

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

CRIMINAL WRIT PETITION NO.1902 OF 2019

Rishabh Surendra Dara
S/o Surendra Pannala Dara & Ors. ..Petitioners
V/s.
The State of Maharashtra & Anr. .. Respondents

Ms.Gauri R. Raghuvanshi for the Petitioner.

Mr.S.R. Shinde, APP for the Respondent-State.

Mr.Gorakh U. Mali, Respondent No.3-present in person.

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

DATE : 02nd MAY 2019

P.C.

1. The learned counsel for the petitioner seeks leave to amend the cause title so as to implead the other accused as petitioner and to give the particulars of the criminal case of the Trial Court, since the amendment is necessitated in the wake of subsequent events. Leave is granted. Necessary amendment shall be carried forthwith.

2. Heard learned counsel appearing for the petitioner and the respondent No.3 in person and learned APP for the respondent-State.

3. The petition is filed for quashing and setting aside the FIR bearing C.R.No. 361 of 2016 registered with Pydhonie Police Station, Mumbai, at the instance of respondent No.3 for an offence punishable under Sections 353, 332, 506, 504 read with 34 of the Indian Penal Code.

4. The petitioner No.1 is an Engineering student and petitioner No.2 is the father of the petitioner No.1. The incident in question is of 23.12.2016. On that date, the petitioners went for shopping near Crawford Market. The petitioner No.2 had some work in Bank of Maharashtra, Crawford Market Branch. The petitioner No.1 parked his car in the 'No parking area'. At that time the respondent No.3 who is a Police constable, came and told the petitioner No.1 that the car is in 'No parking' area and he should remove the car. The petitioner No.1 thereafter told respondent No.3 that he has not parked his car but he has waiting for his father who would be back within five minutes and thereafter he will leave.

5. It is the case of the petitioner that the respondent No.3 abused him in filthy language. It is the case set out in the petition, that as a result of the verbal altercation the respondent No.3 slapped the

petitioner No.1, and in the meantime, the petitioner No.2 also arrived at the location and both the petitioners were alleged of violating the norms and they were taken to Pydhonie Police Station. An offence came to be registered against them and they were locked for whole night and produced before the Court on the next day.

6. The learned counsel for the petitioner Ms.Raghuvanshi would submit that the incident which took place as stated in the petition was sought to be complained of, by preferring an FIR but the Duty Officer refused to take any cognizance and this resulted in filing of complaint under Section 156(3) of the Cr.P.C. by the petitioner No.2. Ms.Raghuvanshi would also submit that the complaint on the basis of which the FIR was registered against the present petitioners is the version of respondent No.3 which is improper one and nothing but an abuse of process of law.

7. We have perused the petition as also the complaint preferred by respondent No.3 which has resulted in registration of an offence under Sections 353, 332, 506, 504 read with 34 of the Indian Penal Code against the present petitioners. The said complaint of respondent No.3 proceeds to state that the petitioner No.1 has parked his car in 'No parking zone' and when he requested the car to be

removed, the petitioner No.1 abused him and soon thereafter petitioner No.2 also came at the scene and he also abused and slapped the respondent No.3.

Thus, we have two versions in relation to the same incident. As far as the petitioner No.1 is concerned it is an allegation in the FIR that he abused the respondent No.3 whereas the case of petitioner No.1 in the petition is that the respondent No.3 abused him in filthy language.

8. So far as the petitioner No.1 is concerned, allegation is that respondent No.3 slapped him and allegation of the respondent No.3 is that petitioner No.1 abused him in filthy language.

9. The present petition initially was filed by the petitioner No.1 on the ground that he is a student of Engineering and he wants to pursue his further education in a foreign University. A statement was made at the bar that the petitioner No.1 has secured admission in California University as well as Stephen Institute of Technology in USA. In light of the urgency that the petitioner No.1 has to confirm his admission and complete the necessary formalities for traveling abroad, the petition was moved by the petitioner.

We had issued notice to the respondent No.3 who is

personally present before this Court.

10. The petitioner No.2 expressed his inclination to withdraw the complaint filed under Section 156(3) against respondent No.3. Both the petitioners are present before us and they are ready and willing to withdraw their complaint. The petitioner No.2 has tendered an affidavit on record where he has stated that he is ready and willing to withdraw the complaint filed under Section 156(3) against the respondent No.3. We enquired from respondent No.3 whether he has any grievance against the petitioner and initially he made a statement that he leaves it to the Court to take appropriate decision. However, on being convinced by the learned APP, respondent No.3 makes a statement that he has no objection to quash the subject FIR. Otherwise also on merits, we have noted that so far as the petitioner No.1 is concerned, the allegations are that he abused respondent No.3. Now it is settled position in law that the abuse in filthy language does not attract Section 506 of the Indian Penal Code. Therefore, FIR against the petitioner No.1 cannot be sustained. So far as the petitioner No.2 is concerned, he has expressed his willingness to withdraw his case filed against the respondent No.3 and to that effect he has given and undertaking. In the backdrop of the aforesaid facts and circumstances, we are not inclined to exercise our inherent jurisdiction under Section 482 of the Code of Criminal Procedure

and Article 226 of the Constitution of India and we are of the express opinion that this is a fit case where we should invoke our inherent powers to secure the ends of justice.

11. Hence, we pass the following order :-

ORDER

(i) In terms of the undertaking given by the petitioner No.2 that he will withdraw the criminal complaint bearing Miscellaneous Application No.120 of 2019 against the respondent No.3 pending on the file of the Metropolitan Magistrate, the application shall be withdrawn within a period of one week from the date of this order.

(ii) We quash and set aside criminal case No.796/PW/17 pending in the Court of Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai against the petitioners for offence punishable under Sections 353, 332, 506, 504 read with 34 of the Indian Penal Code with Pydhonie Police Station, Mumbai.

(iii) The petitioner shall deposit cost of Rs.25,000/- in the Mumbai Police Welfare Fund.

12. Parties to act on an authenticated copy of this order.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)