

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4402 of 2013

Farooque Yusuf Ragaria	.. Petitioner
Versus	
The State of Maharashtra & Anr	.. Respondents

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Mrs.V.V. Thorat for the petitioner.
Mr.K.V. Saste, APP for the State.
Mr.Avinash H. Fatangare for respondent no.2.

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

DATE : 1st JULY, 2019.

P. C. :

1 Heard learned counsel for the petitioner, learned counsel for respondent no.2 and learned APP for the State.

2 Petition is filed for quashing and setting aside the proceedings of the Criminal Case bearing No. 276/PW/13 pending on the file of learned Metropolitan Magistrate, 21st Court, Bandra, Mumbai. The said case arises out of registration of FIR bearing C.R.No.228/2010 at Vakola Police Station at the instance of respondent no.2 for an offence punishable under section 428 of the IPC.

3 We have perused the FIR as also the entire charge-sheet. The incident in question is dated 8th May 2010 and the FIR is registered on 17th May 2010 by the respondent no.2. Respondent no.2, in her FIR, allege that one Secretary of the Society Ms.Nandini Sen Sharma told her that at about 8.00 p.m, on 8th May 2010 that the petitioner ran over his Scorpio motor car over a stray dog who was being looked after by the members of the society. It was also told that the said dog got injured and thereafter, some of the members of the Society took him to the veterinary hospital for medication.

4 A reading of this FIR makes it clear that the First Informant reported the incident in question after 7 days. The information of the respondent no.2 is also hear-say and therefore, the same is not admissible in evidence. What is pertinent to note that the statement of the Society's Secretary Nandini Sen Sharma is not recorded by the police though charge-sheet is already filed.

5 The charge-sheet also disclose statement of two persons i.e. Laxmikant Yadav and Subhedar Chauhan who claim to be eye witnesses to the incident dated 8th May 2010 in question. Laxmikant Yadav has stated in his statement that he along with Subhedar Chavan was standing at the gate of the Society at about 8.45 pm on 8th May 2010. At that time, petitioner came in the car from outside. The petitioner brought his car inside the Society from Society's gate. While entering the society's premises through the gate, the speed of

petitioner's car was slow. However, once he entered the gate of the Society, he increased the speed. The statement further states that, at that time, in the premises of the Society, two stray dogs were sitting. On seeing the car of the petitioner, one of the two stray dogs moved away. Second dog could not get up and the petitioner's car hit that dog, resulting the injury to the dog. Thereafter, the members of the Society gathered, administered some medicine to the dog and on the next day, took the dog to the veterinary hospital. The statement of another eye witness Subhedar Chauhan is also in a similar manner.

6 The petitioner is booked for an offence punishable under section 428 of the IPC. Under Section 428, whoever commits mischief either by killing, poisoning, maiming or rendering useless any animal or animals worth ten rupees or upwards, shall be punished with simple or rigorous imprisonment for a term which may extend upto two years, or with fine, or with both. The prerequisite of the offence under section 428 is mischief. The offence of mischief is defined under Section 425 as “Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief”.

7 Thus, reading of the definition of “mischief” as defined under Section 425 makes it clear that the wrongful loss or damage,

etc., requires to be done with intention or knowledge. As stated above, the information by the respondent no.2 complainant is hearsay. That cannot be taken into consideration as the same is not admissible as evidence. So far as other two eye witnesses i.e. Laxmikant Yadav and Subhedar Chauhan are concerned, the statement do not disclose that the petitioner ran over his car with intention to kill or injure it. Moreover, the complainant is not the owner of the dog.

8 In the above circumstances, having perused the entire charge-sheet, we are of the considered view that offence under section 428 of the IPC as alleged against the petitioner is not made out.

9 The continuation of the criminal proceedings would be an abuse of process of law. No purpose would be served by continuing the proceedings.

We allow the petition in terms of prayer clause (a). Proceedings of C.R. No.2766/PW/13 arising pending on the file of learned Metropolitan Magistrate, 21st Court Bandra, Mumbai are hereby quashed and set aside.

No order as to costs.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]