

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.117 OF 2018

Mayur Manoj Mulik and Ors

.. Petitioners

Versus

State of Maharashtra & Ors

.. Respondents

...

Mr. Pramod Bhosle i/b Sharad K. Bhosle for the petitioners
Mr. Vikas B. Shivarkar, for respondent no. 3.
Mr. S.S. Holke, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 22nd AUGUST, 2023

P.C:-

1 The present petition is filed by the petitioner, assailing the order of issuance of process by the Magistrate u/s. 354C and 323 r/w Section 34 of the IPC, the process being issued on 12/10/2017 in RCC No. 421/2017.

2 Heard learned counsel for the petitioner and learned counsel Mr. Vikas Shivarkar for respondent no.3 and learned APP for the State.

3 The learned counsel for the petitioner has invited my attention to an injunction order passed by the Civil Judge, Sr. Division, Pune, below Exhibit-5 in RCC No. 2166/2015

instituted by the plaintiffs, is the Petitioner's herein. The dispute between the plaintiff and the respondent revolve around the alleged encroachment on the suit property and pertain to causing obstruction thereof.

The location of the plaintiff's property and the respondent's property can be assessed from Exhibit-B, a document annexed at page 34 of the petition.

The order dated 28/1/2016 restrained the defendant no.1 or any person on his behalf from raising illegal construction by making encroachment upon the suit property and causing obstruction thereof till the final disposal of the Suit.

An Appeal filed by the defendants before the District Judge, Pune, is dismissed on 22/02/2017 thereby confirming the order of injunction in favour of the plaintiff.

4 This discord resulted in filing a Criminal Complaint by the wife of the defendant no.1 by invoking Sections 323, 354(a)(b)(c), 452, 499, 500, 504, 506 r/w Section 34 of IPC. The complaint being preferred u/s.156(3) of the Cr.P.C on 12/5/2017 after the defendant was enjoined from creating any obstruction or encroachment on the property of the plaintiff.

5 On 30/6/2017, the Magistrate on perusal of the complaint recorded that there is a civil dispute between the parties coupled with an old enmity prior to the institution of the complaint and therefore, the investigation through police

machinery is not required. It was therefore, directed to take up the complaint for verification.

The affidavit came to be filed by the complainant, Sheetal Darekar, levelling serious accusations. The verification is done in presence of the Magistrate on 7/9/2017 and this verification statement has only one allegation being that she is acquainted with the accused, since he reside opposite to her house and she verified the incident dated 9/6/2016, by stating that there is a vacant land between her house and house of the accused which is separated by two feet distance and, the accused persons are harassing her family.

In the verification statement, she state that the accused has fitted CCTV cameras facing her house, so that all the activities taking place in her house are observed and this has created inconvenience to the entire family. A request was made to remove the CCTV cameras but the request was turned down and they were assaulted. She also alleged that while they were working in front of the house, a videography was carried out by accused Vrishabh Mulik and he clicked pictures and on 17/4/2017, she was assaulted when she questioned about the filming.

6 The aforesaid verification on 7/9/2017 bear the signature of the Magistrate and he also bear the signature of the complainant affixed.

7 The necessary ingredient of Section 200 which empower the Magistrate to take cognizance of an offence of complaint, require examination of the complainant on oath and recording of the substance of examination in writing, which shall bear the signature on the complaint and which shall also be signed by the Magistrate. The only exception to such procedure is contemplated by the proviso and the present case is definitely not covered by the proviso.

When the complaint under verification which is recorded by the Magistrate, is perused, there is no ingredient of Section 354C made out. The order passed by the Magistrate on 12/10/2017 record the following effect :-

“I have perused complaint and verification of complainant. It seems that complainant has shown prima facie case against accused. Perused the allegations and verification. Complainant has shown ingredients required for offence punishable u/s.354(c) and 323 r/w Section 34 of IPC. Hence, issue process against accused u/s.354(c) and 323 r/w Section 34 of the IPC.”

8 The learned Magistrate has completely failed to consider the ingredients of Section 354C, which has inserted “Voyeurism” in the Indian Penal Code with effect from 3/2/2013 by the amending Act No. 13/2013, which necessarily contemplates an action of a man in watching or capturing the image of a woman engaged in a private act in circumstances,

where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminate such image.

The ingredients of the aforesaid Section are clearly lacking in the verification statement. Not only this, as far as Section 323 is concerned, which provides punishment for voluntarily causing hurt, necessarily contemplate an intention to cause hurt to any person or knowledge that he is likely to cause hurt is also absent.

9 The Magistrate has perfunctorily passed the order without verifying the contents of the complaint to make out an offence u/s. 354C and 323. Necessarily, continuation of the proceedings would be nothing else but an abuse of process of law and hence, the impugned order deserve to be quashed and set aside and the Petition is made absolute in terms of prayer clause (a).

(SMT. BHARATI DANGRE, J.)