

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4610 OF 2021**

Vinay Deviprasad Dubey

.....Petitioner

Vs.

State Of Maharashtra & Ors.

.....Respondents

Mr. Vinay Deviprasad Dubey, Petitioner in person.

Mrs. A.S.Pai, P. P. a/w. Mr. Ajay Patil, APP for Respondent No.1-State.

Ms. Rebecca Gonsalves for Respondent Nos. 5 and 8.

Dr. Balsing Rajput, Deputy Commissioner of Police (Detection) Crime Branch, Mumbai present.

Mr. Balasaheb Shinde, PI., Unit DCB, CID, Mumbai present.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 8th AUGUST, 2023.****P.C.:-**

1) The Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India and under Section 482 of Cr.P.C., for quashing and setting aside C.C.No. 2900576/PW/2018 pending on the file of Metropolitan Magistrate, 29th Court, Bhoiwada Dadar, Mumbai, arising out of C.R.No. 117 of 2018 registered with Wadala T.T. Police Station, Mumbai dated 8th April, 2018 under Section 354 of I.P.C. and for various other consequential and inconsequential reliefs, including to initiate action against the police officers who have investigated the present crime and the Judicial Officers who have passed Orders on various Applications/Revision

filed by the Petitioner.

2) Heard Petitioner in person at great length, Smt. A.S. Pai, learned P.P. for the Respondent Nos.1 to 4 and Ms. Gonsalves learned Advocate for Respondent Nos.5 to 8. Perused entire record produced before us.

3) First Information Report is lodged by the victim, who has not been impleaded as a necessary party Respondent to the present Petition, though it is mandate of law.

The Petitioner, a practicing Advocate, has impleaded in all 9 persons including the Police Officers who have recorded FIR, investigated the case and submitted charge-sheet in the crime and also the learned Judges (Judicial Officers) who have passed various Orders in the proceedings pending against the Petitioner or initiated by him.

3.1) As noted in our earlier Order dated 17th July, 2023, impleadment of the judges in their personal name was not at all necessary as it was against the fundamental rules of pleadings. The Petitioner being a practicing Advocate, it is expected from him, that at least in his own case he has clarity in pleadings.

4) FIR herein is lodged by the prosecutrix aged about 29 years. It is stated in the report that, she is a teacher by profession and was residing at the address mentioned therein along with her husband and her son aged

about one year. The Petitioner is residing in the vicinity and the prosecutrix was knowing him.

It is alleged that, on 8th April 2018, the birthday of her nephew was being celebrated and she was making preparation for the same. At about 7.30 p.m., the prosecutrix was cooking food in her kitchen. At that time, the Petitioner closed the door of her house, came inside the kitchen and held the prosecutrix from behind. The prosecutrix shouted for help and rescued herself from the clutches of the Petitioner, opened door of her house and ran outside. The Petitioner also followed the prosecutrix and thereafter fled from the scene of offence. The prosecutrix immediately informed the said fact to her father-in-law and brother namely Hiramani Tiwari who were standing outside the house. She immediately informed the said incident to them. She alongwith them approached the police station for lodging of the crime. In this brief premise, present crime is registered against the Petitioner.

5) The Petitioner in person argued the matter at great length. He submitted that, a thoroughly false crime has been registered against him. He submitted that, the statements of witnesses are recorded only to support the case of the prosecution and nothing else. That, he was having dispute with Hiramani Tiwari and at his instance prosecutrix has lodged present crime against him. That, all the witnesses are stating falsely only to implicate him in the crime and nothing else. He submitted that, the Police

also joined hands with the prosecutrix for indicting him in the present crime. During the course of arguments, while crossing all the limits of decorum, expected from an Advocate, he ventured to submit that, all the Judges before whom his case was listed, were having bias against him and passed adverse Orders. It is the reason he has impleaded those judges as Respondents in the present Petition.

5.1) He submitted that, this Court is having ample powers under Article 226 and more wider powers under Section 482 of Cr.P.C. for quashing of the crime for subserving the ends of justice. That, the inherent powers enjoyed by this Court under Section 482 of Cr.P.C. are much wider than the powers under Article 226 of Constitution of India and therefore to hold him innocent from the present crime, this Court 'must and should' exercise those powers in his favour. In support of his contention, he relied on three decisions of Hon'ble Supreme Court:

- (i) *Pandurang Sitaram Bhagwat Vs. State of Maharashtra reported in (2005) 9 SCC 44;*
- (ii) *Sathish Mehra Vs. State of N.C.T. of Delhi and Anr. reported in AIR 2013 SCC 506;*
- (iii) *Prabhu Chawla Vs. State of Rajasthan and Anr. reported in AIR 2016 SCC 4245.*

5.2) He drew our attention to paragraph No. 19 in the case of *Sathish Mehra* (supra) and submitted that, as this Court is having powers

under Article 226, the same 'should' be exercised in his favour by disbelieving the version of the victim in the present offence.

He continued to repeat his same arguments for substantial period. Ultimately, we had to request him to stop repetitive submissions. He therefore prayed that, the said case may be quashed by allowing present Petition.

6) Mrs. Pai, learned P. P. on instructions submitted that, in the present case, not only the trial Court has framed the charge and the trial has began, but as of today the prosecution has already examined two witnesses and the trial of Petitioner is in progress. She submitted that, in view thereof, the present Petition for quashing of the charge-sheet does not survive.

7) Ms. Gonsalves, learned counsel appearing for Respondent Nos.5 to 8 submitted that, the said Respondents are judicial Officers (Judges) who have at some or other point of time dealt with the Applications/proceedings instituted by the Petitioner. That, impleading them in their personal capacity is contrary to the basic rules of pleadings. She submitted that, the observations made and directions issued vide Order dated 17th July, 2023 have not been complied with by the Petitioner till date. She further adopted the submissions of Smt. Pai and prayed that the Petition may be dismissed.

8) There cannot be any second opinion about the principles of law and interpretation of Section 482 of Cr.P.C. enunciated by the Hon'ble Supreme Court in the said decisions relied upon by the Petitioner.

The Hon'ble Supreme Court in the case of *Sathish Mehra (Supra)* has held that, power of the High Court, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

9) After applying the aforestated principles laid down by the Hon'ble Supreme Court, in the case of *Sathish Mehra (Supra)*, we find that, the First Information Report in the present case is self eloquent and makes

out a strong *prima facie* case against the Petitioner of commission of an offence under Section 354 of I.P.C. The facts noted in paragraph No.3 above are deduced from the FIR of the prosecution and for the sake of brevity repetition of it is hereby avoided. Perusal of charge-sheet indicates that, there is sufficient corroborative material in the form of statements of witnesses to *prima facie* sustain the said charge. The witnesses saw the Petitioner coming out of the house of prosecutrix and running away on the date and time of alleged incident.

10) It is the settled position of law that, the defence of an accused cannot be tested/adjudicated in a Petition under Article 226 of Constitution of India and it is within the exclusive domain of the trial Court. The Hon'ble Supreme Court in the case of '*Central Bureau of Investigation Vs. Aryan Singh*' in its decision dated 16th April, 2023 passed in *Criminal Appeal No.1025-1026 of 2023 (@ SLP (CRL.) Nos.12784-12795 of 2022)* while analysing the provisions of Section 482 of Cr.P.C. has held that, the High Court cannot conduct a mini trial in a proceeding under Section 482 of Cr.P.C. That, as per the cardinal principle of law, at the stage of discharge and/or for quashing of the criminal proceedings, while exercising powers under Section 482 of Cr. P.C., the Court is not required to conduct a mini trial.

10.1) The submissions advanced by the Petitioner and noted in paragraph No.5.1 above, are recorded only for its rejection at its threshold

as those are contrary to the settled principles of law, by a catena of decisions of the Hon'ble Supreme Court.

10.2) From the pleadings in the Petition and the exhaustive arguments advanced by the Petitioner, it clearly appears to us that, he wants this Court to conduct a mini trial while exercising its jurisdiction under Section 482 of Cr.P.C. which is not permissible under the law.

10.3) It is to be noted here that, as per the record the Respondent No.3 has recorded First Information Report of the prosecutrix. Respondent No.2 was the then Officer-in-Charge of Wadala T.T. Police Station who has countersigned the Proforma FIR. Respondent No.5 was the then Senior Inspector of Police attached to Wadala T.T. Police Station, who has signed Final Report under Section 173(2) of Cr.P.C. along with the Respondent No.2.

10.4) It appears to us that, the said three Police Officers have no personal interest in the present crime lodged by the prosecutrix against the Petitioner and have been unnecessarily impleaded as Respondents in their personal capacity. They are not at all necessary parties to decide the present Petition.

10.5) The allegations made by the prosecutrix against the Petitioner are under Section 354 of the Indian Penal Code and it is for the Petitioner to put forth his case before the trial Court for establishing his defence of false implication.

10.6) Respondent Nos.5 to 8 are the Judicial Officers who are either seized with the trial of the Petitioner or before whom the Revision Application No.17 of 2020 preferred by the Petitioner is pending for final adjudication.

10.7) It is observed by this Court in many cases that, there is an on going trend amongst the litigants and/or their Advocates, to implead the Judges as Respondents in their personal capacity, who pass Orders against them, which is undoubtedly contrary to the basic rules of pleadings. As a matter of fact and law, Judges have no personal interest in any case before them and they decide the cases as per the merits involved therein and the provisions of law.

10.8) Respondent Nos.5 to 8 herein are not at all necessary parties for decision of the present Petition, which is filed with the principal prayer for quashing of FIR. It appears to us that, Respondent Nos.5 to 8 have been impleaded only to pressurize them to pass Orders in favour of the Petitioner and none else. The practice adopted by the Petitioner, a practicing Advocate, which is against the fundamental rules of pleadings, is not appreciated and in fact deprecated.

11) As noted earlier, a prima facie case against the Petitioner is made out. The trial of the present case has already begun and the prosecution has already examined two witnesses.

After taking into consideration all the aforestated facts, this Court is of the considered view that, no case for quashing of said C.C.No. 2900576/PW/2018 pending on the file of Metropolitan Magistrate, 29th Court, Bhoiwada, Dadar, Mumbai is made out.

12) Petition is accordingly dismissed.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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