

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 CRIMINAL APPLICATION NO. 1000 OF 2019

RAJU S/O. KESHAVRAO SABLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Kulkarni Abhishek
APP for Respondent No.1-State: Mr. M.M. Nerlikar
Advocate for Respondent No.2 : Ms. Saakshi L. Joshi
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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 4th OCTOBER, 2021**

PER COURT:-

1 Heard.

2. This application is filed for quashing of F.I.R. No. 616 of 2018 registered with CIDCO police station, Aurangabad for the offences punishable under Sections 353, 143, 147, 149, 504 and 506 of I.P.C. The applicant also seeks quashing of criminal proceeding as during pendency of this application, investigation was over and the charge sheet has been submitted and the case is registered as R.C.C. No. 3009 of 2019. The applicant is an accused in connection with the said crime and criminal proceeding.

3. Learned counsel for the applicant accused submits that as per the allegations made in the complaint, the applicant has merely accompanied the other accused persons to inquire with the bank officials as to why the loan proposal submitted by co-accused

Ranjana and Talimun Pathan came to be rejected. Further, as per the allegations made in the complaint so also the charge sheet submitted after completion of investigation, no role has been attributed to the applicant that he has used criminal force to deter the public servant from discharging his official duty. Learned counsel has also invited our attention to the observations made by this court while disposing of pre-arrest bail application filed by the applicant.

4. Learned counsel for the applicant, in order to substantiate his contentions, placed reliance on the judgment of the Supreme Court in the case of ***Manik Taneja and another vs. State of Karnataka and another***, reported in (2015) 7 SCC 423.

5. We have also heard learned counsel for the respondent No.2 and learned A.P.P. for the respondent State.

6. Learned A.P.P. for the respondent State submits that the applicant has not only accompanied the other co-accused persons but also questioned about the authority of informant for rejecting the loan proposal submitted by the co-accused persons and also joined the co-accused Mukesh Makasare by giving abuses to the informant. It has been specifically alleged in the complaint that co-accused Mukesh Makasare and the present applicant has not only abused the informant but also given life threats to him.

7. We have carefully gone through the allegations made in the complaint so also charge sheet. It appears that co-accused Ranjana and Talimun Pathan have submitted their applications for Mudra loan in Union Bank of India, Branch Bajrang Chowk, N-6, CIDCO, Aurangabad, wherein the informant was working as Branch Manager of the said Bank. There were certain deficiencies in the loan proposals and therefore, the informant has rejected the said loan proposals and informed about the same to both of them. The incident had taken place on 20.12.2018 in the bank itself at about 3.15 p.m. It appears that the applicant alongwith other accused persons entered in the chamber of the informant. There are specific allegations that co-accused Mukesh Makasare and the present applicant have questioned the informant about rejection of loan proposals of said co-accused persons Ranjana and Talimun Pathan and created a scene and commotion in the bank. It further appears that the applicant and said co-accused persons abused the informant and further gave him life threats. It has been specifically alleged in the complaint that the said co-accused Mukesh and the present applicant have obstructed the work of the bank and made an attempt to deter the public servants in discharging their official duties.

8. In the case of ***State of Haryana and others vs. Ch. Bhajan Lal and others, reported in AIR 1992 SC 604*** in para No. 108 the Supreme court has made following observations:-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- “1. Where the allegations made in the F.I.R. or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;*
- 3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- 4. Where the allegations in the F.I.R. do not constitute a cognizable offence, but constitute only a non cognizable offence, no investigation is permitted by a police officer*

without an order of a Magistrate as contemplated under Section 155(2) of the Code;

5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
 6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
 7. *Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*
9. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

10. It is not the case that from the allegations made in the F.I.R. and the subsequent investigation carried out in connection with the said F.I.R. no case is made out. There is no reason for the informant, who happened to be the Branch Manager, to loge the complaint with ulterior motive for wreaking vengeance against the applicant.

11 In the case of ***Manik Taneja and another vs. State of Karnataka and another***, (supra) relied upon by learned counsel for the applicant, the Supreme court in para 10 has made following observations:-

10. So far as the issue regarding the registration of FIR under Section 353 IPC is concerned, it has to be seen whether by posting a comment on the Facebook page of the traffic police, the conviction under that Section could be maintainable. Before considering the materials on record, we may usefully refer to Section 353 IPC which reads as follows:-

"353. Assault or criminal force to deter public servant from discharge of his duty.- *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section 353 IPC are not made out."

12. The Hon'ble Supreme court has made the observations in the facts of the said case. In the facts of the said case, the traffic Branch of city police had started online App and the said App was a forum for the public to putforth their grievances online. The appellants in the cited case have posted their comment online under the bonafide belief that it was within permissible limits. Thus, in the facts of the said case, the Supreme Court has observed that even going by the uncontroverted allegations in the FIR, none of the ingredients of the alleged offences are satisfied.

13. In the instant case, prima facie, it appears that the applicant and other co-accused persons have used the criminal force in the bank and deter the public servants from discharging their official duties. In view of the same, we do not find that any case is made out

for quashing of F.I.R. so also the criminal proceedings. Hence, the following order:-

O R D E R

Criminal application is hereby dismissed.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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