time he recorded the N.C. complaint No.493 of 2014 under Section 323 of Indian Penal Code. The complainant thereafter visited doctor on 11th June, 2014 for treatment. He was examined and advised for X-ray by the doctor. The complainant thereafter received a call on 15th June, 2014 and he was asked to meet by a suspicious caller at a particular place. The complainant suspected foul play. Thereafter, he forwarded written complainant to various Superior Police Officers. However, no action was initiated by them. The complainant then filed a private complaint on 20th June, 2014.

3. The verification statement of the complainant was recorded and thereafter the learned Magistrate by order dated 3rd November, 2014 issued process against the accused for the offences punishable under Section 323, 341, 352 of Indian Penal Code. The said order was challenged by the petitioner by preferring Criminal Revision Application No. 74 of 2015 before the Court of Sessions. The said application was dismissed on 24th July,

2015. Hence, the petitioner has preferred the present petition challenging the impugned orders passed by the Courts below.

4. Learned advocate for the petitioner submits that the complaint is false. The learned Magistrate has mechanically issued the process. The petitioner was not named in the NC complaint registered with MRI Marg Police Station. The NC complaint was registered against some other suspected persons. While issuing process the learned Magistrate has not applied his mind to the said NC complaint and medical report. The NC complaint was registered on 9th June, 2014 whereas the medical report of 11th June, 2014. There is no date mentioned on the medical report as to when the alleged incident had occurred. The medical report dated 11th June, 2014 also draws inference of Respondent No.2 having quarrel with someone and has got the said certificate issued. On the basis of which the petitioner is being falsely implicated in the said complaint. The medical certificate was created with a view to implicate the petitioner in the said crime. The allegations in the complaint were made against several persons, however, the complainant has only impleaded the petitioner as accused. The respondent No.2 has filed the private complaint by alleging that the petitioner had filed the several

complaints against him and his contractor with government authorities raising his objection with regards to illegal construction carried out by Respondent No.2 and the contractor. The complaint is a counter blast to the complaint filed by the petitioner. In the history given at the time of medical examination, the name of the petitioner is not mentioned. The main cause of the incident is that the petitioner had filed several complaints against the complainant. It is submitted that the ingredients of Sections 323, 341, 352 of Indian Penal Code are not attracted to the facts and circumstances of the case. It is thus prayed that the proceeding against the petitioner be quashed and set aside.

5. I have perused the complaint filed by the Respondent No.2 and the order passed by the Sessions Court as well as the order of process passed by the trial Court. On the basis of averments in the complaint and verification statement, the learned magistrate had issued the process for the said offences. The complainant in the complaint has specifically attributed overt act to the petitioner. The complaint makes out *prima-facie* case for issuance of process. The arguments advanced by the advocate for the petitioner that the petitioner has been falsely implicated in this case and that the medical examination was conducted belatedly or the history does

not spell out the petitioner being assailant, and that that NC complaint also does not mention the name of the petitioner can be adjudicated at the time of trial. On perusal of complaint and the verification statement, the learned Magistrate was right in issuing the process for the said offence. The issues raised by the petitioner are debatable questions which cannot be appreciated at this stage. At the stage of considering the question as to whether the process can be issued or not the Court was expected to consider the allegations in the complaint, verification of the complainant and other documents produced on record. In the complaint, the Respondent No.2 has elaborately narrated the entire incident by giving all the requisite details like date, time, place as well as the role played by the accused in committing the said crime. The complaint also mentions that the complainant had approached the police station but the police did not take cognizance of the complaint and recorded NC complaint. In pursuant to that since no action was initiated by the police, the Respondent No.2 filed a private complaint. The Sessions Court has also dealt with all the issues raised by the petitioner and has dismissed the revision application by assigning detailed reasons. Taking into consideration the circumstances herein above, the petitioner has

not made out the case for setting aside the order of process as well as the order passed by the Sessions Court. The petition deserves to be dismissed. Hence, I pass the following order.

ORDER

- (i) The Criminal Writ Petition No. 3017 of 2018 stands dismissed.
- (ii) It is clarified that the observation made in this order for considering the issues involved in this matter and the trial Court shall not be influenced by the same at the time of trial.

Sachidanand
Kuttan Nair

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Kuttan Nair
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(PRAKASH D. NAIK, J.)