

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

WRIT PETITION NO.5014 OF 2018

Kunal Birwadkar

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Kunal Birwadkar – Petitioner in person - present.

Mr. J. P. Yagnik, APP for the Respondent/State.

Mr. Tariq Khan, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 4th JULY, 2023

PC.

1. Heard respective counsels.

2. The petitioner came to be charge-sheeted in FIR being Crime No.211 of 2017 registered on 8th June, 2017 for an offence punishable under Sections 341, 504, 506 r/w 34 of IPC. The petitioner is seeking quashing of the same on the ground of NC being initially registered against the petitioner and subsequently contrary to the provisions of Section 155 of the CrPC, on the same genesis, offence came to be registered. It is claimed that the petitioner is one of the witness of the respondent No.2/complainant in prosecution arising out of Crime No.70 of 2016 punishable under Section 504, 506(2) of the IPC. As such, it is claimed that it is the

respondent No.2 who has threatened the petitioner on 7th June, 2016 resulting into registration of offence against the respondent No.2 vide Crime No.208 of 2017 punishable under Section 504, 506(2) of the IPC.

3. The genesis of the offence against the petitioner is that the respondent No.2 is an accused in Crime No.70 of 2016 punishable under Section 504, 506(2) of the IPC which is tried through Cri. Case No.2415 of 2016 on the file of Metropolitan Magistrate, Court Room No.60. On 7th June, 2017 when the petitioner had attended the said proceedings as a witness, the respondent No.2/accused in the said crime claimed that the petitioner has abused the respondent No.2 and also committed an act of wrongful restraint resulting into registration of the aforesaid offence.

4. Prior to the aforesaid registration of offence, on the same complaint, the respondent authorities have registered an NC under Section 155 of the CrPC on 7th June, 2017 on same set of allegations.

5. It appears that the respondent No.2 after registration of the NC has again approached the respondent authorities with the same complaint stating that though an offence punishable under Section 504, 506(2) of IPC was mentioned, however, he has forgotten to mention offence under Section 341 of the IPC i.e.

wrongful restraint. As such, aforesaid offence came to be registered.

6. The offence came to be registered pursuant to the complaint dated 8th June, 2017 for the incident occurred on 7th June, 2017. The respondent No.1 thereafter recorded supplementary statement in support of the aforesaid offence on 14th June, 2017 of the respondent No.2 which is formed to be basis for the offence in question.

7. The fact remains that once based on the very same offence on 7th June, 2017 while NC No.978 of 2017 was registered upon a complaint made by the respondent No.2, police authorities based on the very same genesis but for addition of allegation under Section 341 ought not to have registered the offence in question in view of bar under Section 155 of the CrPC.

8. Apart from above, the witness who is mentioned in the supplementary statement dated 14th June, 2017 and the police constable who was present during the course of alleged act of abuse by the petitioner to the respondent No.2 has not supported the case of respondent No.2.

9. In the aforesaid background, it is to be inferred that the act of the respondent authorities in registering the offence not only goes contrary to the scheme of Sub-Section (2) of Section 155 of the CrPC. The provision of Sub-Section (2) of Section 155 of the CrPC

creates an embargo on the powers of the Investigating Authority to carry out investigation without prior orders of the magistrate in a non-cognizable offence. Apart from above, even if what has been stated is considered to be correct at its face value, the necessary ingredients of offence against the petitioner cannot be inferred.

10. The fact remains that the petitioner is one of the witness in Crime No.70 of 2016 against the respondent No.2 and was present in the Court in discharge of his duty as a witness so as to depose in the aforesaid criminal case. It appears that on the very same date, it is the case of the prosecution in Crime No.208 of 2017 punishable under Section 504 and 506(2) of the IPC, wherein the present petitioner is complainant, respondent No.2 has issued abusive threats and abused. It appears that since the aforesaid conduct discloses cognizable offence against the respondent No.2, Crime No.208 of 2017 came to be registered on the complaint of the petitioner.

11. The fact remains that *prima-facie*, the case of the petitioner that he is being falsely involved in the aforesaid offence can be inferred from the events as referred to herein-above viz. the petitioner being witness in Crime No.70 of 2016 against the respondent No.2, registration of an offence against the respondent No.2 referred to above vide Crime No.208 of 2017 and improvements in the allegation of the respondent No.2 through supplementary statement by way of afterthought.

12. As such, it can be inferred that a case for quashing is made out. The prosecution lodged against the petitioner at the behest of respondent No.2 is hereby quashed and set aside. The petition stands allowed in terms of prayer clauses A and B.

13. At this stage, the party in person i.e. petitioner submits that he has taken out proceedings for cancellation of bail of respondent No.2 which are pending before the Metropolitan Magistrate be directed to be decided expeditiously.

14. If that be so, we deem it appropriate to direct the Metropolitan Magistrate to decide the prayer of the petitioner for cancellation of bail of the respondent No.2 for jumping the bail conditions expeditiously.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]