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APL 121 of 2015.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 121 OF 2015

Bhaskar Gangadhar Shetty

...Applicant

V/s.

The State of Maharashtra & Anr.

...Respondents

Mr. Vinay M. Choudhary for the Applicant.

Ms. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

DATE : 10th OCTOBER, 2023.

ORDER : (PER SHARMILA U. DESHMUKH, J.)

1. By this Application filed under Section 482 of Cr.PC., the Applicant seeks quashing of Regular Criminal Case No. 1589 of 2010 pending before the learned JMFC, 6th Court, Thane.

2. Heard Mr. Vinay Choudhary, learned Advocate appearing for the Applicant and Ms. M. H. Mhatre, learned APP for the Respondent-State. Despite service, none appears for the Respondent No. 3- Original Complainant.

3. The facts of the case are that, on 2nd October, 2010 CR. No. 233 of 2010 came to be lodged against the Applicant and the two other

co-accused with the Shrinagar Police Station for the offence punishable under Section 394 read with Section 34 of the IPC. On the basis of the FIR, investigation was carried out by the police and chargesheet came to be filed in Regular Criminal Case No. 1589 of 2010. On 28th February, 2011, charge was framed by the learned JMFC, Thane for the offence punishable under Section 394 read with Section 34 of the IPC. In the proceedings before the JMFC, the Applicant preferred discharge Application under Section 239 of Cr.P.C. which was rejected vide order dated 2nd November, 2012. The Order of rejection was challenged by way of Revision Application No. 211 of 2012 before the Sessions Court, Thane. Pending the adjudication of the Revision Application, the Applicant withdrew the Revision Application with liberty to file appropriate Application before the Trial Court, which came to be allowed vide order dated 9th July, 2013. An Application below Exhibit 32 was filed by the Applicant before the Trial Court seeking a direction to the Senior Inspector, Crime Branch, Waghale Estate, Unit No. 5, Thane to submit the report along with statement of witnesses, documents and panchanama collected during further investigation.

The Trial Court observed that, the further investigation if any, carried out by the police in relation to the incident in question is without

order of the Court. That the Applicant had already filed similar private complaint being OMA No.30 of 2013, against the original Complainant and police officials in which an order of investigation was passed under Section 202 of Cr.PC. Vide order dated 5th March, 2014, the Trial Court rejected the Application of the Applicant for submission of report of further investigation carried out.

4. On 24th September, 2014, the investigation conducted in OMA No.30 of 2013 was finalized and the report was submitted to the Magistrate vide Order dated 7th March, 2015. The learned JMFC passed an Order of issuance of process against the original Complainant and two other co-accused for the offences punishable under section 120-B, 347 and 506 of IPC and dismissed the case against the accused Nos.4 to 7 therein, who are the police officials of Shrinagar Police Station.

5. Mr. Choudhary, learned Advocate for the Applicant submits that, the report dated 24th September, 2014 filed in OMA No. 13 of 2013 concludes that the Applicant is falsely implicated in the present case by the Complainant. He would submit that, taking into consideration the report, the continuation of the prosecution against the Applicant in Regular Criminal Case No. 1589 of 2010 would constitute an abuse of the process of law. He would further urge that the Application for

discharge was rejected as the charge had been framed and the Applicant had no opportunity to point out to the Court the findings in the report dated 24th September, 2014 which clearly exonerates the Applicant. He would urge this Court to consider the report dated 24th September, 2014 and quash the proceedings initiated against the Applicant. He would submit that, the completion of the trial will take substantial time and as the prosecution against the Applicant in RCC No. 1589 of 2010 is demonstrably an abuse of process of law, the same may be quashed. He further urged that as the charge had already been framed, the remedy of filing discharge application is no longer available to the Applicant.

6. Learned APP submits that, as the charge has already been framed and the trial has commenced, this court may not exercise its power under Section 482 of Cr.P.C. to quash the proceeding.

7. We have considered the submissions and perused the record.

8. FIR No. 233 of 2010 was lodged by the original complainant on 2nd October, 2010. It is alleged that, the first informant who is the owner of the hotel named as Ceasar Park Bar and Restaurant had given the hotel on rent to one Sadhu Shetty and Divakar Shetty. The present Applicant was one of the employees of the tenant of the First Informant. It is alleged that as the tenant breached the terms and conditions of the

license granted by the police, the police had initiated action against the hotel. That the tenant was also in arrears of various statutory taxes as also outgoings in respect of the premises. Upon being aware of the same, on 6th September, 2010, the Applicant took over the possession of the hotel from Sadhu Shetty and Divakar Shetty. It is alleged that as the hotel was taken over by the owner, the Applicant was angry. That on 2nd September, 2010 at about 3.30 p.m. the first informant was carrying out some cleaning work in his hotel premises, when the Applicant with two other accomplices came to the hotel and threatened him to leave the hotel. At that time, the two accomplices of the Applicant came running towards the First Informant armed with wooden stump and bat. That the Applicant caught hold of the First Informant's collar and assaulted him with fists and blows on his mouth, chest and stomach and after throwing him on ground, continued to assault him. At that time, two people who were in the vicinity of the hotel came running to save the First Informant, however, the Applicant picked up a beer bottle lying around and threatened the two persons with it, upon which they left the place. That the Applicant slapped the First Informant and tore his shirt and robbed a sum of Rs. 3,000/- which was in his shirt pocket and also took away his gold chain weighing about one and a half tolas.

9. The allegations prima facie discloses that, being upset as the possession of the hotel premises was taken over by the owner, the Applicant who is stated to be the employee of the tenant has assaulted the First Informant with fists and blows and in the melee, has robbed a sum of Rs. 3,000/- as well as the gold chain from the First Informant. The alleged offence is under Section 394 read with Section 34 of IPC. Prima facie, the allegations in the FIR discloses the commission of the alleged offences. Perusal of the statements of the eye witnesses Pravin Sanjiv Shetty and Vishwanath Mahadev Pujari fully corroborates the version of the First Informant about the incident in question. These witnesses are independent witnesses.

The admitted fact on record is that, the charge had been framed on 28th February, 2011 and the trial has commenced in the present proceedings. The Application for discharge preferred by the Applicant was rejected by the Trial Court on 2nd November, 2012 as against which the Revision Application filed was withdrawn by the Applicant. As the remedy of discharge has already been exhausted by the Applicant, the Application seeking quashing of the criminal proceeding is clearly misconceived.

The sole submission advanced for consideration by Mr.

Choudhary is that, the subsequent inquiry report dated 24th September, 2014 filed by the investigating agency pursuant to a direction passed by the learned JMFC under Section 202 of Cr.P.C. in OMA No. 13 of 2013 filed by the present Applicant against the First Informant and others exonerates the Applicant.

10. This Court is called upon to exercise its power under Section 482 of the Cr.P.C. The factors which the court is required to take into consideration while quashing the proceeding under Section 482 of Cr.P.C. and while considering the application for discharge are totally different as held by the Apex Court in the case of *Manik B. vs. Kadapala Sreyes Reddy & Ors.*, (2023 LiveLw (SC) 642). The Applicant wants this Court to quash the proceeding by examining the report dated 24th September, 2014 which is subsequent to framing of charge. Framing of charge is a first major step in criminal trial where, upon consideration of the police report and documents sent with it under Section 173 of Cr.P.C., examination if any, hearing, an opinion is formed by the Magistrate that, there is ground for assuming that the accused has committed an offence. In that case, the Magistrate frames the charge against the Accused. The exercise as contemplated under the provisions of Section 239 and Section 240 of Cr.P.C. is already conducted by the

Magistrate. The report sought to be relied by the Applicant is an external document which could not have been considered by the Magistrate even if produced at the time of considering the application for discharge. It is not expected of this Court in the proceedings under Section 482 of the Cr.P.C. to appreciate the report of the year 2014 relied upon by the Applicant for the purpose of reaching a conclusion that no offence is disclosed.

11. In our view, it is not permissible for this Court at this stage to conduct a mini trial and to examine the correctness or otherwise of the material produced by the Applicant. The report submitted under Section 202 of Cr.P.C. constitutes the defence of the Applicant. The discharge application has already attained finality. As the charge has been framed and the trial has already commenced, the option for the applicant is to take advantage of the report during the trial. At this stage we are not inclined to quash the proceeding based on the report of the investigation agency which has been done pursuant to an order passed by the Magistrate in completely different proceeding. Learned Magistrate at the stage of framing of charge has considered the relevant material and has reached an opinion that there are sufficient evidence to proceed further against the Applicant. As the FIR prima facie discloses the commission

of the alleged offences, we are not inclined to quash the proceeding.

12. Having regard to the above discussion, we are not inclined to allow the Application.

However, considering that the proceeding is of the year 2010, we deem it appropriate to request the learned JMFC, Thane seized of the Regular Criminal Case No. 1589 of 2018, to decide it expeditiously and in any event within a period of one year from the date of receipt of present Order.

13. Application is dismissed with the above direction.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)