

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

CRIMINAL APPLICATION NO.1015 OF 2023

Rekha Ravindra Gandhi
versus
State of Maharashtra & Anr.

.... Applicant
.... Respondents

.....

- Mr. Mahesh Devlekar, Advocate for Applicant.
- Mr. Vaibhav S. Parab a/w Saurabh More, Advocate for Respondent No.2.
- Mr. A. R. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th AUGUST, 2023

P.C. :

1. This is an application challenging the order passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, order below Ex.6, bearing CC No.4249/PS/2016, whereby the Applicant's application for discharge was rejected. The Applicant was facing the prosecution on the allegations of commission of offence punishable u/s 323, 324, 504 of the Indian Penal Code. Her application was rejected by the learned Magistrate vide order dated 14/12/2018. Thereafter the Applicant preferred Criminal Revision Application No.246 of 2019 before the

Court of Sessions at Greater Mumbai. That Revision Application was dismissed by the learned Additional Sessions Judge, Greater Mumbai, vide his order dated 05/12/2020.

2. Learned counsel Mr. Vaibhav S. Parab appears for the Respondent No.2. He undertakes to file his Vakilpatra within a period of one week from today.
3. Learned counsel for the Applicant submitted that a false case is lodged against her. The Investigating Officer has not investigated the offence properly. There is a CCTV footage of the entire incident, which would show that the Applicant is innocent and in fact she was assaulted by other members of the society who are strangely shown as witnesses in the charge-sheet filed against her. He submitted that she herself had lodged her own FIR which was reluctantly registered belatedly by the Investigating Officer. Therefore, based on this one sided investigation, the charges could not be framed.
4. Learned APP as well as learned counsel for original Respondent No.2 submitted that there is sufficient material

against the Applicant for framing of the charges. At this stage, the evidence cannot be scrutinized minutely and it cannot be held that the Applicant has not committed any offence. That is the matter for trial.

5. I have considered these submissions and I have perused the charge-sheet annexed to this application. The FIR is lodged against the Applicant vide C.R.No.84/2016 on 21/04/2016 at Gamdevi Police Station, Mumbai, u/s 324, 323, 504 of the Indian Penal Code. The FIR is lodged by one Priti Sakpal. The first informant and the Applicant were residing in the same society. There was an incident on 19/04/2016 when the Applicant had assaulted the informant's husband on the misunderstanding that the informant's husband had abused her. The incident which is the subject matter of the prosecution had taken place on 20/04/2016 at 07.30 p.m. At that time, when the first informant and her relatives were coming out of the parking area, the Applicant came there. The informant questioned her as to why she had slapped the informant's husband on

19/04/2016. The Applicant got angry. She started abusing the informant. She scratched her and bit her on her palm. The Applicant also slapped the informant's mother. After that, the informant went to Nayar Hospital and lodged her FIR.

6. The informant's story is supported by the eyewitnesses Kavita Kadam, Alka Chavan, Hitesh Sakpal. Though eyewitnesses are relatives of the first informant, the evidentiary value of their statements can be tested only during the trial. The Secretary of society has provided CCTV footage. The CCTV footage is part of the investigation. The prosecution will have to prove the CCTV footage in consonance with the provisions of the Indian Evidence Act. Even the Applicant will get an opportunity to get the CCTV footage on record by following due procedure under the Indian Evidence Act. At this stage, there are statements of eyewitnesses and more particularly there is injury certificate issued by the Nayar Hospital, which supports the informant's case, because the injury certificate shows the bite marks as mentioned by the first informant.

7. The case of the Applicant and her own FIR which is registered vide C.R.No.114/2016 at the same police station, in June 2016, is a subject matter of the other trial. Both the learned counsel and learned APP informed the Court that both the cases i.e. the case filed by the first informant against the Applicant as well as the case resulting from the FIR lodged by the Applicant against the other side, are being tried together as counter cases. All these issues are triable issues. Those can be decided only after the evidence is led. At the stage of considering discharge of the Applicant, it is not possible to give a finding as to which version is correct. Therefore, I do not find any infirmity in the orders passed by the learned Magistrate rejecting discharge application of the Applicant and also the order passed by the learned Additional Sessions Judge, rejecting her Revision Application. Therefore, I do not find merit in this application. The application is dismissed.

(SARANG V. KOTWAL, J.)