



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1804 OF 2022

Dnyaneshwar S/o. Sopan Gite

.. Petitioner

Versus

1] State of Maharashtra
Through Police Station, Bhoom,
Tq. Bhoom, Dist. Osmanabad

2] Khaserao S/o Machindra Galande

.. Respondents

...
Advocate for petitioner : Mr. K.R. Doke and Ms. S.S. Renge
APP for the respondent – State : Ms. S.S. Joshi
Advocate for respondent no. 2 : Mr. V.S. Undre
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 7 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers of this Court under section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India, the petitioner is seeking quashment of crime no. 273 of 2022 registered with Bhoom Police Station, District - Osmanabad for the offences punishable under section 353, 352, 504, 506 of the Indian Penal Code, consequent chargesheet no. 17 of 2023 and Regular Criminal Case no. 25 of 2023 pending before the learned Judicial Magistrate First Class, Bhoom.

2. We have heard both the sides finally at the stage of admission, with their consent.

3. The FIR was lodged by the respondent no.2 alleging that he was serving as a Junior Engineer in the Public Works Department Sub Division, Bhoom under Zilla Parishad. He received a work order in the name of one V.B. Mote for carrying out construction of a road on 06-12-2021. Without intimating him, work of the road was started in February 2022. Having learnt about it, he visited the spot and enquired with the workers there, whereupon they told him that it was the petitioner who had asked them to start the work. The petitioner was also present there. When the respondent no. 2 questioned the petitioner, he declared that he was carrying out that work. When the respondent no. 2 undertook inspection of the work being done, it was found to be of not desired quality. He issued instructions to the petitioner in respect of the material to be used whereupon the petitioner retorted and threatened him if any interference was caused. The respondent no. 2 thereafter returned to the office and submitted a report to the superior office regarding the inferior quality of the work being performed.

4. The FIR even alleges that after about 8 days, in the month of February 2022, when he was present in his office, the petitioner arrived and started questioning him for forwarding a false report. He

also extended threats of kidnapping and again threatened him not to cause interference in the work. He also man-handled the respondent no. 2 but due to the fear, he did not lodge any complaint.

5. FIR then concludes by alleging that on 18-11-2022 between 10.30 and 10.45 am, when he was present in his office together with one Pratiksinh Pandit Patil (Contractor) and Sarfaraz Jafar Pathan (Junior Assistant), the respondent no. 2 received a phone from the petitioner. Applicant asked him as to why he was not picking up his phone. When the respondent no. 2 tried to convince him by saying that because of the workload, he was unable to pick up the phone, the petitioner stated that he had sustained a loss in the work to the tune of Rs.1 Crore and also asked him as to why he (respondent no. 2) was not preparing the estimate of the entire work. After some conversation, the petitioner abused the respondent no. 2 in filthy language, cuss words were used and he also extended threats. The respondent no. 2 then lodged the FIR on 21-11-2022 and the crime was registered for the afore-mentioned offences.

6. The learned advocate for the petitioner would submit that there is delay in lodging the FIR. There is also delay in the two episodes; one in the month of February 2022 and the last telephonic conversation dated 18-11-2022. Accepting the telephonic conversation on 18-11-2022 at its face value, since it was only a telephonic

conversation, there was no question of use of force much less with an intention to prevent the respondent no. 2 in discharging duties of his public office. The petitioner is being falsely implicated and the crime may be quashed.

7. Per contra, the learned APP and the learned advocate for the respondent no. 2 would submit that even the threats extended across the telephonic conversation would constitute force whereby the petitioner has obstructed the respondent no.2 in discharging his public duty. The telephonic conversation was preceded by the earlier episode of February 2022, wherein the petitioner had man-handled the respondent no.2 by entering into his office and had extended threats. Both these circumstances cumulatively would demonstrate existence of ingredients of the offence including offence under section 353 of the Indian Penal Code.

8. We have carefully considered the rival submissions and perused the papers.

9. Sections 332 and 353 of the Indian Penal Code read as under:-

“Section 332 - Voluntarily causing hurt to deter public servant from his duty - Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 353 - Assault or criminal force to deter public servant from discharge of his duty - *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."*

10. Since using criminal force is the ingredient for constituting the offence punishable under section 353 of the Indian Penal Code, it is imperative that a reference is made to the definition of force contained in section 349 and criminal force under section 350 of the Indian Penal Code which read as under:-

"Section 349 – Force - *A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance in to contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:*

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.-- By his own bodily power.

Secondly.-- By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person,

Thirdly.-- By inducing any animal to move, to change its motion, or to cease to move.

Section 350 - Criminal force - *Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."*

11. As far as the conversation dated 18-11-2022 is concerned, admittedly, even according to the prosecution, it was merely a telephonic conversation and even if it is accepted that the petitioner abused and threatened the respondent no. 2 during that telephonic conversation, *ex facie*, the incident would only demonstrate commission of offences of punishable under section 504 and under section 506 of the Indian Penal Code.

12. In view of the specific wording of section 353 coupled with the definition of force under section 349 and criminal force under section 350, such telephonic conversation and the threats and the abuses hurled therein would not constitute use of criminal force which is the basic ingredient for constituting offence punishable under section 353 of the Indian Penal Code.

13. Contemplating such a contingency, the learned APP and the learned advocate for the respondent no. 2 tried to demonstrate that the incident involving telephonic conversation on 18-11-2022, was a sequel to the episode which had taken place in February 2022, wherein the petitioner had man-handled and used criminal force against the respondent no. 2 by entering into his office. Though ingenious, we cannot ignore the fact that there is a time gap of more than 9 months between these two episodes. For whatever reason, the respondent no.

2 did not report the incident, which according to him had taken place in the month of February 2022.

14. Besides, though the FIR reads about such episode of February 2022, wherein the petitioner allegedly man-handled, pushed and pulled the respondent no. 2, in his statement recorded under section 164 of the Code of Criminal Procedure, the respondent no. 2 has not repeated the allegations in respect of use of criminal force in the episode which had taken place in February 2022. He has merely stated that the petitioner entered his office and started speaking in a loud voice and threatened him of kidnapping and rushed towards him. Accepting this stand in the statement under section 164, mere rushing towards the respondent no. 2 would not *ipso facto* make out use of criminal force. He has conspicuously omitted to state before the Magistrate about petitioner having man-handled / pushed and pulled him.

15. In view of such peculiar state of affairs, apart from the fact that these two episodes cannot be tagged in the manner submitted by the learned APP and the learned advocate for the respondent no.2, when the respondent no. 2, in his statement under section 164 of the Code of Criminal Procedure, has not stated about use of any criminal force by the petitioner even in the episode which had taken place in February 2022, we have no manner of doubt that the necessary

concomitant for constituting the offences punishable under section 332 and 353 of the Indian Penal Code, causing of hurt and use of criminal force is conspicuously missing. It would be sheer abuse of the process of the Court to allow the prosecution to go on to the extent of section 332 and 353 of the Indian Penal Code.

16. Sections 504 and 506 of the Indian Penal Code read as under:-

“Section 504 - Intentional insult with intent to provoke breach of the peace -- Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 506 - Punishment for criminal intimidation -- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Obviously, since cuss words were used and threats were extended by using filthy language in the telephonic conversation which had taken place on 18-11-2022, the ingredients for constituting the offence punishable under section 504 and 506 of the Indian Penal Code can certainly be deduced.

17. In view of above, the crime and the criminal case to the extent of section 332 and 353 of the Indian Penal Code are liable to quashed though the prosecution under section 504 and 506 of the Indian Penal Code can go on. Needless to state that the Court of Additional Sessions Judge may have to now transfer the trial to the jurisdictional Magistrate.

18. The writ petition is partly allowed.

19. Crime no. 273 of 2022 registered with Bhoom Police Station, District - Osmanabad, consequent chargesheet no. 17 of 2023 and Regular Criminal Case no. 25 of 2023 pending before the learned Judicial Magistrate First Class, Bhoom to the extent of offence punishable under section 332 and 353 of the Indian Penal Code are quashed and set aside.

20. Writ petition seeking quashment of crime even to the extent of offences punishable under section 504 and 506 of the Indian Penal Code, is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/