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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2341 OF 2018

Anil G. Shah ... Petitioner
V/s.
The State of Maharashtra and ors. ... Respondents

Mr. Anil G. Shah, the Petitioner in person present.
Mr. J.P. Yagnik, APP for the Respondent.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 6 JULY 2022.

P.C.

. The present petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure is filed to quash F.I.R. No. 37 of 2018 registered at Worli Police Station, Mumbai against the Petitioner for the offences punishable under Section 353 and 506 of the Indian Penal Code and Criminal Case No. 512/PW/2021 pending on the file of Metropolitan Magistrate, Dadar arising out of the FIR in question.

2. The aforesaid crime came to be registered at the instance of Respondent No.2, a lady Judicial Officer working as Deputy Charity Commissioner. The Respondent No.2 has alleged that on

22 January 2018, the present Petitioner shouted at her, threatened her of dire consequences and prevented her from discharging her judicial functions.

3. We have heard the Petitioner – in- person and the learned APP for the Respondent / State.

4. The Petitioner submits that the F.I.R. does not disclose any cognizable offence. It is submitted that at any rate no offence under Section 353 of the IPC is made out as there are no allegations of use of criminal force or assault. As regards the offence under Section 506 of the IPC, it is submitted that the same is non-cognizable and even otherwise there are no allegations of criminal intimidation to attract the said offence.

5. On the other hand, learned APP for the Respondent / State submits that FIR clearly discloses commission of cognizable offence punishable under Section 353 of the IPC. It is submitted that there are statements of witnesses recorded under Section 161 of the Cr.P.C. in whose presence the Complainant was threatened and prevented from discharging her official duty. It is submitted that considering the nature of allegations, the present petition may not be entertained.

6. Chargesheet has been filed in the case. During the investigation, statements of witnesses have been recorded. One of the witnesses is working in the office of the Charity Commissioner has given a statement that she was called for by an employee working in his office. As to when she entered, the Petitioner was shouting in the office of the Complainant. It is stated in the charge-sheet that the Petitioner created disturbances at 12.15 in the afternoon when the proceedings were going on and again on 2.30 in the afternoon. When the proceedings were going on, the Complainant – Judicial Officer heard a loud noise of the door banging and the Complainant got scared. She saw the Petitioner advancing towards the front row of the chairs and threatened that he will make a complaint and he will take action against the Complainant. The staff members who were present tried to reason with the Petitioner, however, he was not ready to remove himself. The witnesses present have stated to that effect.

7. The contention of the Petitioner in-person that all that he did was to state that he will file a complaint to the Chief Justice is too simplistic stand to be taken. It was not the mere words of the Petitioner alone, but coupled with action. Under Section 353 of the Indian Penal Code, whosoever assaults or uses the criminal force to any public servant in the exercise of his duty as such public servant, or with an intention to prevent or deter the person from discharging his duty is punishable with the imprisonment specified therein.

That the Complainant was lawfully discharging the duty imposed upon the law is clear from the complaint. It is stated by the Complainant that when the Petitioner entered in the Court room, there was a loud noise of the door which made the Complainant, a lady judicial officer extremely apprehensive. For offence under Section 353 of the IPC, it was not essential that the hurt should be caused to the public servant. In the complaint it is stated which is *prima facie* seen from statements of the witnesses that the Petitioner had deterred the complainant from performing the official duties. The definition of Section 351 of assault, the gesture which causes an apprehension that the gesture or preparation is about to use criminal force would amount to assault.

8. We have to keep in mind that we are considering the case of the Petitioner for quashing of the criminal proceedings and not an application for bail or a trial. The exercise of the extraordinary jurisdiction is in exceptional circumstances. The issue is whether no case is made out at all from the statements and the FIR filed. *Prima facie*, the facts on record the manner in which the Petitioner conducted himself in front of the complainant, it cannot be said that ingredients of the offence invoked are absent. Whether a particular action or words amount to an assault for criminal force would be the facts of each case and therefore, the arguments of the Petitioner in-person that he has not used criminal force or committed assault would be considered at the time of trial.

9. As regard the decisions cited by the Petitioner in-person in the case of *Fakruddin Ahmed Lohar v/s. The State of Maharashtra and Ors.*¹, the Division Bench found that the applicant therein had not used any criminal force to deter the public servant. In that case the applicant therein had stated to a Police Officer at the Police Station that he will file complaint against the informant and the superiors in the Court. There was no such allegations of loudly banging the doors of the room and advancing towards the table of the complainant shouting which caused apprehension in the mind of a Judicial Officer. Furthermore straight jacket formula cannot be evolved and the case would depend on the facts of each case. The Petitioner in-person has placed on record the judgment of the Division Bench in the case of *S.B. Khandelwal v/s. State of Maharashtra and Anr.*². This decision is entirely irrelevant for the case at hand as it pertains to service matter filed by the complainant.

10. Considering these circumstances, we find that no case is made out for exercising extraordinary jurisdiction. It is clarified that the observations made in this order are in the context of non exercise of the extraordinary jurisdiction. The Petition is dismissed.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

1 Manu/MH/1951/2017

2 2011(1) Mh.L.J. 469