

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 87 OF 2024

Sachin Gopinath Kulkarni

... Applicant

Versus

Jas Jeet Singh and anr

... Respondents

Mr. Kulkarni a/w Ms. Anjali B. Shaw i/b. Mr. D. K. Jain for the Applicant.

Dr. D. Iyer, APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 5th MARCH 2024

PC. :

1. Heard the learned Advocate for the Applicant and the learned APP who represents Respondent No.7 – State of Maharashtra. Respondent Nos. 1 to 6 are the police officers impleaded by their names. The issue involved in this Revision Application is “whether the learned Magistrate were justified in refusing to order investigation under Section 156(3) of Code of Criminal Procedure, 1973”.

2. There was complaint made by the complainant/Applicant

against the office bearers of Sidhkala Co-operative Housing Society for commission of several offences punishable under Sections 380, 385, 387, 409, 420, 468 and other Sections read with 34, 35, 37 of the Indian Penal Code, 1860. However, the police of Kalwa police station instead of registering FIR have closed the complaint and that is why the grievance was made that the police officers have committed offences punishable under Sections 166, other Sections read with Section 34, 35, 37 of the Indian Penal Code, 1860. That is why the Applicant filed Miscellaneous Application and impugned order came to be passed.

3. Today this Revision Application is placed before me for the first time. I am supposed to decide whether there is any merit in issuing notice to Respondent Nos. 1 to 6 who are the police officers. Prayers made in this Revision Application are as follows:-

- (i) Call for the record and proceedings of Cr. MA/1459/2023 from the Court of JMFC 5th Court, Thane, and set aside the impugned order dated 6th October, 2023.
- (ii) Respondent Nos.1 to 6 be transferred to non-executive

and non-influencing posting during pendency of this Revision Application.

- (iii) Ad-interim relief by ordering departmental enquiry against the learned Magistrate through the Registrar General of this High Court during pendency of this Revision Application.

4. At the beginning itself, I make it very clear the reliefs in (ii) and (iii) cannot be granted by this Court while exercising revisional jurisdiction and at threshold itself they are rejected. When I started dictating the order, the learned Advocate for the Applicant invited my attention to the following documents, they are as follows ;

- (a) Typed copy of roznama from the proceedings before the learned Magistrate which has been placed on record at page No. 97 to the Revision Application. His grievance is that infact on 27th July, 2023 itself he has argued the matter and he has not argued the matter on 6th October, 2023. However, the learned Magistrate on 3rd August, 2023 and 16th September, 2023 has wrongly

and deliberately shown that the matter is fixed for arguments.

- (b) Letter dated 1st November, 2022 addressed to the Principal Secretary, Home Department which has been placed on record at page No.98 to the Revision Application thereby requesting for taking disciplinary action against the public servant.
- (c) Notice dated 10th April, 2023 issued to the Commissioner of Police Thane for initiating action under the provisions of Contempt of Court Act and under “The All India Services Act and (Conduct) Rules, 1968” for not following the mandate of law and the directions given in the case of ***Lalita Kumari vs. Govt. Of UP and ors***¹ The said notice has been placed on record at page no.104 to the Revision.

I will deal with aforesaid documents separately. It is seen from the record that there are allegations made against Respondent Nos.1 to 6 who are police officers and as such the learned APP cannot

¹ AIR 2014 SUPREME COURT 187

represent them. So I heard the learned Advocate for the Applicant on the point of issuing notice to Respondent Nos.1 to 6.

Grievances in Revision

5. During the course of arguments, it is revealed that in fact the Applicant is having two kind of complaints. They are as follows;

- (i) against the office bearers of Sidhkala Co-operative Housing Society in respect of which he has already lodged complaint with Respondent No.1 firstly on 11th July, 2022 and later on 6th March, 2023;
- (ii) another grievance is that the concerned police officers in violation of the directions and observations given in the case of *Lalita Kumari (supra)* had refused to register the FIR against the office bearers of that society. Hence, they have committed offences punishable under Sections 166A (b) read with Section 166 and Sections 34, 35 and 37 of the Indian Penal Code, 1860 ("IPC").

6. During the course of dictation, the learned Advocate for the

Applicant made an attempt to suggests a few words in my order. When he was asked if he wants he may file the written notes of arguments because when the Court is dictating order, it may not be proper to suggest a few words in the dictation and if any point is left out, certainly the learned Advocate can point out that words later on. To this query, the learned Advocate for the Applicant requested the Court to go on with the dictation.

Grievances before the Court of JMFC

7. I have perused the impugned order which has been placed on record at page no.45 to the Revision Application. The learned Magistrate has also noted the fact that the Applicant has not complained against the office bearers of the Society but against the police officers. The said complaint is filed by way of Criminal Miscellaneous Application No.1459 of 2023. The copy of which has been placed on record at page No.47 to the Revision Application. The following prayers are made therein;

- (a) Complaint under Sections 156(3) and 200 of the Criminal Procedure Code, 1973 against Respondent Nos.1 to 6 be allowed.

- (b) Complaint may be registered against Respondent Nos.1 to 6 and necessary order of investigation as per law.
- (c) Process be issued against all accused.
- (d) trial be conducted against Respondent Nos.1 to 6 and
- (e) for such other reliefs.

8. Learned Advocate for the Applicant read over the contents of that Miscellaneous Application. Sum and substance of his grievance is that those police officers have not followed the mandate laid down in the case of *Lalita Kumari (supra)*. He placed on record those observations. He read over the conclusion part in paragraph 111 of the said Judgment by the way of observations. He emphasized on the following observations;

“Conclusion / Directions:

111. In view of the aforesaid discussion, we hold:

-(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The police officer cannot avoid his duty of

- registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.....”

He also read a few submissions recorded in the order made by the learned Senior Advocate Mr. Shekhar Naphade.

Principles from Lalita Kumari

9. If I read the observations by way of conclusion, the following principle emerges :-

- (1) No preliminary enquiry is permissible if information discloses commission of cognizable offence, then registration of FIR is mandatory.
- (2) If preliminary enquiry is required, then the following are the options :-
 - (a) enquiry can be conducted to ascertain whether cognizable offence is disclosed or not.
 - (b) if enquiry results into closing of complaint, then

the copy of entry of closure report may be supplied to the first informant within a week and it must disclose the reasons in brief.

- (c) The scope of preliminary enquiry should not for verifying the veracity of the offence.
- (d) if any police officer avoids his duty of registering the offence in spite of disclosure of cognizable offence, action can be initiated against those erring officer.

Submissions on facts & on law

10. Learned Advocate for the Applicant emphasizes on two facts they are;

- (i) inspite of complaints made to the police officers through the Commissioner of police against the office bearers of the Society disclosing cognizable offence, they have not registered the FIR against those office bearers. That is how they have abdicated their responsibilities.
- (ii) In view of that his client was compelled to file a complaint which is registered as Criminal

Miscellaneous Case.

11. He also read over the provisions of Sections 166 and 166A of the IPC and Section 36 of the Criminal Procedure Code, 1973 ("Cr.P.C."). Section 36 of the Cr.P.C. also empowers the superior police officers with the same powers equivalent to the police officers of the local area may exercise.

12. According to the learned APP, unless and until the Applicant may take legal steps for redressal of his grievance against the office bearers of the Society particularly after the closure report, again making grievance for violation of Sections 166 and 166A of the IPC cannot be entertained. According to her, in fact, there is no disobedience to any directions of law as contemplated u/s. 166 & 166A of the IPC. Hence, those sections cannot be resorted.

Documents relied

13. Learned Advocate for the Applicant invited my attention to the following documents :-

(a) Copy of letter dated 12th August 2022 written by the

Senior Police Inspector to the Applicant informing him to take appropriate action before the Co-operative Court.

- (b) Copy of letter dated 3rd April, 2023 by the Senior Police Inspector to the Applicant advising the same. It is placed on record at page no.77 to the Revision Application.
- (c) Copy of email sent by the Applicant to the Commissioner of Police, Thane and the Director General of Police thereby bringing to their notice about violation of the Supreme Court' directions and requesting to register the FIR against police officers.
- (d) Copy of circular dated 19th December, 2013, issued by the Director General of Police, Maharashtra thereby bringing to the notice of all police officers about compliance of directions given in the case of ***Lalita Kumari (supra)***.
- (e) Copy of circular dated 19th December, 2013 issued by the Director General of Police on the same line.
- (f) Copy of Advisory dated 12th October, 2015 issued by

the Joint Secretary to the Government of India which has been placed on record at page no.89 to the Revision Application, thereby bringing to the notice of the Chief Secretaries of all State Governments / UT Administrations to comply with the directions given in case of ***Lalita Kumari (supra)***.

- (g) Certified copy of roznama of the trial Court's proceedings which have been placed on record at page nos.95 to 97.
- (h) Copy of complaint dated 1st November, 2022 made by the Applicant to the Principal Secretary, Home Department requesting for disciplinary action.
- (i) Copy of email dated 1st November 2022 made by the Applicant to the Principal Secretary, Home Department which has been placed on record at page no.100 to the Revision Application.
- (j) Copy of notice issued to the Commissioner of police bringing to his notice the violation of direction given in the case of ***Lalita Kumari (supra)*** which has been placed on record at page no.104 to the Revision

Application.

- (k) Copy of notice dated 22nd February, 2023 addressed to the Director General of Police on the same line, which has been placed on record at page no.112 of the Revision Application.
- (l) Copy of notice dated 22nd February, 2023 addressed to the Addl. Chief Secretary, Home Department, on the same line which has been placed on record at page no.116 to the Revision Application.

Analysis

14. Now, the issue in this Revision is “whether can it be said that the learned Magistrate has committed illegality in dismissing the Criminal Miscellaneous Application”?. **The reasons** given by the learned Magistrate are as follows;

- (i) The Application was not filed for registering the FIR against the Managing Committee Members of the Society but against the police officers.
- (ii) Application under Section 156(3) of the Cr.P.C. may be allowed for registering FIR of the original facts and not

for the fact of “*not registering the complaint against the police officers*”. *This is not correct reason because the litigant has got choice against whom he should proceed.*

- (iii) Learned Magistrate has further observed about “non compliance of mandatory provisions of Section 154 of the Cr. P.C.”.

15. Even though certain reasoning given by the learned Magistrate are not acceptable (for the reasons stated herein below), I do not think that the order passed thereby dismissing the Criminal Miscellaneous Application can be faulted.

Reasons

16. Once there is a closure report of complaint against the office bearers of the society what steps the complainant should take is an option available to the Applicant. If he decides to proceed against the police officers for violation of Sections 166 and 166A of the IPC, to debar him entertaining his complaint is one thing and not granting relief is another thing. Not taking

further steps against the office bearers of the society may be one of the reason for not granting relief in a complaint against the police officers. But you simply cannot debar a litigant from filing such a complaint.

Not filing private complaint against Society

17. In this case, it is submitted that the Applicant has already filed Writ Petition No.138 of 2023 for issuing directions to the police officer for registration of FIR against office bearers of the Society. However, this Writ Petition was disposed of as withdrawn on 6th January, 2023 and liberty was granted to the Petitioner / Applicant to exhaust alternate remedy of filing a private complaint.

18. Learned Advocate for the Applicant tried to explain that his client had once again filed another Writ Petition being Writ Petition No.2901 of 2023 seeking same relief. Yet it is not decided, and in the order dated 23rd August, 2023 the Court has observed that despite granting the liberty, the Applicant again filed an Application / Complaint with the police. In fact, Writ Court has

refused to grant any interim relief but admitted the said Writ Petition. Some sort of justification was offered for not filing the private complaint. It is submitted that there are thousands of cases pending before the Court of Judicial Magistrate, Thane. This explanation cannot be accepted. It is for the simple reason that just because there is huge pendency, no Court can refuse an aggrieved party to approach them. At the most, there can be delay in hearing the matter but access to justice cannot be denied.

19. Learned Magistrate further observed “such action is not warranted as per the Judgment in the case of *Lalita Kumari (supra)*.” In fact, this observation is not correct. It is for the reason that it is not supported by any reasoning. In direction given in sub clause (iv) of Paragraph 111 of *Lalita Kumari (supra)*, the Supreme Court also cautioned “to take action against any officer who have not registered FIR”. Again restraining and debarring a person from taking action is one thing and refusing a relief is another thing. That reason is not correct. If I read the observations in the form of conclusion, the learned Magistrate could have opined that in a given set of facts, it cannot be said that

action under direction No.(iii) of Paragraph 111 is warranted.

20. Learned Advocate for the Applicant has brought to my notice a copy of email addressed to the Commissioner of Police and the Director General of Police. He has made grievance about non registration of FIR against the police officers. It can be said to be compliance of Section 154(3) of the Cr.P.C. Learned Magistrate has over looked to this correspondence.

21. If we read provisions of **Section 166** of the IPC, we may find that if any public servant disobeys **the law** with certain intent, he can be prosecuted. Whereas as per the newly added Section 166A of the IPC (which came into force on 3rd February, 2013) also prescribes punishment for the public servant who disobeys the **directions as per the law**. On behalf of the Applicant, my attention is invited to sub clause (b) of Section 166A which prescribes “the disobedience of law thereby regulating the manner in which he shall carry out such investigation”. It is important to note that in both these Sections the essential requirement is ‘knowingly’ disobeying the law / directions under the law.

22. It is observed in the case of *Lalita Kumari (supra)* that no preliminary enquiry is required if cognizable offence is disclosed and in such case registration of FIR is mandatory. If preliminary enquiry is required, then it can not be carried out to ascertain whether cognizable offence is disclosed or not and when carried out and resulted into closure of complaint, then it shall be informed to the complainant.

23. In this case, there are letters at page nos.75 and 76 dated 12th August, 2022 and 3rd April, 2023 respectively sent by Kalwa Police Station to the Applicant. Learned Advocate for the Applicant invited my attention to the contents of those letters. In nutshell they are as follows;

- (a) In the year 2006, the members of the Society have removed the security grill without permission of the Applicant.
- (b) the office bearers of the society have misappropriated the amount of maintenance deposited by the Applicant.
- (c) There are recovery proceedings initiated against the Applicant for recovery of an amount of Rs.2,26,192/-

on the basis of false and forged documents and the order was passed against the Society.

- (d) In spite of that, there are further proceedings for recovery of an amount of Rs.2,26,192/- on the basis of forged documents.
- (e) In fact, it was mandatory for the Society to carry out repairs to structural damage in the block of the Applicant but the office bearers have refused for the same for non payment of maintenance charges by the Applicant.
- (f) There is grievance that the learned Advocate for the Society is filing false, frivolous Applications before the Co-operative Court.
- (g) Notices are issued to the Applicant for recovery of arrears and that is how the Applicant alleges that it is sort of extortion and the complaint against the office bearers was filed for the offences punishable under Section 380, 42, 500, 409, 387, 468 and 120B of the IPC.

24. On the basis of the above facts, the police have concluded “*the dispute is pending before the Co-operative Court, so it is advisable for the Applicant to agitate these grievances before the Co-operative Court*”.

25. On this background, the question arose whether the concerned police officers have disobeyed the directions given in the case of *Lalita Kumari (supra)* by not registering the offence against the office bearers of the society on the basis of available record. I felt that the preliminary enquiry was required and the police had done it by concluding the enquiry as “no cognizable offence was disclosed”. Now this conclusion may not be acceptable to the Applicant. The police may be wrong in arriving at that conclusion.

26. By no stretch of interpretation, it can be said that the police officers have knowingly disobeyed the directions given in the case of *Lalita Kumari (supra)* because it is not simple disobedience which is punishable under Sections 166 and 166A of the IPC. It must be done knowingly. So I do not think that the

Magistrate was wrong in dismissing the Application. So no case for interference is made out.

27. For the above reasons, I felt it unnecessary to issue notice to Respondent Nos.1 to 6, resultantly, the Revision Application stands dismissed.

[S. M. MODAK, J.]

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