

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1335 OF 2014

Mr. Harshad Prakash Narkar	]	
Occupation : Business, Residing At : Room No.4,	]	
Vasnik Niwas, Kajupada, Borivali (E.),	]	
Mumbai – 400 066.	]	... Applicant

V/s.

1. The State of Maharashtra	]	
Through L.T. Marg Police Station Mumbai.	]	
2. Lubharam Raghunath Chaudhari	]	
Age 42 years, Occ.:Business,	]	
R/o.Tel Galli, Dhanak Mension,	]	
Ground Floor, Room No.2, Vitthal Vadi,	]	
Kalbhadevi Road, Mumbai – 400 002.	]	... Respondents

Mr. Kunal J. Rane for Applicant.

Ms. Mahalakshmi Ganpathy, A.P.P. for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 1st December 2023.

JUDGMENT (Per A. S. Gadkari, J.) :-

1) By the present Application under Section 482 of Criminal Procedure Code, the Applicant has prayed for quashing of F.I.R. No. 161 of 2014 dated 18th June 2014 registered with L.T. Marg Police Station, Mumbai

and Chargesheet dated 24th September 2014 bearing C.C. No. 780/PW/2014 pending on the file of learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, under Sections 448, 453 and 454 of the Indian Penal Code.

2) Heard Mr. Rane, learned Advocate for the Applicant at length and Ms.Ganpathy, learned A.P.P. for Respondent No.1-State. Perused entire record produced before us.

3) Brief facts giving rise to file present Application are as under :

Respondent No.2 has lodged present crime on 18th June 2014. It is the prosecution case that, the Respondent No.2 got possession of suit premises i.e. Room No.5, 2nd Floor, Maruti Bhavan, Mahajan Lane, Building No.12, Shop No.2-A, Shaikh Menan street, Mumbai-2, after the Small Causes Court, Mumbai passed a decree in R.A.E. & R. Suit No. 459/755 of 2011 on 8th August 2013. After passing of the said decree, the Respondent No.2 filed Execution Application No. 110 of 2014 before the Small Causes Court. On 8th May 2014 the Trial Court appointed bailiff to take possession of the suit property and also directed the concerned police to provide police protection to the bailiff. In pursuance of Order passed by the Small Causes Court, the bailiff so appointed took possession of the suit property and handed it over to the Respondent No.2. It is the further case of the prosecution that, on 16th May 2014 the Respondent No.2 along with his family members went to his native place in the State of Rajasthan and returned on 16th June 2014, when

he found that the lock put up by him on the suit premises was broken open and the Applicant was in the possession of the suit premises. Upon enquiry made with the Applicant, he informed the Respondent No.2 that, he has broken the lock of said premises and it is in his name and entered into bickering with the Respondent No.2. In this brief premise present crime is registered.

4) Learned Advocate for the Applicant submitted that, the bailiff report(s) dated 15th April 2014 and 8th May 2014 do indicate that, the Applicant was infact in possession of the suit premises. That, the Applicant had filed an application as contemplated under Order 21 Rule 99 of Civil Procedure Code, however the same has been rejected by the Trial Court. That the Applicant did not break the lock of suit premises. That the Applicant came into possession of it by adopting necessary legal procedure.

4.1) He advanced various other arguments across the bar, which according to us would amount to putting forth his defence in a probable trial. The learned Advocate for the Applicant *inter-alia* called upon this Court to adjudicate his defence in an application under Section 482 of Cr.P.C. and to test veracity of various documents. The pleadings of the learned Advocate for the Applicant according to us clearly indicates that, he wants this Court to conduct a mini trial.

4.2) It is pertinent to note that, even though the Applicant claims that he was in possession of the subject property at the relevant time, the Bailiff's

Reports at Exhibits 'H' and 'K' clearly shows that when the Bailiff visited at the subject premises to execute the possession warrant, said premises was found locked and surprisingly the Applicant was not present there.

5) The Hon'ble Supreme Court in the case of *Central Bureau of Investigating Vs. Aryan Singh etc., reported in AIR 2023 SC 1987 : 2023 SCC OnLine SC 379*, has held that, as per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.P.C., the Court is not required to conduct the mini trial. At the stage of discharge and while exercising the powers under Section 482 of Cr.P.C., the Court has very limited jurisdiction and is required to consider whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. In any case at this stage what is required to be considered by the Court is a *prima-facie* case and the material collected during the course of investigation which warranted the accused to be tried.

6) In the case of *Manik B. Vs. Kadapala Sreyes Reddy & Anr., Criminal Appeal No. 2294 of 2023 Arising out of SLP (Crl) No. 2924 of 2023 Dated 7th August 2023*, the Hon'ble Supreme Court has held that, whether the testimony of witnesses is trustworthy or not has to be made out from the cross examination of the witnesses when they stand in the box at the stage of such trial. Such exercise in the view of their Lordships is not permissible

while exercising the jurisdiction under Section 482 of Cr.P.C.. It is further held that, the scope of interference while quashing the proceedings under Section 482 of Cr.P.C. and that too for a serious offence is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all. It is further held that, at the stage of deciding the application under Section 482 of Cr.P.C., it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the chargesheet.

6.1) The same view is further reiterated by the Hon'ble Supreme Court in the cases of (i) Mohammad Wajid & Anr. Vs. State of U.P. & Ors., reported in AIR 2023 SC (Cri.) 1153 and (ii) Abhishek Vs. State of Madhya Pradesh, reported in AIR 2023 SC 4209.

6.2) As noted earlier from the perusal of pleadings and arguments advanced by the Advocate for the Applicant across the bar, it is apparent that, the Applicant wants this Court to conduct a mini trial adjudicating his defence for acquitting him in a proceedings under Section 482 of Cr.P.C.. A bare perusal of First Information Report and the other material annexed with the Chargesheet, according to us, *prima facie* clearly discloses commission of alleged offence by the Applicant. There is corroborative material annexed to the chargesheet which further reinforces the indictment of the Applicant in the present crime.

7) After applying the principles enunciated by the Hon'ble Supreme Court in the aforestated decisions, we are of the considered view that, no case for interference in our jurisdiction under Section 482 of Cr.P.C. is made out.

8) Application is *dehors* of merits and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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