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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1250 OF 2020

Rakesh Sharma
Versus
The State of Maharashtra and Ors.

...Petitioner
...Respondents

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh for the Petitioner.

Mr. S.S.Hulke, A.P.P for the Respondent No.1-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 18th AUGUST, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 19th December, 2017 passed by the Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai, in C.C.No. 1085/M/2017, by which the learned Metropolitan Magistrate rejected the petitioner's application/complaint seeking an order under Section 156(3) of the Criminal Procedure Code; as well as the order dated 23rd January, 2020 passed by the learned Additional Sessions Judge, Mumbai in Criminal Revision Application No. 221 of 2018 by which the petitioner's Revision Application preferred against the said

order was rejected.

3. Learned Counsel for the petitioner submits that the learned Metropolitan Magistrate ought to have taken cognizance of the offence alleged by the petitioner in the complaint under Section 190(1)(a) of the Criminal Procedure Code and should have proceeded further in accordance with Section 200 of the Criminal Procedure Code by examining the petitioner (complainant), so as to determine whether process should be issued or not, instead of dismissing the complaint, only because the petitioner in the complaint did not make out a case for passing an order under Section 156(3) of the Criminal Procedure Code ('Cr.P.C.' for short) as prayed for in the complaint. Learned Counsel for the petitioner submits that the complaint discloses the commission of a cognizable offence and as such the learned Magistrate was not justified in dismissing the complaint, without coming to the conclusion, that no cognizable offence was made out. He further submits that merely because the civil suit is pending, would also not be a ground for dismissal of the criminal complaint filed by the petitioner, inasmuch as, the civil case does not pertain or relate to the forged document, which is at page 59 of the petition.

4. Learned Counsel for the petitioner further submits that the

document on page 59 is a forged document and that the learned Judge ought to have either passed an order under Section 156(3) of Cr.P.C. or should have proceeded further in accordance with Section 200 of Cr.P.C., by examining the petitioner (complainant). He submits that the learned Sessions Judge has failed to consider the said aspects, whilst rejecting the petitioner's Revision Application.

5. Perused the papers. The petitioner is a member of Dadar Club and respondent Nos.2 to 7 are the office bearers of the said club. It appears that the petitioner's wife is the primary member of the said club and as such, the petitioner was availing all the facilities of the said club being the husband of the primary member. According to the petitioner, as he was questioning the office bearers of the club regarding the irregularities in the club including in the swimming pool department and mismanagement in the restaurant and bar departments, the respondent Nos.2 to 7 conspired with each other to falsely implicate the petitioner in a false case/complaint. It is the petitioner's case that he received a text message from the Dadar Club on 5th June, 2016 regarding a complaint made as against him and asking him to remain present before the Managing Committee on 7th June, 2016. According to the petitioner on 10th June, 2016, the respondent No.2 alongwith other committee members, asked the petitioner about the

unhygienic practice in the pool. It is further alleged by the petitioner that he was shocked and surprised to hear the allegations leveled against him as he was a regular swimmer and had never violated any rules or regulations of the Club.

6. According to the petitioner, the alleged written complaints made by someone against him, were not shown to him. It is further alleged by the petitioner that his wife received a Show Cause Notice from the said club alongwith the complaints and allegations made as against the petitioner. The petitioner's wife was asked to appear before the Managing Committee. It is the petitioner's case that all the allegations made against him were false and bogus, out of personal grudge and enmity. According to the petitioner, although, the complaints were dated 12th April, 2016 and 27th May, 2016, the Show Cause Notice was served on the petitioner only on 30th June, 2016. According to the petitioner, on 1st September, 2016, a letter was received from the said club informing him and his wife that they were found guilty by the Inquiry Committee in the preliminary inquiry and were asked why disciplinary action should not be taken against them. The same was contested by the petitioner and his wife. It appears that there are complaints and counter-complaints filed by both sides against each other. A civil suit was also filed by the petitioner in the City Civil Court, Mumbai.

Vide order dated 2nd March, 2017, the learned Judge, City Civil Court, Mumbai, allowed the petitioner's wife and children to use the club facilities. According to the petitioner, despite making complaints to the Police, no action was taken by the Police against the respondent-members of the club. Hence, the petitioner filed a criminal complaint bearing Criminal Complaint No. 1085/M/2017 in the Court of the Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai, in April, 2017 as against the office bearers of the Dadar Club alleging offences punishable under Sections 420, 465, 469, 471, 500, 506, 120B and 34 of the Indian Penal Code. In the said criminal complaint, the petitioner prayed that cognizance of the complaint be taken and the matter be sent for investigation under Section 156(3) of the Cr.P.C. and the Police be directed to register a case against the accused. According to the petitioner, the letter/ complaint which is on page 59 of the petition, sent by one Ramchandra Pallai to the Committee Members of the Club, making allegations as against the petitioner, was forged by the respondents - members.

7. The learned Metropolitan Magistrate vide order dated 19th December, 2017 rejected the said application/complaint after observing that there was no sufficient material on record to treat this application as a private complaint. The said Order dated 19th December, 2017 was

challenged by the petitioner before the learned Additional Sessions Judge, Mumbai in Revision Application and the learned Judge vide order dated 23rd January, 2020 rejected the said Revision Application.

8. It is well settled that mere filing of a civil suit, cannot be a ground for dismissing a criminal complaint. What cannot be lost sight of is that the facts in a criminal complaint must disclose the commission of a cognizable offence or the facts should reveal a case for either sending the case to the Police for inquiry or the necessity for passing an order under Section 156(3) of the Cr.P.C. or for taking recourse to Section 203 of the Cr.P.C.

9. The submission of the learned Counsel for the petitioner is that since the document at page 59 was forged, the learned Judge ought to have taken recourse to Section 203 Cr.P.C., if the learned Judge felt that an order under Section 156(3) Cr.P.C. was not warranted. The letter / complaint on page 59 is a complaint made by one Ramchandra Pallai as against the petitioner. The said letter / complaint, according to the petitioner is allegedly forged and fabricated by the office bearers of the Club. The said complaint letter has an inward number i.e. the said letter was received by the clerk of the Club on 28th May, 2016. Merely because the petitioner

(complainant) alleges that the said document i.e. letter is forged, cannot be a ground for the learned Magistrate to take recourse to Sections 200-202 of the Cr.P.C. or to pass an order under Section 156(3) of the Cr.P.C., as a matter of right. The learned Magistrate and the Revisional Court, after considering the merits of the case, has dismissed the complaint and the Revision Application. No infirmity can be found in the said orders.

10. Accordingly, writ petition is dismissed.

11. It is made clear that the observations made herein are prima facie, only for the purpose of deciding this application.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.