

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL)NO. 1190 OF 2021

APPLICANTS :-

1. Prashant Natthuji Shende, Aged 46 years, Occup.Business and Partner of Venus Critical Care Hospital, R/o.Plot No.13, Borkute Layout, Vivekanand Nagar, Nagpur-15.
2. Bhupendra Sevak Lavatre, Aged 48 years, Occup.Doctor and Partner of Venus Critical Care Hospital, R/o.Flat No.303, Swastik Apartment No.2, Neeri Road, Post Uppalwadi, Nagpur 440026.
3. Rajesh Tulshiram Baghe, Aged 51 years, Occup. Doctor and Partner of Venus Critical Care Hospital, R/o.Flat No.34/2, Priyadarsani Colony Gadge Layout, Civil Lines, Amravati Road, Nagpur.

...VERSUS...

NON-APPLICANTS :-

1. The State of Maharashtra, through Police Station Officer, Police Station, Sadar, Nagpur City, District-Nagpur.
2. Dinesh Ghyanprakash Chhabra, Aged about 62 years, Occupation: Business, R/o.Plot No.18, Vijay Nagar, Chaoni, Nagpur, Tq. and District Nagpur.

Mr. D.C.Daga, counsel for the applicants.
Mr. M.J.Khan, APP for non-applicant No.1.
Mr.Rohan Chhabra, counsel for non-applicant No.2.

**CORAM : SUNIL B.SHUKRE &
G.A.SANAP JJ.**

DATE : 06.06.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. Although, it has been argued on behalf of the State, by the learned APP and also on behalf of respondent no.2, the complainant, by his learned counsel, that there are some elements of criminal offences which are *prima facie* made out against the applicants; the reason for registration of various offences like those punishable under Sections 420, 419, 409, 504, 506 and 120-B of the Indian Penal Code, we find on careful consideration of the material available in case diary and allegations made against the applicants by the non-applicant no.2 in the First Information Report, that no *prima facie* case for registration of these offences against any of the applicants is made out.

4. The allegations made against the applicants are basically regarding non payment of rent by the applicants for a certain period of time. At the same time, non-applicant no.2, in his complaint, admits that during the first year of the agreement of leave and license, non-applicant no.2 was paid full rent by the applicants and in the second year of the 7 years agreement, non applicant no.2 received rent of Rs.69,00,000/- from the applicants. Once, it is admitted by a complainant like non-applicant no.2 that a part of the promise made by the accused is fulfilled, no allegation made by a complainant against the accused that remaining part of the agreement was not fulfilled by the accused can be understood as amounting to intentionally deceiving the complainant. In order to make out any offence punishable under Section 420 of the Indian Penal Code, there has to be present dishonest intention since beginning of the transaction which is not here. As regards, the offence punishable under Section 409 of the Indian Penal Code, there must be some entrustment of the property or handing over of any dominion over the property and its dishonest use or disposal by the accused. Merely because there is a grievance of not paying of rent by the tenant for some months

or for some years, it cannot be said that there is any dishonest use or disposal of the property. Therefore, accepting all the allegations made in the complaint against the applicants at their face value and as they are, without adding anything thereto or subtracting anything there from, we, find that no offences punishable under Sections 420 or 409 of the Indian Penal Code, are made out.

5. As regards, the offence of criminal conspiracy, under Section 120-B of the Indian Penal Code, which has been registered against the applicants, we find that there is not even a whisper regarding entering into any criminal agreement by these applicants with a view to commit offence in relation to the complainant i.e. non-applicant no.2 and, therefore, in our considered view, even the offence punishable under Section 120-B of the Indian Penal Code is not made out in any way.

6. As regards the offences punishable under Section 504 and 509 of the Indian Penal Code, we find that there are some allegations of threatening and using insulting language. But, these allegations are absolutely vague as nothing is stated about the date and time of the incident and also the place of occurrence.

Therefore, even if these allegations are accepted as they are, we do not think that they would *prima facie* constitute any offence punishable under Sections 504 or 506 of the Indian Penal code.

7. Apart from what is stated above, we find that basically the dispute between the applicants on the one hand and non-applicant on the other is Civil in nature. The applicants have, much before filing of the complaint by non-applicant no.2, filed a Civil Suit against the non-applicant no.2. This suit being Reg.Civil Suit No.195 of 2021 is pending before the Small Causes Court at Nagpur. In this Suit, the applicants have sought a declaration that they are lawful tenants on the suit premises in view of the unregistered agreement dated 15.09.2020 and the applicants have also sought injunction against the non-applicant no.2 restraining him from alienating the suit property or dispossessing the applicants from the suit property. In this suit, the applicants have also filed an application seeking temporary injunction under Order 39, rules 1 and 2, wherein the applicants have sought temporary injunction against non-applicant no.2 for restraining him from disturbing the peaceful possession of the applicants over the suit

premises and in this application, a notice has already been issued by the Civil Court.

8. Pendency of this civil dispute in respect of the same property has been suppressed by non-applicant no.2, while lodging his complaint against the applicants. It appears to us that such suppression has been done by the non-applicant no.2 intentionally so that he can settle his dispute of civil nature with applicants by arm twisting method, thereby abusing process of law. With such allegations, the Investigating Officer, ought not to have registered any crime against the applicants as the allegations made against the applicants, at their face value, do not constitute any offence. In fact, if one carefully reads and considers the allegations made in the complaint, one would not require assistance of any legal expert to understand the nature of the dispute between the parties and to know as to how these allegations do not even remotely constitute any criminal offence against the applicants. But, for the reasons best known to the Investigating Officer, the offences have been registered against the applicants at the behest of the non-applicant no.2 and the offences so registered, being serious in nature, are

quite sufficient to cause some damage to the reputation of the applicants. Of course, it has been argued that one of the applicants i.e. applicant no.3 has criminal antecedents. Even if one of the applicants is having some criminal record, it would not mean that he can always be dealt with in a high handed manner come what may be the nature of the allegations freshly made against him. If those allegations point towards some civil dispute and not any crime, Investigating Officer would not be justified to register any crime against such a person just because he has some criminal history. If a person has a criminal history, the most advisable thing to do for the Investigating Officer is to proceed against him in the crimes earlier registered against that person and not treat him in a manner as if he is a person who was and who would always be a criminal only because fresh complaint is received against him. He cannot presumptuously and without verifying if any cognizable offence is made out or not register any fresh crime against such a person. The Investigating Officer, however, failed to perform his such duty here. Besides, failure to pay rent would only lead to civil consequences and there can be no offence registered against the tenant for such failure. This is the law laid down by the Apex

Court in the case of **Neetu Singh and ors. Vs. State of U.P.**, reported in **2022 LiveLaw (SC) 281**.

9. Shri.Chhabra, learned counsel appearing for non-applicant no.2 has invited our attention to the guidelines laid down by the Hon'ble Supreme Court in the case of **Neeharika Infrastructure Pvt.Ltd..Vs. State of Maharashtra and ors.**, reported in **2021 SCC OnLine SC 315**, which are to be followed by the Courts while dealing with the applications and writ petitions seeking quashing of the First Information Report and the investigation. These guidelines are reproduced thus:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned*

Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.PC. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.PC., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.PC. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the

investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

10. So far as, the facts and circumstances of the present case are concerned, guideline Nos. (iii), (iv) and (x) are important. Guideline No.(iv) lays down that the power of quashing of First Information Report in investigation must be exercised sparingly and with circumspection and in the rarest of rare cases. Guideline No.(x) prescribes that save in exceptional cases where non interference would result in miscarriage of justice, the Court must

not interfere and the judicial process must not be carried out for interfering at the stage of investigation of offences. Guideline No. (iii) says that it is only in cases where no cognizable offence or offence of any kind is disclosed in the First Information Report that the Court will not permit an investigation to go on. In our opinion, the present case is squarely covered by all these three guidelines, which we have already elaborated upon. We have also found that the dispute between the parties is civil in nature. We have also discussed as to how no cognizable offence is disclosed by the complaint. In these circumstances, we are of the view that, if no interference is made with the crime already registered against the applicants and the investigation that is going on, it would result in miscarriage of justice.

11. We, therefore, find that this is a fit case for making interference with the investigation being made. Ordinarily, we would have directed taking of suitable departmental action against the Investigating Officer for his arbitrary and unjustifiable action in registering the offences against the applicants and we would also have liked to impose some cost on the Investigating Officer. But,

this time we refrain from doing so with the hope that in future the concerned Investigating Officer, would not repeat his such serious mistakes. We may add here that if in future, the Investigating Officer, is seen to be repeating his similar arbitrary acts, his superior officers would be justified in proceeding against him departmentally.

12. In view of above, the Criminal Application is allowed in terms of the prayer clause (i) which is reproduced for the sake of convenience as follows.

i) quash and set aside the First Information Report vide Crime No.461 2021 dated 05.10.2021 for the offences punishable under Section 420, 419,409, 504,506 and 120-B of Indian Penal Code registered by non-applicant no.1-Police Station Sadar, Nagpur (Annexure-B);

13. Rule is made absolute in the above terms. No costs.

14. Copy of the order be forwarded to the Director General of Police-State of Maharashtra and the Commissioner of Police, Nagpur for information.

(G.A.SANAP, J)

(SUNIL B. SHUKRE,J)