

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 311 OF 2021

Badruddin S. Manihar ... Petitioner

v/s.

State of Maharashtra & ors. ... Respondent

Mr Prashant G Pandey a/w. Dinesh Jadhvani for the petitioner.

Smt M M Deshmukh, APP for the State.

***CORAM : NITIN W. SAMBRE &
R.N.LADDHA, JJ.***

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Crime No. 304/2020 came to be registered against the petitioner on 12th November 2020 for an offence punishable under Section 354, 323, 504, 509, 34 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act, 2012 of which quashing is sought by the petitioner. The petitioner is already charge-sheeted in the matter.

2. Mr Prashant Pandey, learned counsel appearing for the

petitioner, while trying to make out a case for quashing would urge that the petitioner is falsely implicated in the aforesaid crime as the Complainant acted at the behest of the ex-Corporator who is interested in the property occupied by the petitioner. According to Mr Pandey, the incident allegedly took place on 12th November 2020, the date on which petitioner was not present at the spot of the incident. According to him, petitioner anticipated his false implication in a frivolous offence which was brought to the notice of the respondent authorities vide complaint dated October 16, 2020 i.e. even before the registration of the offence in question.

3. He would invite attention of this Court to the complaint lodged by the cousin sister of the petitioner namely Mrs Sharmin Shaikh who was threatened by the Complainant of implicating her in a false offence if she fails to lodge a criminal complaint against the petitioner.

4. In the aforesaid background, the contention of Mr Pandey, learned counsel appearing for the petitioner, is that the petitioner is falsely implicated in the offence and as such FIR is liable to be quashed and set aside.

5. He would further urge that in all 3 offences are registered against the petitioner at the behest of the Complainant

6. So as to substantiate the aforesaid contention, he has drawn support from page 102(7) of the judgment of the Apex Court in the matter of *State of Haryana & ors. v/s. Bhajan Lal & Ors.*¹

7. The learned APP while opposing the prayer would urge that the complaint lodged against the petitioner was investigated. Since substance was found, the petitioner came to be charge-sheeted in the matter. She has invited our attention to the charge-sheet against the petitioner which sufficiently speaks of the complicity of the petitioner in the crime. As such prayer for dismissal is made.

8. We have appreciated the submissions. Before registration of the FIR on 12th November 2020 against the petitioner the fact remains that petitioner so also the side of the complainant has lodged 3 complaints against each other. The petitioner has come out with a plea that his sister has also informed the police authorities that she is being forced by the complainant to implicate the petitioner in a false offence. The aforesaid material according to petitioner is sufficient to interfere malafide approach on the part of the complainant in lodging a false complaint or of implicating the petitioner in a false offence. Apart from above, it is claimed that petitioner at the relevant time was not available at the spot when the alleged offence was committed.

1 1992 Supp (1) SCC

9. As far as the absence of the petitioner from the spot of the incident is concerned, the said issue can be appreciated by the trial Court at the time of appreciating the evidence as the same is in the form of defence of the petitioner.

10. As far as the claim of malafide complaints is concerned, which has formed to be a basis in support of a prayer for quashing, it is worth to observe that the complaints referred above by the cousin sister of the petitioner to the police authorities can be inferred from record, however, that by itself cannot lead to the inference that the petitioner is falsely implicated in the offence in question.

11. The perusal of the material which is part of the charge-sheet prima-facie reflects that a cognizable case was disclosed against the petitioner. Accordingly, the authorities were led to carry out investigation against the petitioner. The petitioner is already charge-sheeted in the matter, based on the statement under Section 161 of Cr.P.C. of the witnesses which are formed to be the part of the charge-sheets. Credibility of such evidence can be looked into at the time of appreciation of evidence. Merely because witnesses are the relatives of the Complainant cannot be formed to be basis which can be gone into at this stage i.e. at the stage of deciding the present writ petition so as to order quashing. Such plea which is in the form of defence particularly

having regard to the contents of the statement recorded under Section 161 of the witnesses can be looked into only at the time of trial.

12. In this background, the claim put forth by Mr Pandey, the learned counsel for the petitioner, that the petitioner is falsely implicated or that he is being targeted by lodging false complaint against him, cannot be inferred from the record particularly when the charge-sheet speaks of availability of sufficient material against the petitioner. These statements of witnesses recorded and placed on record alongwith the charge-sheet in our opinion sufficiently speaks of the complicity of the offence committed by the petitioner.

13. In this background, it cannot be said that opinion of the petitioner of malafides can be said to have been established based on the judgment of the Apex Court in the matter of ***Bhajanlal*** (*supra*).

14. In this background, in our opinion, no case for causing interference is made out. Petition as such fails and stands dismissed.

R.N. LADDHA, J.

NITIN W. SAMBRE, J.

Lata Panjwani, P.S.