

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 478 OF 2018

Kishin Tahilram Krishnani ...Applicant
Versus
State of Maharashtra & anr. ...Respondents

Mr. Prem Keshwani, for the Applicant.

Mr. F. R. Shaikh, APP for the State/Respondent no.1.

Mr. Bernardo Reis, a/w Ajit Hadege i/b Jyotiram Jadhav, for
Respondent no.2.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ**
DATED : 17th OCTOBER, 2019

PC:-

1. Heard Mr. Keshwani, the learned Counsel for the applicant, Mr. Shaikh, the learned APP for the State and Mr. Reis, the learned Counsel for respondent no.2.

2. The application is filed for quashing and setting aside the First Information Report ("FIR") bearing CR No.139 of 2018, dated 15th March, 2018, registered with Andheri Police Station, Mumbai, for the offences punishable under Sections 195-A, 506 read with Section 34 of the Indian Penal Code, 1860 ("IPC"). The said FIR is registered at the instance of respondent no.2 against Advocate Gopal Satam, Mohan Krishnani and Kishin Kirshnan. The copy of FIR is annexed at Exhibit-5.

3. Having perused copy of FIR and record, we find that the

applicant is real brother of one Mohan Krishnani, who is residing separately. The son of Mohan by name Jayesh Krishnani was married with respondent no.2 – complainant in the year 1998. There were some disputes as regards the property between the Mohan and his son Jayesh, the husband of respondent no.2 – complainant. In the year 2006, respondent no.2 lodged a case against her father-in-law i.e. Mohan, her mother-in-law, the applicant and his wife and others under Section 498-A, 406 read with Section 34 of Indian Penal Code. The charge-sheet in the said case was filed before the Metropolitan Magistrate 10th Court, Andheri, Mumbai; which is numbered as CC No.536/PW/2009.

4. On 2nd April, 2016, the said matter was kept for recording the evidence of respondent no.2 – complainant. It is the case of the applicant that, on that date, the complainant made an application for exhibiting certain documents and sought adjournment. The learned Magistrate, however, was reluctant to adjourn the matter and insistant upon recording the evidence. The complainant, thereafter, told the Magistrate that she can not give evidence because the accused had threatened her. The learned Magistrate, thereafter, told the complainant to go to the police station. The complainant accordingly approached the

Andheri Police Station making grievance about the threatening by the accused in Criminal Case No.536/PW/2009. On the grievance of the complainant Andheri Police Station has registered N.C. Complaint bearing No.706 of 2016 on 2nd April, 2016.

5. Respondent no.2 – complainant, thereafter, also filed an application (Exhibit-14) for cancellation of bail of the accused in CC No.536/PW/2009. The cancellation was sought on the ground that the accused threatened her to withdraw the complaint. The learned Magistrate, thereafter, passed an order on 29th November, 2017, thereby rejecting complainant's application for cancellation of bail, however, she was granted liberty to avail of the remedy under Section 195A of Criminal Procedure Code.

6. In pursuance of this order, the subject FIR is filed on 15th March, 2018. The allegations in the FIR are made against Advocate Gopal Satam, Mohan Krishnani – the father-in-law of the complainant and present applicant Kishin Krishnani. The allegations are made that they have threatened the complainant to withdraw the case and, if same is not withdrawn, they will go to the gangster Dawood and kill the complainant and her husband. On the basis of these allegations, as stated above,

FIR is registered for the offences punishable under Sections 195-A, 506 read with Section 34 of IPC.

7. Section 195-A of IPC deals with the offence of threatening or inducing any person to give false evidence. Under this Section, whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Reading of this section makes it clear that the threatening must be with an intention to cause the person threatened to give false evidence. So far as the allegation in the FIR is concerned, the accused, including the applicant, threatened the complainant to withdraw the criminal case. By no stretch of imagination, this threat can be equated with the threat to give false evidence. The allegations in the FIR, therefore, in our view, are not sufficient to attract the provisions of Section 195-A of IPC.

8. So far as the allegations under Section 506 are concerned, we have already referred to the NC filed by respondent no.2 – complainant on the very same day of the incident i.e. 2nd April, 2016. This NC complaint is part of the record. Having gone

through the same, we find no allegations made by the complainant in the said complaint that the applicant and other accused threatened her to withdraw the earlier criminal complaint. Even, application of respondent no.2 before the learned Magistrate for cancellation of bail of the applicant and other accused was filed after six months of the date of the incident. In this application also the version of respondent no.2 - complainant was that the accused threatened her to withdraw the complaint. In both, NC complaint as well as complainant's application for cancellation of bail, there were no allegation that the accused also threatened her that if she does not withdraw the case, they will go to the gangster Dawood to kill the complainant and her husband. Obviously Section 506 is applied in the FIR because of the second part of the allegation; which was allegedly after expiry of the period of two years. In our view, the second part of the allegation is afterthought and that was included only in order to make the provisions of part II of Section 506 applicable to the present application.

9. Before parting with this order, we must note that Advocate Gopal Satam filed Criminal Writ Petition No.1660 of 2018 before this Court for quashing the subject FIR qua him and this Court by order dated 9th July, 2018, quashed the subject FIR filed

against the Advocate Gopal Satam since respondent no.2 – original complainant gave no-objection for quashing the same.

10. If the totality of the facts and circumstances is taken into consideration, we are of the opinion that the subject FIR is afterthought, *mala fide*, and consequently abuse of process of law and, therefore, we can not allow the prosecution to continue.

11. The application is accordingly allowed.

12. The subject FIR bearing CR No.139 of 2018, dated 15th March, 2018 registered with Andheri Police Station, Mumbai, is quashed qua the applicant.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]