

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

**WRIT PETITION NO.407 OF 2019**

Sachin Shinde and Ors.

...Petitioners

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Rajiv Chavan, Senior Advocate with Ms Sudha Diwedi, Mr. Vinay Dubey, Ms Priyanka Chavan, Ms Neelam Kaintara I/b. Ms Sudha Diwedi for the Petitioners.

Mr. Deepak Thakare, PP with Mr. S.R. Shinde, APP for the Respondent-State.

Mr. Sandeep S. Ladda I/b. M/s. Jhangiani Narula and Associates for the Respondent No.2.

**CORAM : RANJIT MORE &  
SMT. BHARATI H. DANGRE, JJ.**

**DATE : 10<sup>th</sup> JULY, 2019.**

**P.C.:-**

Heard the learned counsel for the respective parties and the learned PP for the Respondent No.1-State.

2. Initially the petition was filed for quashing of the FIR No.221 of 2014 registered with Dadar Police Station at the instance of the Respondent No.2 for offences punishable under Sections 143, 145, 146, 147, 149, 150, 323, 504 and 506 of the Indian Penal Code, 1860. During the pendency of the Petition, the charge-sheet is filed in the

subject crime and same was numbered as Criminal Case No.642/PS/2016 pending on the file of the learned 5<sup>th</sup> Additional Chief Metropolitan Magistrate, 5<sup>th</sup> Court, Bhoiwada. The Petitioners by amending the petition have also sought quashment of this criminal case.

3. The brief facts giving rise to the present petition are as follows:-

On 18<sup>th</sup> July, 2014, the Petitioner No.1 registered non-cognizable complaint against the Respondent No.2. Petitioner No.1 and the Respondent No.2 are members of the same housing society at Dadar. This non-cognizable complaint was registered on the allegation of the Petitioner No.1 that the Respondent No.2 has abused him, his wife and children.

4. Dadar Police Station on 19<sup>th</sup> July, 2014 registered another FIR No.221 of 2014 at the instance of the Respondent No.2 for offences punishable under Sections 143, 145, 146, 147, 149, 150, 323, 504 and 506 of the IPC. This FIR is registered against the Petitioner No.1 and other 8 to 10 unidentified individuals. Allegation made in this FIR is that the Petitioner and the unidentified 7 to 8 persons

assaulted and abused the Respondent No.2.

5. The Investigation Officer of the Dadar Police Station investigated the said crime and came to the conclusion that the Respondent No.2 was assaulted by 3 to 4 persons and during the incident he had received simple injury. This conclusion is drawn by the Investigation Officer on the basis of the statement of the eye witnesses. The Investigation Officer has come to the conclusion that under the circumstances, offences under Sections 143, 145, 146, 147, 149 and 150 are not made out and only offences under Sections 323, 504 and 506 of the IPC are made out. It was concluded that these offences are non-cognizable and therefore report was sent to 5<sup>th</sup> Additional Chief Metropolitan Magistrate, Court at Bhoiwada on 15<sup>th</sup> December, 2015 with a request to classify the said case as non-cognizable offence. Obviously this report under Section 173 of the Criminal Procedure Code, copy of which is annexed at Exhibit-'D' (page 33) of the petition, is pending before the 5<sup>th</sup> Additional Chief Metropolitan Magistrate, Court at Bhoiwada, and no final orders are passed.

6. During pendency of the above stated report, under Section

173 of the Cr.P.C., Dadar Police Station also filed a charge-sheet against the Petitioners ignoring earlier report filed by themselves under Section 173 of the Cr.P.C. and as stated above the Petitioners are aggrieved by the filing of charge-sheet.

7. On the last date, after hearing the respective counsel, we directed the learned APP to explain how the charge-sheet came to be filed in the subject FIR despite filing report for classifying the offence as non-cognizable offence.

8. Mr. S.R. Shinde, the learned APP has taken instructions and has placed on record letter dated 10<sup>th</sup> July, 2019 of the senior Police Inspector, Dadar Police Station, Mumbai, which is taken on record and marked 'X' for identification. The letter discloses that on 15<sup>th</sup> December, 2015 a report was filed in the subject FIR for classifying the same as non-cognizable crime. It is also stated that the said report is pending before the 5<sup>th</sup> Additional Chief Metropolitan Magistrate, Court at Bhoiwada. It is further disclosed that the Investigation Officer could not have filed the charge-sheet subsequent to filing of the said report. The explanation is given that by oversight said charge-sheet might have been filed.

9. Having perused the record and considering the rival submissions, we are of the considered opinion that when the police filed the report for classifying the offences as non-cognizable offences, thereafter filing of the charge-sheet is not permissible, especially when said report is pending. As stated above, this fact is also accepted by the learned APP. Therefore in our opinion, it is for the Magistrate to pass final order on the report of the police. Needless to say that the Respondent No.2-Complainant is entitled to be heard while passing final order on the said report.

10. The learned counsel for the Respondent No.2-Complainant opposed the petition vehemently by relying upon decisions of the Apex Court in *Rekha Vs. State of Maharashtra and Anr.* [ (2010) 15 SCC 725] and *State of Orissa Vs. Sharat Chandra Sahu and Anr* [(1996) 6 SCC 435].

11. Having gone through the judgments of the Apex Court, we are of the opinion that ratio of said decisions are not applicable in the circumstances of the case. In *Rekha* (supra), on the basis of the allegations made in the FIR, the investigating agency filed charge sheet

under Sections 323 and 324 of the IPC. The Magistrate however, while framing the charge was of the opinion that no case is made out under Section 324 of the IPC and framed the charge under Section 323 of the IPC only. The accused thereafter moved the High Court for quashing the proceedings on the ground that police could not have investigated the offence under Section 323 of the IPC without order of the Magistrate under Section 155 (2) of the Cr.P.C. The High Court on the basis of this plea, quashed the entire charge-sheet as well as the subsequent proceedings. The Apex Court in the light of provisions of Sub Sections (2) and (4) of Section 155 of Cr.P.C. was of the opinion that the High Court was not justified in setting aside the entire proceedings on conclusion that the police were incompetent to investigate into the offence under Section 323 of the IPC. The Apex Court has held that the very purpose of the investigation is to collect evidence relating to commission of an offence and it would always be necessary for the Court to examine if the accused in any way has been prejudiced by the steps taken by the investigating agency. The Apex Court recorded that there is no prejudice caused in framing of the charge under Section 323 of the IPC and that the subsequent order of the Magistrate framing charge under Section 323 of the IPC would not vitiate the investigation carried on. In the present case, the FIR was

filed under the cognizable and non-cognizable offence. Police have investigated the same and have filed the above referred report, when they came to the conclusion that cognizable offence is not made out. Ratio of decision of the *Rekha* (supra), therefore is not applicable since the Petitioners are aggrieved by filing of the subsequent charge-sheet.

12. So far as decision of the *Sharat Chandra Sahu* (supra) is concerned, same makes it clear that police are not de-barred from investigation of non-cognizable cases when in fact the report discloses both cognizable and non-cognizable offences. In the present case, the FIR disclosed commission of the cognizable as well as non-cognizable offences. However, police came to the conclusion that the commission of cognizable offence is not made out and therefore filed a report. This decision is also not applicable to the present facts and circumstances of the case.

13. In the light of the above, in our considered opinion the petition must succeed. We, accordingly allow the same in terms of prayer clause (a). Proceeding of the Criminal Case No.642/PS/2016 is quashed and set aside. We direct the learned 5<sup>th</sup> Additional Chief Metropolitan Magistrate's Court at Bhoiwada to decide the report

dated 15<sup>th</sup> December, 2015 filed by the Senior Police Inspector, Dadar Police Station under Section 173 of the Cr.PC. in the subject crime. Needless to mention that the Respondent No.2 will be at liberty to file protest petition and contest the same.

**[SMT. BHARATI H. DANGRE, J.]**

**[RANJIT MORE, J.]**

Megha  
Parab

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by Megha  
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