

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3952 OF 2021

Firoz Alam Mir and others. ... Petitioners.

Versus

The State of Maharashtra and Another. ... Respondents.

Mr. Shravan Giri, for the petitioners.
Mr. J.P. Yagnik, APP for the Respondent-State.
Ms. Madhuri More, for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : June 14, 2023.

ORDER (Per : Sharmila U. Deshmukh, J.):

1. Heard.
2. The First Information Report (FIR) being C.R. No.183 of 2022 for the alleged offences punishable under Sections 353, 506, 504, 141, 142, 143, 149 and 34 of the Indian Penal Code, 1860, has been lodged at the instance of the Respondent No.2 with the Azad Maidan Police Station, who is employed as Junior Engineer in BMC Building Department.

3. Heard Mr. Shravan Giri, learned counsel appearing for the Petitioners, Mr. J.P. Yagnik, learned APP for the Respondent-State and Ms. Madhuri More, learned counsel appearing for Respondent No.2.

4. The FIR in question came to be registered on the allegation that on 30th September, 2020, the Respondent No.2 being an officer of BMC visited the house of the Petitioners for the purpose of demolishing the balcony alleged to have been extended. It is alleged that when the officials and the police personnel came to the site and asked the petitioner to open the grill of the entry gate, same was not opened and a threat was given to the officials. It is further alleged that subsequently, the Petitioner No.1 opened the grill and the officials entered the premises and while inspecting the alleged illegality the officials were again threatened with Court proceedings and as such, the FIR in question came to be lodged.

5. Learned counsel appearing for the Petitioners points out that the allegations in the FIR even if taken at its face value do not make out a case for the alleged offences under Sections 353, 506, 504, 141, 142, 143, 149, 34 of the IPC. He would further submit that it is alleged that the officials were threatened with court proceedings

and, as such, there is no allegations of any assault or criminal intimidation. He would urge that the offences of unlawful assembly is not attracted as the Petitioners are family members and the site in question is the dwelling house of the Petitioners.

6. Per contra, the learned counsel appearing for the Respondent No.2 submits that while carrying out the official duties, the officials of the BMC and the police personnel were abused and prevented from doing their official duties, and, as such, the allegations in the FIR, *prima facie*, constitutes an offence and the Petitioners deserve no indulgence.

7. Considered the submissions of the parties and perused the proceedings.

8. The allegation in the FIR is that on 30th September, 2020, when the officials went to the site in question, the Petitioners refused to permit them entry and threatened them with Court proceedings and that compensation would be sought. There is no allegation in the FIR that there was any assault or criminal force with an intention to deter the public servant from discharging their duties. Looking to the offence of criminal intimidation, set out in Section 503 of the IPC, it

states that, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Even if, the words of threat are taken into consideration, it cannot be said that there was any threat to the public officials with any injury to their person, reputation or property. All that was said was that the court proceedings will be initiated and compensation will be obtained. In our view, these words do not satisfy the ingredients of criminal intimidation. As regards the offence under Section 353 of the IPC is concerned, there is no allegation of assault or criminal force in the FIR with the intent to deter the officials from discharging their public duties.

9. Considering the allegations made in the FIR, we do not find that the offences as alleged are made out. No doubt, the officials were carrying out their public duties and the Petitioners appear to have obstructed them from entering their premises, however, the same cannot be said to constitute the offences under the sections as

alleged. It is nobodies case that there was any criminal force or assault or any threats were given so as to amount criminal intimidation or there was any intention to insult with an intent to provoke the breach of public peace.

10. Taking the allegations in the FIR as it is, we find that no case for the offence alleged is made out against the accused and, as such, the petition deserves to be allowed and so allowed in terms of prayer clause “(a)” which reads thus:

“a) This Hon’ble Court be pleased to quash FIR, vide bearing no. 183/2020, registered with Azad Maidan Police Station U/s. 353, 506, 504, 141, 142, 143, 149, 34 of Indian Penal Code, 1860, pending before Hon’ble Sessiions Court in C.C. No. Session Case/751/2021.”

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]