

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1907 OF 2022

Ashfak Hussain Kamruddin Shaikh,
Age. 48 years, Occ. Business,
R/o. Behind Balaji Wada, Nandurbar.

.... Applicant
[Ori. Accused No. 1]

Versus

1. The State of Maharashtra,
(Nandurbar City Police Station).

2. Kismat kamruddin Shaikh,
Age. 44 years, Occ. Business,
R/o. Behind Balaji Wada,
Tq. and Dist. Nandurbar.

.... Respondents

Advocate for Applicant : Mr. Shaikh Mujtaba Gulama Mustafa
APP for Respondent No. 1 : Mr. S.J. Salgare

**CORAM : SMT. VIBHA KANKANWADI &
RAJESH S. PATIL, JJ.**

DATE : 14th SEPTEMBER, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] By the present application, the applicant – real brother of the informant/respondent No.2 is praying for quashing the FIR bearing No. 379 of 2018 registered at Nandurbar Police Station, and Charge Sheet No. 3789 of 2020, registered under Sections 436, 448, 504, 506 r/w. 34 of IPC and resultant Criminal proceeding bearing RCC No. 155 of 2020 pending before the learned Sessions Court at Nandurbar.

A. FACTS :-

2] The First Information Report filed by the informant – Kismat Kamroddin Shaikh, Age 41 years states that he resides behind Balaji Wada, Taluka and Dist. Nandurbar, alongwith his family and engaged in business. He owns a shop in Nandurbar city at Survey No. 367/2. In Survey No. 368/1 and 368/2 he has share alongwith his brother Ashfak (present applicant) and another elder brother Faiyaz Hussain Kamroddin Shaikh has a share in it and he resides abroad. He has given a power of attorney to the informant to look after that property.

3] It is stated that on 10.11.2018 at 11.11 a.m. in the morning, he was at his shop at Survey No. 366/2. Alongwith him, one Hasnoddin Pinjari (Watchman) and mason Mahemood Pathan were present. At that time, his brother Mohammad Hussain Kamroddin Shaikh came with a Torch (mashal) in his hand and the present applicant- Ashfak Husain Kamroddin Shaikh was instigating him by uttering “सब जला डाल कुछ बाकी मत रख वो भडवा किस्मत आगे आया तो उसकी भी जला डाल”. When he rushed towards them, Mohammad Hussain ran away from that spot and present applicant Ashfak entered his bungalow in Survey No. 367/2 and set ablaze the wooden cots and he fled away from there. At that time, as the grass meant for the animals caught fire and fire spread rapidly and though they tried to extinguish the fire they were helpless. Therefore, fire fighter was called and the fire was extinguished. Thus, it is alleged that the complainant has suffered a loss of Rs. 12 Lakhs due to burning of grass, trees and the wooden cot.

4] The present application is filed for quashing of FIR bearing Crime No. 379/2018 and charge sheet which has further culminated in RCC No. 155 of 2020 pending before the learned J.M.F.C., Nandurbar.

4.1] It is submitted on behalf of the applicant that, the informant has falsely implicated the applicant in the present crime knowing fully well that the applicant has not at all committed any crime, much less, the one alleged in the FIR. The very registration of crime is to counterblast to the complaint filed by the applicant and to pressurize him to desist from taking any lawful action as against the applicant.

4.2] It is further contended that, apart from above, it is equally important to note that, the present complaint is filed with oblique and sinister motive to compel the applicant to desist himself from taking any legal action against the informant.

4.3] It is contended that the applicant is real brother of informant and there exists a property dispute between them. The applicant is also one of the owners of said Gat No. 368/1 which is jointly owned with Mr. Fayyaz Hussain (Elder brother) so also sole owner of Gat No. 368/2. It is highly doubtful to believe that, applicant will set on fire his own property. It is therefore a totally false and imaginary complaint is lodged against the applicant by the present informant. It is also necessary to state that, accused No.1 is mentally challenged and therefore, allegation that, accused No.1 acted on instigation of the applicant is false, imaginary and concocted allegation.

B. SUBMISSION OF PARTIES :

5] Heard Shaikh Mujtaba Gulam Mustafa, Advocate for the applicant and Mr. S.J. Salgare, learned APP for the State.

6] Learned counsel Mr. Shaikh Mujtaba submitted that if the applicant and respondent No. 2 (Informant) are real brother and have landed property at Nandurbar, the properties have been devolved upon the applicant and respondent No. 2. Therefore, there is ongoing disputes

between the brothers as regards entitlement of the immovable property and in order to deprive the applicant of the property, the present false and frivolous FIR has been filed against the applicant. The applicant is an innocent person and has been falsely roped in the present crime. There is no evidence to establish the involvement of the applicant in the present crime. None of the ingredients of Sections 436, 448, 504, 506 are attracted towards the present applicant. Therefore, continuation of the proceedings in the above crime would amount to the abuse of process of law on this count also the impugned FIR deserves to be quashed and set aside.

7] It is next submitted that so far as allegations of burning of field and wooden bed of complainant are concerned, the IO has not carried out any panchnama to that effect and therefore the allegations of burning of field and wooden bed are absolutely baseless. On this count also the impugned FIR is liable to be quashed and set aside.

8] It is then submitted that the applicant has been falsely implicated by the informant knowing fully well that the applicant has not at all committed any crime much less the one has alleged in the FIR. It is further submitted that very registration of the crime is with a view to counter blast the legal action of the applicant and in order to pressurize and desist him from taking any lawful action against the informant. Hence, the FIR needs to be quashed and set aside. It is next submitted that accused – Mohammad Hussain Kamruddin Shaikh is mentally challenged person and therefore, he acted on instigation of the applicant is false, imaginary and concocted one. Hence, the impugned FIR needs to be quashed and set aside.

9] The counsel for the applicants relied upon the judgments in the matter of *Gian Singh Vs. State Punjab*, reported in **(2012) 10 SCC 303**, *Geeta Mehrotra Vs. State of U.P.*, reported in **AIR 2013 SC 181**, and *Shaikh Mushrraf Pasha and others Vs. State of Maharashtra and another*, reported in **2021(2) AVR (Cri.) 343**.

10] Learned APP – Mr. Salgare submitted that there are specific allegations against the applicant that he instigated the accused Mohammad Hussain to set everything on fire, hence there is no question of quashing of FIR and criminal proceedings. The contents of the FIR clearly demonstrate that offence under Sections 436, 448, 504, 506 r/w 34 is made out.

C. ANALYSIS :

11] It is noted in the FIR that on the date of incident when the informant was in the Shop, the accused persons were seen setting fire at Survey No. 368/1 and 368/2. The FIR further states that the present applicant instigated the other accused to set everything on fire by saying “सब जला डाल कुछ बाकी मत रख वो भडवा किस्मत आगे आया तो उसकी भी जला डाल” and thereby, committed the offence as alleged. The witnesses namely Mehboob Khan Bage Khan Pathan was a mason and Police Niak Rajdev Jagdale have supported the prosecution’s case. In fact, a mason Mehboob Khan Pathan is shown as eye witness to the incident.

11.1] The applicant has enclosed to the present criminal application, a copy of the police complaint lodged at New Delhi on 24.2.2018 against the respondent No.2 herein, alleging the charges of cheating forgery and extending threats to kill. The applicant has also published a Newspaper Notice on 9.19.2018, thereby warning general

public against any action undertaken by respondent No.2, regarding the Agricultural lands. Therefore, there are cross-complaints filed by applicant against the respondent No.2, which are pending.

11.2] The statement of witnesses recorded, which are part of charge sheet also, prima facie, indicate that if the allegations are taken as it is, then the offences punishable under Sections 436, 448, 504, 506 are attracted.

11.3] Thus, it can be seen that there was a land dispute between the brothers and the present applicant. It is alleged that the applicant was physically present at the scene of offence and instigated the other accused to set everything on fire.

12] We are of the considered view that this is not a fit case wherein we should exercise powers under Section 482 of Cr.P.C. to quash the FIR. The charge sheet is filed on 5.7.2020. For the reasons stated above, the applicant is required to face trial. The application being sans merit is accordingly dismissed.

13] In the result, we pass the following order :

ORDER

- i. The criminal application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-