

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1588 OF 2023

Vijay s/o Yashwant Kulkarni

.... APPLICANT
(Ori. Accused No.1)

VERSUS

1. The State of Maharashtra
2. Deepak Chandmal Varma

... RESPONDENTS
(Ori. Complainant)

Mr. V. S. Bedre, Advocate for the applicant
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. D. K. Kulkarni, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 31st AUGUST, 2023

P.C. :-

1. This application is filed under Section 482 of Code of Criminal Procedure (for short 'Code') for quashment of S.T.C. No. 2853/2013 on the file of learned Judicial Magistrate First Class, Court No. 11, Ahmednagar.

2. The applicant is then Municipal Commissioner, Ahmednagar for the period from 2012 to 2015. Respondent No.2 is businessman from Ahmednagar, who filed private complaint against applicant and others. It is alleged therein that the officials of the Municipal Corporation had seized goods of the complainant at the time of removal of encroachment

and against the said action on 18/05/2013 he started agitation in front of the house of the Municipal Commissioner. It is alleged that applicant and accused No.2 in the complaint came, abused and pushed him. It is alleged that accused No.2 gave fist blow on his face which has resulted in uprooting of the tooth. It is further alleged that thereafter police personnel came to the spot and took him to the police station wherein he was detained. On these allegations offence was alleged against the applicant and two accused persons punishable under Sections 341, 342, 323, 325, 504, 506 read with 34 of Indian Penal Code (for short 'IPC').

3. Record indicates that after filing of the said complaint on 18/10/2013 an order came to be passed by JMFC, Court No.11, Ahmednagar dated 19/11/2013 to postpone the issuance of process against the accused person and inquiry was directed under Section 202 of the Code. The complainant was also directed to furnish additional evidence. This order seems to have been passed after recording of the verification of complainant.

4. Learned counsel for the applicant submits that the applicant was Municipal Commissioner and in his official duties if the action is taken of seizure of articles of the complainant, he cannot be allowed to be subjected to the criminal prosecution. It is submitted that when the

learned JMFC had passed an order dated 19/11/2013 directing an inquiry under Section 202 of the Code and has called upon him to furnish additional evidence, without there being such evidence, it was not open for the Court to issue process against the applicant. He submitted that the record indicates that no inquiry report was filed by the concerned Police Station before the learned Magistrate nor any additional evidence was laid by the complainant in order to issue process against him. It is further submitted that *prima facie* perusal of the complaint does not disclose any offence against applicant and hence the said proceeding deserves to be quashed.

5. Learned counsel for respondent No.2 opposed the said submission by stating that the act alleged in the complaint has nothing to do with the discharge of the duties by the applicant and hence he cannot seek any protection under Section 197 of the Code. To support his submission he placed reliance on the judgment of in case of ***B. S. Sambhu V. T. S. Krishnaswamy, AIR 1983 Supreme Court 64***. On merit it is submitted that the allegations in the complaint are sufficient to show that all the accused in furtherance of their common intention have committed the offence and hence the Trial Court has rightly issued process against them. According to him considering averments in complaint, this is not fit case for quashment of proceeding.

6. Before considering the contents of the complaint it would be relevant to take note of certain facts as they appear from the record. On 18/05/2013 an application was filed by the son of the complainant/respondent No.2 under Section 97 of the Code for search warrant. Perusal of the said complaint indicates that it was alleged that at the instance of accused person, complainant was taken in the custody and was wrongfully confined in the police station. It is alleged therein that around 10.30 am on 18/05/2013 the accused unauthorizedly confined his father and that he was beaten. An order came to be passed on this application on 23/07/2013 directing affidavit of Deepak Varma i.e. respondent No.2 to be registered as private complaint. On the basis of the said direction complaint came to be registered. An order came to be passed on 19/11/2013 postponement of issuance of process and inquiry was directed under Section 202 of the Code. It is thus clear that the learned Magistrate was not satisfied that any case is made out for issuance of process against the accused and hence inquiry was directed accordingly. Record further indicates that though the concerned police station was called upon to submit report with regard to the said inquiry however at no point of time any such report is placed on record. It is thereafter only on the basis of the statement of complainant and without any other evidence on record, order came to be passed on 21/02/2023 of issuance of process against the accused persons.

7. The aforesaid facts clearly indicate that the order of issuance process passed by the learned Magistrate is contrary to order dated 19/11/2013 which required the complainant to furnish additional evidence and police to conduct an inquiry into the allegations.

8. Apart from this perusal of the complaint shows that there is no allegation against the present applicant of causing any hurt to the complainant. The allegation against the accused Nos. 1 and 2 is about hurling abuses. There is allegation against accused No.2 that he gave fist blow on the face of the complainant and thereby caused injury to him. It is further stated in the complaint that after five minutes thereof his son Premchand came to the spot and thereafter the police vehicle of Topkhana Police Station came and 4 police personnel took the complainant to police station. It is stated that he was unlawfully arrested and was detained in the police station. It is further alleged that after 8 days of the incident he lost the tooth.

9. The allegation against the present applicant is that he pushed complainant. In order to constitute even an offence punishable under Section 323 of the Code, it is just and necessary that a hurt as defined under Section 319 of IPC must cause to the complainant. As per the said definition who were causes bodily pain, disease or infirmity to any person

is said to cause hurt. It is there is nothing in the complaint to indicate that any hurt was caused by the applicant to the complainant. As such even offence punishable under Section 323 of the Code does not get attracted against present applicant and question of under Section 325 of the Code does not arise at all.

10. It is sought to be argued that learned counsel for respondent No.2 that all accused persons in furtherance of their common intention have done the acts and they are responsible for the acts of each other. In this regard it is pertinent to note that there is no averment in the complaint that the accused person in furtherance their common intention committed any act. From the complaint itself it is clear that the police personnel were not present at the time of occurrence of the alleged incident wherein the complainant was allegedly abused and assaulted. Thus, question of accused No.3 who is PI Topkhana Police Station cannot be said to be sharing any common intention with co-accused for committing the said offence. Apart from this there is nothing on record to indicate that accused No.1 and 2 shared common intention to cause assault on the complainant. The allegation in respect of causing of hurt is attributable only against accused No.2. Under Section 34 of the IPC recognizes the principle of vicarious liability in criminal jurisprudence. For the purpose of attracting the same the common intention must be

apparent from the act. Even complainant does not state in his complaint anything about accused sharing any such common intention or any material indicating same. Pertinently even learned Trial Court while passing order of issuance of process has nowhere observed that accused shared any common intention between them for the commission of alleged offence.

11. There is no averments in the complaint that the present applicant had called police at the spot and thereafter at the instance of applicant complainant was taken by police in the custody. Thus, it cannot be said to the responsible for the alleged detention of the complainant by the concerned police Station.

12. In order to attract provisions of Section 504 of IPC there must be allegation that the abuses hurl were intending or knowing that such action would provoke the aggrieved person to break public peace or to commit an offence. Mere hurling of abuses in absence of any such knowledge of intention does not fall within the definition of Section 504 of IPC. From the complaint such knowledge or intention cannot be attributed to the present applicant. Having regard to avernments in the complaint, no offence is made out against applicant.

13. The law on the point of quashment of the proceeding is fairly settled. The Hon'ble Apex Court in case of ***State of Harayana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604*** has laid down principles and the circumstances in which the criminal proceeding can be quashed. The said illustration indicate that where the complaint on the face of it does not disclose any offence, it is liable to be quashed. Apart from this if the complaint is motivated and is a result of vengeance in that circumstance also it cannot be allowed to be continued. In the present case it is clear from the material placed on record that the applicant was Municipal Commission at Ahmednagar. Some action seems to have been initiated of removal of encroachment wherein it is alleged that the articles/ goods of complainant were seized. The complainant, therefore definitely had grievance against the present applicant and there is reason to accept contention applicant's counsel that proceeding is filed out of vengeance. Thus, this case squarely fits in to the illustrations (1), (2) and (7) of aforesaid judgment. As a result of this, application is allowed. Proceeding bearing S.T.C. No. 2853/2023 stands quashed qua applicant.

(R. M. JOSHI, J.)

ssp