



Harish

APL-613-2017-1.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 613 OF 2017

1. Ranjeetsingh Kalyan
 2. Harjeetsingh Alias Rinku
 3. Jagdishsingh Kalyan
 4. Gauravsingh Kalyan
 5. Harpreetsingh Kalyan Alias Bobby
 6. Chamkorsingh Kalyan
 7. Gurudaysingh Kalyan
 8. Kuldeepkaur Alias Raj
 9. Sukhvinderkaur Kalyan
 10. Twinklekaur Kalyan
 11. Sonu Chamkorsingh Kalyan
- All above R/o. Nirbhaya Khalsa Society,
Road No. 2, Koldongri, Sahar Road,
Andheri (East), Mumbai-400069

...Applicants

V/s.

1. The State of Maharashtra
(Through the Public Prosecutor,
High Court, Appellate Side)
2. Jagtarsingh Surjeetsingh Kalyan
Residing at Nirbhaya Khalsa Society,
Road No. 2, Koldongri, Sahar Road,
Andheri (East), Mumbai-400069

...Respondents

Mr. Chetan Akerkar for the Applicants.
Ms. M. H. Mhatre, APP for the Respondent-State.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.
RESERVED ON : 7th OCTOBER, 2023.
PRONOUNCED ON : 2nd NOVEMBER, 2023.

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

1. By this application filed under Section 482 of Cr.PC., the Applicants seeks quashing of CR. No. 239 of 2017 dated 28th April, 2017 registered with Andheri Police Station, for the offences punishable under Section 143, 149, 504 and 506 of the Indian Penal Code.
2. Heard Mr. Chetan Akerkar, learned Advocate for the Applicants and learned APP for the Respondent-State. The Respondent No.2 was duly served and had caused appearance in the matter. Despite service, none appears for Respondent No.2.
3. Mr. Akerkar, learned Advocate for the Applicants submits that, the incident in question occurred on 3rd January, 2017 at about 6.45 p.m. subsequent to which, the Respondent No.2 and Applicant No.1 had filed cross complaints with the Andheri Police Station, which were registered as NC No. 20 of 2017 and NC No. 325 of 2017 respectively under Section 504 and 506 of IPC. He would submit that, despite registering non-cognizable complaint against the Applicant Nos. 1 to 5,

after period of about 3 months, the police has registered the FIR by adding Section 143 and 149 along with Section 504 and 506 of IPC. He would submit that, the provisions of Section 155 of Cr.PC were not complied with and as such, the registration of the FIR is an abuse of process of law.

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

5. The incident had occurred on 3rd January, 2017 in respect of which the Respondent No.2 had lodged a complaint with the police which came to be registered as a non-cognizable complaint for the offences punishable under Section 504 and 506 of IPC. Interestingly, the complaint was lodged by the Respondent No.2 only against the Applicant Nos.1 to 5 herein, whereas in the FIR, the Applicant Nos.6 to 11 are also roped in. The NC complaint records that, on 3rd January, 2017 at about 6.45 p.m., the Respondent No.2 and his father were proceeding towards their house when the Applicant Nos.1 to 5 started abusing and threatened them. It appears that, on 13th February, 2017, the Applicant No.1 has lodged a NC complaint against the Respondent No.2 and his family members alleging a different version of the incident that, the Respondent No.2 and his family members had abused the Applicant No.1. Considering the allegations made by both the parties

against each other, the police were justified in lodging the NC complaint under Section 504 and 506 of IPC. After a period almost 3 months, on 28th April, 2017 the FIR came to be lodged by adding of Sections 143 and 149 of IPC, Section 143 of IPC being a cognizable offence. Perusal of the FIR indicates that, for the same incident of 3rd January, 2017, the number of accused have swelled from 5 to 11 and there are considerable improvements in the allegations made in the FIR. The issue which arises is, whether it is permissible for the police to conduct an investigation in a non-cognizable case and register the FIR based on such investigation.

6. Firstly, the material on record does not demonstrate that, there was any investigation by the police and even if that would be so, the same is in violation of the provision of Section 155(2) which prohibits a police officer from investigating a non-cognizable case without the order of the Magistrate having power to try such a case. Considering the prohibition which operated against investigating the non-cognizable complaint, the registration of the crime is clearly an abuse of process of law. We also find that, to bring home the offence under Section 143 and 149 of IPC, substantial improvements were made in the FIR and the number of persons impleaded as accused also increased. That apart, upon perusal of the FIR, we do not find that the

ingredients of Section 141 of IPC are made out. The allegations demonstrate that the heated exchange if any, was a sudden unpremeditated dispute between the two groups and as such, it cannot be stated that the Applicants have formed an unlawful assembly.

7. Having regard to the discussion above, we find that the continuation of the prosecution against Applicants would amount to abuse of process of law. Resultantly, we allow the Application in terms of prayer clause (a), which reads thus:

(a) First Information Report No. 239 of 2017 dated 28th April 2017 registered with the Andheri Police Station under Section 143, 149, 504 and 506 of the Indian Penal code by the Respondent No. 2 against the Applicants be quashed.

8. Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)