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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 573 OF 2022**

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|----|--------------------------------|----------------|
| 1. | Kanaiyalal Jagjivan Darji | |
| 2. | Mrs. Jasumati Kanaiyalal Darji | ...Applicants |
| | Versus | |
| 1. | The State of Maharashtra | |
| 2. | Mr. Bhushan K. Thorat | ...Respondents |

Mr. Mubin Solkar a/w. Mr. Tahir Hussain, Adv. A. Shaikh, Adv. Hemal Shah i/b Yusuf Mithi for the Applicants.
Ms Rutuja Ambekar, APP for the Respondent/State.
Mr. Surendra R. Yadav for Respondent No.2.

CORAM	:	PRAKASH D. NAIK & N. R. BORKAR, JJ.
DATE	:	02.04.2024.

PC:-

1. The applicants have invoked inherent powers of this Court under Section 482 of Code of Criminal Procedure (Cr.P.C.) for challenging the First Information Report (FIR) dated 11.2.2022 registered with Vileparle Police Station, Mumbai vide C.R. No.62 of 2022 for the offences under Sections 341 and 504 read with 34 of the Indian Penal Code (IPC).

2. The allegations reflected in the FIR can be briefly summarised as under:

The father of complainant had obtained premises viz. Flat No.102 situated at Kala Mandir Building, Chitrakar Ketkar Marg,

Vileparle (E), Mumbai during the period from 2014 to 2017 on leave and license basis. The agreement was executed. The agreement was subsequently transferred in the name of complainant and his mother. The agreement had lapsed after 31.10.2021. Thereafter, the complainant, his father and the owners of premises had orgaized a meeting and the owners had agreed for extension of license agreement for a period of three years. Two cheques of Rs.1 lakh were issued. One of the said cheque was deposited in the bank. Subsequently, in January 2022, it was decided to execute the agreement. Since the applicant No.2 was ailing, the applicant No.1 had obtained amount of Rs.5 lakhs in cash from the complainant. Thereafter, the complainant approached the owner for extension of leave and licence agreement and at that time, the owner refused to extend the agrement. In 2018, the owner of the premises had obtained Rs.10 lakhs in cash from the complainant and Rs.2 lakhs thereafter. Thus, the owner had obtained the amount of Rs.28 lakhs from the complainant. The advance rent was paid to the owner.

On 15.1.2022, notice was issued by Small Causes Court and the licensees were directed to appear before the Court on

15.2.2022. However, on 11.2.2022 at about 1.10 p.m., the accused came to the premises along with two unknown ladies and entered into the premises. On receipt of information, the police arrived at the spot. Statement was recorded.

3. Learned Advocate for the applicants submitted that the registration of FIR is abuse of process of law. The applicants are senior citizens aged around 65 and 67 years. Applicant No.2 is a Cancer patient. They are owners of the premises. Assuming the allegations reflected in the FIR to be true, the FIR does not disclose any offence against them. The facts indicate in the FIR does not constitute the offence of wrongful restraint. Section 504 of IPC is non-cognizable offence. Section 341 of the IPC deliberately invoked to register the FIR. The allegations made by the complainant and the attending circumstances do not disclose that the accused had any intention to harm the complainant and hence, none of the offences are made out against the applicants.

4. Learned Advocate further submitted that the applicants have initiated civil proceedings before the Small Causes Court.

The summons were issued to the complainant. The applicants in the past had preferred online complaint dated 9.2.2022 against Krishna B. Thorat for not vacating the flat and intimidation. The licensees are occupying the premises without extension of agreement of leave and licence. The FIR contains false allegations that amount in cash was parted to the applicants. The complainant had not produced any evidence in that regard. The Small Causes Court vide order dated 25.2.2022 rejected the Application vide Exhibit-12 in L.E.& C. Suit No.4 of 2022 preferred by the defendants therein for injunction and claiming appointment of Court Commissioner. The owners/applicants had preferred an application vide Exhibit-14 in L.E.& C. Suit No.4 of 2022 for injunction, arrears of compensation, damages, appointment of Court Receiver. Vide separate order dated 25.2.2022 passed by the Small Causes Court, the said application was partly allowed and the defendants therein were directed to deposit compensation or license fee at the rate of Rs.15,000/- per month from the months of September and October 2021 and damages of Rs.30,000/- per month from November 2021 on or before 10th day of each month till the final decision of the suit. The

occupants of the premises had preferred Miscellaneous Appeal No.79 of 2022 before the Appellate Bench of the Small Causes Court and the said appeal has been dismissed vide order dated 10.8.2023.

5. Learned APP submitted that on completing investigation, charge-sheet is filed. The charge-sheet contains the statements of witnesses, which support the prosecution case.

6. Learned Advocate for respondent No.2 submitted that the offence is made out against the applicants. The FIR discloses the act of accused which constitute the offence. The applicants have suppressed vital facts. Cameras were installed at the place of incident which supports the prosecution case. The complainant is licensee since 2015. Cash amount was parted to the owner of the premises towards license fees. Cheques were also issued in favour of the original plaintiff. On the ground that the applicants are senior citizens, no sympathy can be shown as the offence is clearly made out. Statements of witnesses support the prosecution. The trial should proceed. The applicants were accompanied by two ladies. They had

abused the occupants of the premises. No case is made out for quashing the impugned proceedings.

7. The applicants are co-owners of the subject premises. The contents of the FIR disclose that the complainant and his family members were occupying the premises as licensee. The agreement of leave and license had expired. There was no extension. The complainant contends that huge amount was parted by way of cash. No evidence was produced during the investigation. The applicants/owners had filed suit in the Small Causes Court. Notice was issued to the licensees. Assuming that the applicants were present at the place of incident on 11.2.2022, we do not find any offence is made out in the FIR.

8. The tenor of FIR does not indicate any offence under Section 341 of the IPC. It was alleged that the applicants had visited the premises and entered into the premises. We do not find as to how FIR was registered for an offence of wrongful restraint by invoking Section 341 of the IPC. The applicants are the owners of premises. They are senior citizens. The civil proceedings were initiated by the plaintiffs/owners/applicants.

The occupants had preferred an application for injunction and appointment of Court Commissioner which has been rejected by the Small Causes Court. The order passed by the Small Causes Court in application preferred by the applicants indicate that the occupants of the premises were directed to deposit compensation of license fees. In the appeal preferred by the relatives of the complainant, who were occupying the premises, challenging the order passed by the Small Causes Court has been dismissed vide order 10.08.2023.

9. In paragraph 13 of the order dated 10.8.2023, it was observed that in entire FIR, it has not been mentioned that the owners tried to forcefully dispossess the defendants from the suit premises. It is pertinent to note that the appellate Court in the aforesaid order dated 10.08.2023 in paragraph 12 has observed that the case of the defendants that they have spent 42 lakhs on furniture and interior work. They have not produced any documents in respect of huge amount of Rs.42 lakhs, as claimed by them. Apart from that, they have claimed to have paid Rs.28 lakhs in cash to the plaintiffs. They have not produced any receipt of payment to that effect. They have

produced account statement, which shows that they were paying amount of licence fee by cheque. The licence fee was only Rs.15,000/- and they paid it by cheque.

10. The allegations reflected in the FIR are not fortified by any cogent evidence. This is a clear case of abuse of process of law where the FIR has been registered in respect of dispute which is of purely civil nature against the applicants at the instance of persons occupying the premises owned by the applicants. It is clear that the FIR was registered out of vendetta and apparently on receipt of notice received from the Small Causes Court to implicate the applicants in the alleged crime. The allegations in the FIR does not disclose any offence. Surprisingly, the police registered offence and proceeded with the investigation and also filed the charge-sheet. We find that the dispute which is of purely civil nature was converted into criminal proceedings. In the absence of any ingredients to constituting the offence, we are surprised that the police machinery has registered the impugned FIR and conducted investigation. This is misuse of powers of investigation. This is a fit case where this Court should exercise inherent powers

under Section 482 of Cr.P.C. for quashing the impugned proceedings.

ORDER

A] Criminal Application is allowed.

B] The proceedings in C.C. No.5928 of 2022 pending before the Chief Metropolitan Magistrate, Court Room No.65, Andheri arising out of FIR dated 11.02.2022 registered with Vile Parle Police Station, Mumbai vide C.R. No.62 of 2022 are quashed and set aside.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)