

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

WRIT PETITION NO.2594 OF 2021

Mrs. Leela Sudarshan Chinnam
Age about 51 yrs, Occ: service
Indian Inhabitant of Maharashtra
residing at 4/146, Shivneri CHS, Dr.
Anni Besant Road, Worli, Prabhadevi,
Mumbai. ... Petitioner.

V/s

1. The State of Maharashtra
(at the instance of Worli Police
Station, Mumbai)

2. Chaya Balkrishan Jhore
Age 60 yrs, Occ: business
r/o Building no.3, Room no.117,
Shivneri, Shivaji CHS, Dr. Annie
Besant road, Worli, Mumbai. ... Respondents.

...
Ms Darshikha Vasani a/w Raju Gupta with Mukesh
Gupte a/w Punit Jain a/w Dhruv Gupta a/w
Harshvardhan Tambe with Ms Shivangi Singh for the
petitioner.

Mr.KV Saste, APP for State.

Mr.Chaitnya S. Kotnis @ Ms Shrutika Padwankar a/w
Mr. Shreyas for the respondent no.2.

**CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.**

DATE : 15 NOVEMBER 2022.

JUDGMENT (Per R. N. Laddha, J.) :

. Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. By this criminal writ petition, under Article 227 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short), the applicant seeks quashing of FIR no.12 of 2022 dated 24.12.2020, registered with Worli Police Station, Mumbai, at the instance of respondent no.2 for the offence punishable under Section 289 of the Indian Penal Code which culminated in filing Criminal Case No.944/PS/2020 pending on the file of the Metropolitan Magistrate, 62nd Court, at Bhoiwada-Dadar, Mumbai.

4. It is the case of the prosecution that the petitioner and respondent no.2 are neighbours residing

in the same housing society. The petitioner has kept four dogs outside her house, which bite people. The petitioner feeds these dogs. Further, it is the case of the prosecution that on 18.1.2020 at about 8.30 a.m., when respondent no.2 was on her way home, these dogs suddenly attacked and bit her. Before this incident, these dogs had targeted many persons by their attack and by injuring them.

5. Ms Darshikha Vasani, learned Counsel appearing on behalf of the petitioner, submitted that the petitioner is a dog lover and that she used to feed stray dogs in society's compound, however, the neighbours were not happy with her acts. She submitted that in the instant case, respondent no.2 has falsely implicated the petitioner, due to their animosity. She further submitted that the allegations in the impugned FIR against the petitioner, when read in their entirety and accepted as true, do not make out any case against the petitioner under Section 289 of the Indian Penal Code. Ms Vasani submitted that the petitioner's case squarely falls within the exceptions given by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*¹, and hence, the

1 1992 Supp (1) SCC 335

impugned FIR is bad in law and needs to be quashed.

6. Mr K.V.Saste learned APP, and Mr Chaitanya Kotnis, appearing for respondent no.2, contested the contentions of the learned Counsel for the petitioner. They submitted that, while exercising the powers under Section 482 of the Cr.P.C., the High Court is not required to enter into and consider the case's merits in detail, which as such, are required to be considered at the time of trial. They submitted that when there are serious triable allegations in the report, it is inappropriate to quash the FIR, in exercise of the powers inherent in the High Court. They submitted that the applicants cannot insist that this Court minutely examine the allegations made in the complaint to ascertain whether all the ingredients of the offence are present therein or not. They submitted that even though the inherent powers of this Court u/s 482 of Cr.P.C. to interfere with criminal proceedings are wide, such powers have to be exercised with circumspection and only in exceptional cases. They submitted that dogs looked after and fed by the Petitioner, have been attacking and biting people. They pointed out that in the petition itself, the petitioner has admitted that for 4 to 6 years, dogs used to sit

outside her house for food and shelter.

7. Before dwelling upon the rival submissions, it is appropriate to note the decisions of the Hon'ble Supreme Court in the following cases.

8. The Hon'ble Supreme Court in ***Bhajan Lal*** (*supra*) has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under :

“102. 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 extraordinary 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 channelised 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 first information report 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR 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 FIR 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 FIR 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 provision 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.

103. 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 FIR or the complaint and that the extraordinary or inherent powers does not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

9. In *Central Bureau of Investigation Vs. K.M.Sharan*² the Hon’ble Supreme Court observed thus:

“31. At this stage, the High Court in its jurisdiction under Section 482 Cr.PC was not called upon to embark upon the inquiry whether the allegations in the FIR and the

² (2008)4 SCC 471

charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led.”

10. In *Dineshbhai Chandubhai Patel Vs. State of Gujrat*³, it has been held that ;

“29. The High court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of FIR, complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court can not act like an investigating agency and nor can exercise the powers like an Appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so, when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the

³ (2018)3 SCC 104

questions once the chargesheet is filed alongwith such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

11. ***In Superintendent of Police, CBI Vs. Tapan Kumar Singh⁴***, the Hon’ble Supreme Court, in paragraph 22 has held that,

“The law does not require the mentioning of all the ingredients of the offence in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.”

12. In ***State of Punjab Vs. Dharam Singh⁵***, the Hon’ble Supreme Court, in para 2 has held that-

“The High Court has, however, not confined its scrutiny to the averments contained in the first information report but has traversed beyond and examined the case in the light of the contentions put forth by the respondents in their petition under

⁴ (2003) 6 SCC 175.

⁵ 1987 SCC (Cri) 621.

Section 482 Cr.P.C. By indulgence in such exercise the High Court has come to the conclusion that the second respondent Cooperative Society cannot be termed a dealer of the alleged adulterated fertilizer distributed to its members because there was no sale involved in the transaction, that for the same reason the second respondent Society was not bound to obtain a Registration Certificate for selling fertilizer and furthermore the alleged sale of adulterated fertilizer was itself open to serious doubt because of conflicting analysis reports issued by the Chemical Analyst regarding the fertilizer and hence the emergent position is cognizable offences. Thus what the High Court has done is to go far beyond the contents of the first information report and enter into a discussion on the merits of the case before the Investigating Agency had conducted investigation and collected evidence.”

13. In the present case, the material available on record prima facie indicates that these dogs have instilled fear in the society and that they were in the care and control of the petitioner. It also demonstrates that even earlier, these dogs would attack and bite people. Still, the petitioner had continued to feed and keep these dogs in the society. The presence of dogs in the society, at her instance, is evident from the charge sheet. In the impugned FIR, respondent no.2 has

categorically stated that, at the relevant time, the petitioner had kept the dogs outside her house, and they bit her, and that they would attack and bite people often. These allegations also appear to be supported by the other witnesses. Insofar as the contents of the FIR and the charge sheet are concerned, we prima facie find that respondent no.2/informant has spelt out the offending acts of the petitioner. The allegations made in the FIR and the charge sheet prima facie do constitute a cognizable offence justifying registration of crime, and at this stage it cannot be concluded that no ingredients of an offence under Section 289 of the Indian Penal Code are present in the instant case.

14. Besides, upon perusal of the categories as enumerated by the Hon'ble Supreme Court, in the case of ***Bhajan Lal*** (supra), it is seen that the case of the petitioner does not fall under any of the parameters, warranting quashing of the FIR.

15. Considering the aforesaid, we are of the opinion that no case is made out to quash the impugned FIR. However, we abstain from discussing the statements of the witnesses and the extent of their

substantiation of the FIR, as we apprehend that the same may create an unconscious impression in the mind of the learned trial Court. We wish to mention that this order should not be construed as having ruled on the merits of the matter. Consequently, the learned trial Court shall not be influenced by any of the observations made by us in this Judgment.

16. In light of the above, the present petition, being without merit, is accordingly dismissed.

(R. N. LADsDHA, J.) (REVATI MOHITE DERE,J.)