

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3810 OF 2018

Devidas Parshuram Gavai, Age 72 years,
Occ.Business, R/o.A/405, Nil Lake Vie CHS Ltd.
Plot No.20, Sector-6, Khanda Colony,
New Panvel, District Raigad.

Petitioner

versus

1. Abhijit Bhanudas Tekavade,
2. Bhanudas Prabhakar Tekavade,
Both r/o.Flat No.49/1402, Seawood Estate
CHS Ltd; Palm Beach Road, Sector-26,
New Mumbai.
3. Samadhan Shivaji Sanap, Age 30 years,
R/o.Ashok Patil Chawl Row House,
Sector-20, Helapur Village, CBD Belapur.
4. Parshuram Gundu Gavade, Age 45 years,
R/o.Flat No.1-3, Plot No.Z-19, Shahbaz Village
CBD Belapur, Navi Mumbai.
5. The State of Maharashtra.

Respondents

Mr.Mateen Abdul R. Shaikh, Advocate for Petitioner.
Mr.A.R.Patil, APP, for State.

Ms.Vrushali Maindad i/by Mr.Prashant Patil, Advocate for
Respondent nos.1 to 4.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th September 2022

PC :

1. The petitioner is the original complainant. Respondent nos.1 to 4 were arraigned as accused in the said complaint. The complaint was filed for the offences under Sections 420, 447, 504, 506 of Indian Penal Code.

2. The complainant has alleged that he was conducting hotel business. He approached accused no.1 for hiring shop premises

belonging to him situated at New Bombay Co-operative Commercial Complex Premises, Plot No.43, Sector-11, CBD-Belapur for the purpose of conducting hotel business. Accused no.2 is the father of accused no.1. He is the power of attorney holder of accused no.1. Accused no.3 is driver of accused no.2 and accused no.4 had acted in connivance with other accused for taking possession of the premises and using the same. The aforesaid premises was let out to the complainant by accused no.1 for a period of 36 months on leave and license basis. Agreement in that regard was executed for the period from 26th September 2016 to 29th September 2019. It was registered. It was agreed that complainant would deposit Rs.2 lakh by way of security deposit and pay monthly license fee in the sum of Rs.25,000/- for first 12 months, Rs.25,500/- for next 12 months and Rs.30,250/- for last 12 months. The complainant renovated the premises and also spent money for furniture, electrification etc. Accused nos.1 and 2 had agreed to clear the encroachments in front of the premises. However, he did not take any steps in that regard. The complainant spent Rs.15 lakh towards interiors and furniture installed in the premises for his business. He obtained all the requisite permissions for hotel business. However, there was no co-operation from accused nos.1 and 2 for fulfilling their promises and also for constructing stairs in front of premises. For non compliance of the promise by accused, notice was sent to accused no.1 by complainant through his advocate on 11th November 2018. On receipt of notice, accused nos.2 and 3 came to the hotel premises. The Manager and other staff members were present at the premises. Accused abused the staff of complainant. They threatened the customers sitting in the hotel. They were asked to move out of premises. The accused forcefully entered into the premises. They

had also hired some goons, kept watch at the premises. Accused then took possession of the premises. Complainant made attempts to take possession of said premises. He approached police for lodging complaint on 18th November 2016. Police did not take cognizance of the complaint. On 21st November 2016 complainant forwarded complaint to CBD Belapur Police Station for registering the offence against accused. No action was taken by police against accused. Accused no.2 in connivance with and at the instance of accused no.1 forwarded notice dated 19th December 2016 through their advocate. False allegations were made in the notice. Notice was replied by complainant through his advocate and refuted allegations in the notice. Since police did not initiate any action, complainant filed Criminal Writ Petition No.127 of 2017 in this Court. Vide order dated 27th February 2017 the petition was disposed off with liberty to initiate appropriate remedy. Accused have committed offence u/s.406, 420, 447, 448, 452, 504, 506 r/w 34 of Indian Penal Code. A Private complaint was filed before the Court of Judicial Magistrate, First Class, Navi Mumbai on 20th March 2017.

3. Learned JMFC, Vashi, at CBD Belapur vide order dated 3rd August 2017 issued process against accused no.1 under Section 420 of IPC, under Sections 445, 504 and 506 of IPC against accused nos.2 and 3 and u/s.447 of IPC against accused no.4.

4. Respondent nos.1 to 4 challenged the order issuing process before the Court of Sessions by preferring Criminal Revision Application No.181 of 2017. Learned Sessions Judge, Thane by order dated 13th June 2018 allowed the revision application and set aside the order issuing process dated 3rd August 2017 passed in

Criminal Case No.401 of 2017 by learned JMFC, Vashi, at CBD Belapur.

5. Petitioner being the original complainant is aggrieved by the order dated 13th June 2018 and has preferred this petition challenging said order.

6. Learned advocate for petitioner submitted that order passed by Sessions Court setting aside the order of process is contrary to law. Learned Magistrate had issued process on the basis of complaint, verification statement and documents on record. Learned Magistrate had observed that offences u/s.420, 447, 504 and 506 of IPC are prima facie made out. There was no reason to set aside the said order. The premises owned by accused no.1 was rented out to petitioner-complainant by executing leave and license agreement. Petitioner had spent huge amount in renovation and installation of furniture. The accused did not fulfill the terms of agreement. Despite several complaints no action was taken by police. The accused retained the deposit amount and equipments. The agreement was registered and petitioner cannot be dispossessed without following due process of law. Accused had forcefully entered into the premises and took over possession. Complaints were made to police. No action was initiated by police. Hence petitioner filed a private complaint. Learned Magistrate recorded verification statement of complainant on 25th April 2017 and issued process for the aforesaid offences. At the stage of issuance of process what is required to be considered is whether prima facie case is made out for taking cognizance of complaint and issuing summons to the accused. The Sessions Court has failed to appreciate evidence on record and mechanically set aside the order of process.

7. Learned advocate for respondents supported the impugned order dated 13th June 2018 passed by Sessions Court. It is submitted that learned Magistrate had mechanically issued the order of process. The said order reflects non application of mind. The dispute relates to the premises let out by accused no.1 to the complainant. The complaint does not involve any criminal element and no offence u/s.420, 447, 504 and 506 was made out. At the most the dispute is of civil nature.

8. The complaint discloses that accused no.1 is the owner of premises. Agreement was executed between complainant and accused no.1. Subject premises were let out to the complainant. The grievance of complainant is that promises made by accused no.1 while executing agreement of leave and license were not fulfilled. The accused then entered into the premises and threatened the members of staff of complainant and customers present in the hotel premises. It is alleged that accused have committed offence of cheating, criminal trespass, criminal intimidation and breach of peace. The petitioner/complainant had prayed for directions to investigate the complaint vide Section 156(3) of Cr.P.C. The learned Magistrate vide order dated 18th April 2017 observed that considering allegations, it is not proper case to invoke power under Section 156(3) of Cr.P.C. Hence that prayer is rejected. Put up for verification on oath as per Section 200 of Cr.P.C. Vide order dated 3rd August 2017, process was issued. The complainant through his advocate issued notice dated 11th November 2016 to respondent no.1 and called upon him to provide access through staircase to the shop and remove illegal tapari business carried in front of shop. The complainant submitted complaint to police through his advocate on

22nd November 2016. The respondent no.1 through his advocate sent notice to complainant dated 19th December 2016 stating that the complainant avoided to enter into agreement for shop fixtures, fittings etc. He did not pay license compensation from 26th September 2016. The cheque issued by him was dishonoured. There are complaints of neighbours against him. Notice also stated that the leave and license agreement is terminated. The said notice was replied by complainant through advocate's reply dated 24th December 2016. The allegations were refuted. The report regarding action taken on complaint dated 21st November 2016 was forwarded to petitioner on his application through RTI. The police report dated 21st December 2016 submitted to the Deputy Commissioner of Police, Zone-I, Vashi, Navi Mumbai by Assistant Police Inspector, CBD Police Station wherein it is stated that inquiry was conducted by police in respect of complaint by petitioner and inquiry revealed that dispute is of civil nature. Perusal of contents of complaint and documents on record makes it clear that indeed the dispute is of civil nature. Learned Sessions Judge has assigned reasons for setting aside order of process. Learned Sessions Judge while passing impugned order dated 13th June 2018 has observed that learned Magistrate had not applied judicial mind while passing order of process. Learned Sessions Judge considered the factual aspects that there was dispute between parties regarding premises and leave and license agreement allegedly executed between them. The complainant had allegedly issued notice to accused no.1. Police did not take cognizance of the complaint lodged by complainant. The contention of accused was that as per terms and conditions of leave and license agreement, the complainant was required to pay rent to accused no.1. However, in spite of repeated demands he failed to pay rent and surrender

possession of premises to accused no.1. The case of accused was that there was no written or oral agreement between the complainant and accused no.1 about construction of staircase and removal of unauthorized tenements situated in front of shop premises. I do not find any reason to interfere in the impugned order dated 13th June 2018. No case was made out for issuing process against accused. There is no ground to set aside the impugned order passed by Sessions Court.

ORDER

- (i) Criminal Writ Petition No.3810 of 2018 is dismissed.

(PRAKASH D. NAIK, J.)

MST