

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.582 OF 2016

1. Lalji Bhagwati Pandey, Age 65 years,
2. Ganesh Lalji Pandey, Age 32 years,
3. Rakesh Lalji Pandey, Age 28 years,
R/o.Behind Sai Baba Temple, Near Tabela,
Shastri Nagar, Mulund (West), Mumbai.

Applicants

versus

The State of Maharashtra

Respondents

Mr.Pankaj D. Kavale for applicant.

Ms.R.M.Gadhvi, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st February 2018

PC :

1. Rule. Rule made returnable forthwith. With the consent of both the parties, matter is taken up for final disposal.

2. The applicants are prosecuted for the offences punishable under Section 436, 354, 341, 504, 506(2) r/w Section 34 of Indian Penal Code.

3. The brief facts of the prosecution case are as follows :

The informant Smt.Sunita Kahar lodged first information report on 3rd July 2014 alleging that in the year 1991 her father-in-law had purchased a room from one Ramgopal Gaur. One affidavit was prepared and the said room was let out. In November-2013, she had been to Uttar Pradesh. She returned in December-2013. She

found that some unknown persons had encroached on the ground floor of the premises. The said persons told her that the room was let out to them by one Ganesh Pandey. On 1st July 2014 she went to see her ailing brother-in-law at about 4.30 p.m.. She along with three children went to Andheri. At about 9.45 p.m she started to her house. At 10.00 p.m her neighbour Smt.Gauri Khade informed her on mobile phone that there was a fire incident to her house. She went to the house at about 11.00 p.m. The fire was put on. Lalji Pandey, his sons Ganesh and Rakesh were present. They started abusing her. Lalji Pandey went to her and said “Tumhara Ghar Jal Gaya Hai. Abhi Tum Yahase Nikal Jao, Varna Tumhe Bhi Jaan Se Maar Denge”. At that time, Ganesh Pandey also abused her and reiterated the same words. They obstructed her. Ganesh and Rakesh caught her. Ganesh caught her hand and Rakesh caught her hairs. At that time the accused said “Tumko Bhi Ek Din Aise Hi Jala Denge”. The police conducted the investigation and filed a charge sheet. Since the offence under Section 436 of Indian Penal Code is triable by the Court of Sessions, the case was committed to the Court of Sessions and the same was numbered as Sessions Case No.250 of 2015.

4. The applicants preferred an application before the Trial Court seeking discharge for an offence under Section 436 of Indian Penal Code. It was contended that the charge cannot be framed for the said offence. It was submitted that there is no evidence against the accused that they have committed mischief by fire to the house of the complainant. The learned Sessions Judge by order dated 29th July 2016 rejected the said application and directed that the charge be framed against the accused under Sections 436, 341, 504, 506 r/w

Section 34 of Indian Penal Code. The Court thereafter proceeded to frame the charge for the aforesaid offences vide order dated 31st August 2017. The applicants are aggrieved by both the aforesaid order and have therefore preferred this application challenging the said orders.

5. The learned advocate for the applicants submitted that the applicants are falsely implicated in the present crime. The complainant has filed the first information report with an ulterior motive to grab the rooms which are subject matter of the complaint. It is submitted that the complainant had concealed the vital and important facts in respect to the said premises from the investigating agency. It is submitted that the cause of fire to the house is certified as faulty electricity circuits by the fire brigade authorities and in spite of the same, the applicants were prosecuted for an offence under Section 436 of Indian Penal Code. On perusal of the charge sheet there is no material against the applicant for framing the charge under Section 436 of Indian Penal Code and hence the applicants had preferred an application before the Sessions Court for dropping charge under Section 436 of Indian Penal Code. It is submitted that the Sessions Court has committed an error in rejecting the application and framing the charge for the said offence. It is submitted that nothing incriminating is seized or recovered or discovered at the instance of the applicants. Nothing incriminating was found at the spot of incident to implicate the present applicants in the said crime. There is no eye witness supporting the case of the complainant. The learned advocate for the applicants relied upon the decision of this Court in the case of **Sumit Bachewar Vs. State of Maharashtra and another**¹.

1 2017-ALL MR (Cri.)-1610

6. Learned APP submitted that there is sufficient evidence to frame charge against the applicants-accused for the offence u/s 436 r/w Section 34 of Indian Penal Code. The Trial Court has taken into consideration the material on record in the form of the statement of the complainant and the other witnesses and has thereafter framed the charge against the applicants for an offence u/s 436 of IPC as well as the other offences. It is submitted that the words uttered by the accused clearly indicate that the accused had set the house on fire and they would also set the complainant on fire. It is submitted that the complainant has therefore made out the case for an offence under Section 436 of IPC. This is not the stage to interpret the version of the complainant and the other witnesses and it will be a matter of trial where the evidence and the defences would be appreciated by the Trial Court. It is submitted that prima facie case is made out to frame the charge under Section 436 of Indian Penal Code and therefore the applications preferred by the applicants have been rightly rejected by the Sessions Court and the Court has proceeded to frame the charge u/s 436 of IPC. There is no infirmity in the order rejecting the application preferred by the applicants as well as the order framing charge. The learned APP pointed out the contents of the FIR and the supplementary statement of the complainant recorded on 3rd July 2014 and 8th July 2014. The complainant has stated that the applicants are the persons who are responsible for causing fire and has also tampered with the electrical connection which has resulted in fire. She also pointed out the statement of the witnesses who corroborate the version of the complainant and therefore from the statements of the witnesses including the complainant, the case is made out for framing charge

u/s 436 of IPC. It is thus submitted that the application preferred by the applicants be rejected.

7. Section 436 of Indian Penal Code reads as follows :

“436. Mischief by fire or explosive substance with intent to destroy house, etc.-

Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Admittedly the alleged fire was due to faulty electricity circuits which was certified by the concerned fire brigade officer and by no stretch of imagination it can be said that the accused have committed the offence u/s 436 of IPC. Taking the version of the complainant as it is, it cannot be said that the applicants are responsible for causing mischief by fire or explosive substance with intent to destroy the house, which is the requirement to constitute the offence u/s 436 of IPC. The order passed by the learned Sessions Judge is, therefore, requires interference and the same has to be set aside. The prosecution case is based on inferences. There is no eye witness to the alleged incident of setting the house on fire. The house was closed. Whatever material appearing against the applicants do not make out case for framing charge u/s 436 of IPC. There is nothing even to create grave suspicion against the applicants to constitute the said offence. It is settled position of law that the Judge while considering the question of framing the charges under the said

section, has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Except the offence under Section 436 of IPC, all other offences are triable by the Court of Magistrate. The case will have to be relegated to the the Court of Magistrate by setting aside the entire order framing charge to deal with other charges levelled by prosecution, in accordance with law.

8. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.582 of 2016 is allowed;
- (ii) The impugned order dated 29th July 2016 as well as the order framing charge dated 31st August 2017 passed by the learned Additional Sessions Judge, in Sessions Case No.250 of 2015, is quashed and set aside;
- (iii) The charge u/s 436 of Indian Penal Code against the applicants is dropped and the Sessions Court is directed to remit the matter to the appropriate Court for prosecution of the applicants for the offences punishable under the other penal provisions;
- (iv) The competent Court to which the case will be remitted, shall deal with the case in accordance with law;
- (v) Criminal Revision Application No.582 of 2016 stands disposed off.

(PRAKASH D. NAIK, J.)

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