

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.554 OF 2020

Bholashankar Sheshnarayan Shukla ...Applicant

vs.

Mahesh Chunilal Sharma and Others ...Respondents

Mr. Dilip Satale, for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent-State.

VISHAL
SUBHASH
PAREKAR

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Date: 2022.04.25
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CORAM : N. J. JAMADAR, J.

DATE : APRIL 22, 2022

P.C.:

1. The applicant who claimed to be the tenant of a shop premises situated at Swaccha Hindu Uphar Griha, Gaondevi, Mumbai has preferred this application assailing the legality and correctness of the order passed by the learned Sessions Judge in Criminal Revision Application No. 1172 of 2018 whereby the learned Sessions Judge dismissed the revision application and affirmed the order passed by the learned Magistrate in CC No. 5026/SW/2016 dismissing the complaint lodged by the applicant for the offence punishable under sections 120(B), 420, 406, 114 read with 34 of the Indian Penal Code, 1860 (the penal code).

2. The learned Magistrate was of the view that the report of inquiry submitted by the police officer under section 202 of the

Code of Criminal Procedure was worthy of acceptance and no prima facie case for the offence punishable under sections 120(B), 420, 406, 114 read with 34 of the penal Code was made out. The learned Sessions Judge concurred with the view of learned Magistrate. Being aggrieved the applicant has invoked the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure.

3. Heard the learned counsel for the applicant.

4. The learned counsel submitted that the learned Magistrate as well as the learned Additional Sessions Judge did not properly appreciate the case put forth by the complainant. The finding arrived at by the Courts below that the dispute was of a civil nature is infirm. The learned counsel took pains to take the Court through the copies of the multiple complaints lodged by the complainant against respondent Nos. 1 to 3, over a period of time.

5. The indictment against respondent Nos. 1 to 3 is that while the complainant was in lawful possession of the *pan stall*, the respondent Nos. 1 to 3 repeatedly threatened to dispossess the complainant and eventually demolished the *pan stall* and dispossessed the complainant.

6. The learned Magistrate has noted that the complainant has initially lodged a complaint No. 17/SW/2014. The said complaint was withdrawn on 22nd June, 2014. The complainant, thereafter filed another complaint being case No. 1048/SW/2015, which came to be dismissed by the learned Magistrate under section 203 of the Code. The complainant, thereafter, preferred the instant complaint. It was referred for inquiry under section 202 of the Code. After perusal of the report, which indicated that no offence was made out, the learned Magistrate, was persuaded to dismiss the complaint and dispose of the protest petition filed by the complainant. The learned Magistrate recorded that the complaint essentially proceeded on the premise that while withdrawing the complaint No. 17/SW/2014 the accused had assured to pay Rs. 50,000/- to the complainant and allow him to run the *pan stall* and, thereafter, the accused reneged from their promise. Thus no element of criminality was involved.

7. I do not find that the learned Magistrate committed any error in dismissing the complaint. The record indicates that on the same set of facts the complainant approached the Magistrate with three complaints apart from multiple NC reports lodged with the police. The first complaint was withdrawn and accused therein were discharged. The second complaint was dismissed by the learned

Magistrate under section 203 of the Code. In the third and the instant complaint, the primary grievance was the non compliance of the terms on which the complaint No. 17/SW/2014 was withdrawn. In the circumstances, neither the learned Magistrate nor the learned Additional Sessions Judge committed any error in dismissing the complaint and revision application, respectively.

8. Hence, no case is made out to entertain this application.

9. Application stands dismissed.

(N. J. JAMADAR, J.)