



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 509 OF 2020

1. Dnyaneshwar s/o Uttamrao Wadekar
Aged 57 years, Occ. Business,
R/o. Anant Nagar, Balapur Road,
Old City, Akola.
2. Shantabai w/o Sahadev Wadekar
Aged about 57 years, Occ. Household,
R/o. Wadekar Market,
Near Water Tank, Balapur Road,
Akola, District – Akola.
3. Gopal s/o Dnyaneshwar Wadekar
Aged about 32 years, Occ. Service,
R/o. Anant Nagar, Balapur Road,
Old City, Akola.
4. Dinesh s/o Dnyaneshwar Wadekar
Aged about 30 years, Occ. Education,
R/o. Anant Nagar, Balapur Road,
Old City, Akola.



... Applicants

Versus

1. State of Maharashtra,
Through Police Station Officer,
Police Station Old City Akola,
District – Akola.
2. Vijay s/o Bhagchandji Jain
Aged about 45 years, Occ. Business,
R/o. Rajputpura, Akola,
District – Akola.



... Non-applicants

Mr. A.M. Tirukh, Advocate for applicants.

Mr. V.A. Thakare, APP for non-applicant No.1.

None for non-applicant No.2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.

DATE : 10.08.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Heard finally by consent of learned counsel for the parties. Despite sufficient opportunity learned counsel appearing for informant chooses not to remain present.

(2) Admit.

(3) This is an application seeking to quash FIR in Crime No. 398/2019 registered with Police Station Old City Akola, District – Akola, for the offence punishable under Sections 341, 188 read with Section 34 of the Indian Penal Code, on account of inadequacy of material.

(4) Particularly, it has been submitted that merely on the basis of suspicion, applicants have been implicated in the crime and thus, in the absence of material, the prosecution is totally untenable. The State resisted this application by contending that in past also the applicants did the similar act. Despite injunction order they tried to take forcible possession and thus, the matter requires full fledged trial.

(5) At the instance of report dated 02.12.2019 lodged by the informant, crime has been registered. Informant owns and possesses a shop premises since last 20 years. He had a dispute with one Sahadev (husband of petitioner Shantabai) regarding the shop property. It is informant's contention that during the intervening night of 01.12.2019 to 02.12.2019 additional locks were put by applicants on the shutter of the concerned shop. He stated that since earlier also at the instance of Sahadev applicants put the lock therefore, he is sure that this time also they might have put the lock and, therefore, the report.

(6) On the basis of said report, the police have registered crime for the offence punishable under Sections 341, 188 read with Section 34 of the Indian Penal Code. It is not in dispute that the informant has filed a civil suit against Sahadev, in which, the order of temporary injunction dated 19.03.2018 has been passed restraining Sahadev and his family members from disturbing peaceful possession of subject shop. Applicants' learned counsel would submit that the shop was in the possession of informant, however, neither applicants' put the lock nor they did the offence of wrongful restraint.

(7) So far as the applicability of Section 188 of the Indian Penal Code is concerned, it is argued that in absence of any order promulgated by Public Servant, the said provision cannot be invoked. Admittedly, besides the injunction order passed by Court, there is no other order passed by the Public Authority. Certainly, the orders of Court cannot assume the character of orders passed by Public Servant within the meaning of Section 188 of the Indian Penal Code. Moreover, the provisions of Section 188 could be invoked only at the instance of a complaint made by Public Servant, on said criteria also, invocation of Section 188 is not tenable.

(8) Perusal of entire investigation paper reveals that merely, on suspicion, the report has been lodged. There is no statement of a witness who could say that applicants have seen while putting additional lock on the subject shop. It appears that in past, applicants did the same act, therefore, they must have repeated the same. Merely, on the basis of past antecedents one cannot presume the commission of offence. The criminal law requires a stricter proof which cannot be on the basis presumptions and assumptions. The learned APP has pointed out some printouts of CCTV footage, however,

in said footage, the applicants are seen to be inside the shop meaning thereby they were of some different occasion. It is apparent that in absence of any material on mere suspicion report is lodged, therefore, the case squarely falls in criteria 1 and 3 as laid down by Supreme Court in para 108 in the case of *State of Haryana and ors. Vs. Bhajan Lal and Ors.* reported *in AIR 1992 SC 604*.

(9) In view of above, continuation of such prosecution amounts to abuse of the process of Court, therefore, this is a fit case to exercise our inherent powers.

(10) In view of above, the application is allowed. We hereby quash and set side the FIR in Crime No. 398/2019 registered with Police Station Old City Akola, District – Akola, for the offence punishable under Sections 341, 188 read with Section 34 of the Indian Penal Code.

(11) The application stands disposed of accordingly.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity