



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3233/2017

KAMLA SHAAMANDAS BAJAJ

..PETITIONER

VS.

PRASHANT SHARMA & ORS.

..RESPONDENTS

Adv. Asha S. Bajaj for the petitioner.

Adv. Ajinkya Udane for the respondent nos. 1 to 4.

Mr. S. H. Yadav, APP for the respondent no.5/State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 26, 2024.

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondent nos.1 to 4.

2. This writ petition challenges the order dated 2/12/2016 passed by the Additional Sessions Judge, Sessions Court, Greater Mumbai, rejecting the revision application filed by the petitioner. The petitioner challenged the order passed by the trial Court by way of a revision before the Sessions Court. The trial Court discharged some accused with which the petitioner was aggrieved. The petitioner alleges that the accused have harassed the petitioner no ends. The petitioner was a devotee of Lord Shiva. She often visited the

temple. The accused persons were not comfortable with the petitioner visiting the said temple. They obstructed her. The accused harassed her. It is submitted that the petitioner who is senior citizen was assaulted and pulled by her hair by the accused persons.

3. Learned counsel appearing on behalf of the petitioner submitted that despite several complaints lodged with the police authorities, they failed to take any action against the accused persons only because one of the accused happened to be a powerful builder. It is submitted that it is at the instance of the builder that the police failed to take any action.

4. The petitioner, therefore, had approached this Court by filing Criminal Writ Petition No.233/2012 for appropriate reliefs. This Court by an order dated 22/3/2012 disposed of the writ petition with liberty to adopt appropriate proceedings in appropriate Court. The order reads thus:-

“1. Heard the learned counsel appearing on behalf of the Petitioner and the learned APP appearing on behalf of the Respondent-State. The grievance of the Petitioner is that the Respondents are not permitting her to perform Dev Pooja in the temple of Lord Shiva, which is situated at Pavai. It is further submitted that Respondents have assaulted her when she made an attempt to perform

pooja in the said temple. It is submitted that in view of provisions of Article 25 of the Constitution of India, the Petitioner has a fundamental right to perform pooja in the said temple. The Petitioner has, therefore, prayed for direction under Art. 226 of the Constitution, directing the Respondents not to interfere with the Petitioner's right to worship in the said temple. It is also prayed that the directions may be given to Respondent Nos. 1 and 2 to consider and take an appropriate action in respect of the complaints which are filed by her and to register the FIR.

2. In our view, so far as prayer Clause (a) is concerned, this Court while exercising its jurisdiction in criminal writ petition may not be in a position to grant/pass the said order, particularly since Respondent Nos. 3 to 8 are private citizens, and therefore, writ as claimed by the Petitioner under this prayer clause cannot be issued. The Petitioner has an alternate efficacious remedy of taking an appropriate proceedings in appropriate Court.

3. So far as prayer Clause (b) is concerned, the Petitioner has an alternate efficacious remedy of filing a private complaint in the appropriate Court of Metropolitan Magistrate within whose jurisdiction the alleged offence has taken place.

4. We are, therefore, not inclined to grant both the prayers. However, liberty is granted to the Petitioner to file appropriate proceedings before the appropriate Court for seeking relief, as sought by him in prayer Clause 10(a) and 10(b). If such a private complaint is filed by the Petitioner before the Magistrate, he may immediately hear the said complaint and pass an appropriate order, in any case within a period of four weeks thereafter, on the question of issuance of process or order under S. 156(3) Cr. P.C. All contentions raised by the Petitioner in this Petition are kept open. The learned counsel for the Petitioner requests for recording appearance of the Petitioner, who is present in the Court.

. Writ Petition is accordingly disposed of with liberty, in the aforesaid terms."

5. Thereafter, the petitioner filed the complaint before the Metropolitan Magistrate, 22nd Court at Andheri, Mumbai, against the accused under Sections 324, 504, 506(ii) read

with 34 of the Indian Penal Code. The petitioner's deposition was recorded by the Metropolitan Magistrate on 16/6/2014.

The deposition reads thus:-

"Examination in Chief by Advocate Mukesh Mishra:-

Incident occurred on 30/09/2021 at about 10.00 to 11.00 a.m. at Bholanath Temple, in Powai Vihar, Mumbai. Accused Rajendra Sharma and others were engaged in secretly vigiling my activities. Upon my questioning of the same the relations were worsened. The accused Nirmala Kadam also abused me. On the same day I was assaulted by the wife of accused Rajendra Sharma and Nirmala Kadam assaulted me by snatching my hairs and falling me down by fist blows. Number of persons were assembled there. I was made to stand from some of the said persons. The accused thereafter rushed to Powai police station ahead of me, so also I visited police station Powai. I was referred to hospital by Powai police. Doctor examined me.

Builder Prashant Sharma negotiated with the police and did not allow the police to record my F.I.R. They instead recorded NC complaint. Subsequent thereto, I was approached to Hon'ble High Court and thereafter, filed this complaint, as per the direction of the Hon'ble High Court. I know all the accused, they are not present before Court today. In August 2011 I was also threatened by the son of accused Rajendra Sharma of dire consequences. I have filed NC report of all the incidents and ready to file the original copies of the same.

At his juncture, learned counsel for complainant prayed for an adjournment for filing original copies for the NC's. Upon hearing both side and prayer of the complainant, the case is adjourned till next date i.e. 28/07/2014."

6. The trial Court passed an order below Exhibit 1. It is necessary to reproduce the order below Exhibit 1 whereby the charge came to be framed only against accused no.3-

Nirmala Kadam for the offence punishable under Sections 323, 504 of the Indian Penal Code. The Metropolitan Magistrate discharged rest of the accused viz. accused no.1- Prashant Sharma, accused no.2-Rajendra Hanuman Prasad Sharma, accused no.4-V.C. Manoj and accused no.5- Narayani Bai as per Section 245 of the Code of Criminal Procedure. The order reads thus:-

Order below Exh.-1

Complainant viz. Kamla Shaamandas Bajaj, have filed resent complaint U/Sec. 324, 504, 506 (il) r/w Sec. 34 of Indian Penal Code, against accused No. 1 to 5. It seems that, my Ld. Predecessor was pleased to issue process against accused P. U. Sec. 323, 504, 506 (ii), r/w Sec. 34 of I.P.C. At the stage of hearing before charge, complainant have adduced her oral evidence, at **Exh. 39**. She have also relied upon various documents, which are in the form of various cases filed by her with Powai police station, against accused persons. Complainant come with the case that, on 30/09/2011, when she visited the temple of Lord Shiva accused started to abuse her, as soon as she entered in the temple. As soon as she went to drink water accused locked her inside the room, when she started to scream and insisted to open the door, accused No.- 2, 3 and 5 came with the broom and started beating her. Those accused hold her hair and started beating her with hands and broom on her face and other parts of body. Thereafter accused persons threatened her with knife. After the alleged incident she went to Doctor and then lodged complaint.

Now I have turned to the actual oral evidence adduced by complainant at **Exh.-39**, wherein she stated that, incident occurred on 30/09/2011, at about 10.00 to 11.00 a.m., at Bholenath Temple, in Powai Vihar, Mumbai. There accused Rejendra Sharma and other were engaged in secretly vigiling her activities. Upon her questioning, the relations were worsened. Accused Nirmala Kadam abused her. On the same day, complainant was assaulted by wife of Rajendra Sharma and Nirmala Kadam assaulted her by snatching her hairs and falling her down by fist and blows. In all the evidence of complainant Kamla Bajaj revolves around accused Nirmala Kadam and wife of Rajendra Sharma, whose name she has not stated in her

evidence. It is pertinent to note that, she nowhere stated the names of accused No.-2. Rajendra Sharma, No.-3. Nirmala Kadam and No.-5 Narayani Bai, who allegedly came with broom and had beaten her by means of broom and hands and pulled her hairs. Therefore, there is absolutely no any evidence against accused No. 2 and 5 regarding the alleged act. It seems that, there is no any incriminating evidence come on record through the evidence of Kamla Bajaj against accused No.-1 Prashant Sharma regarding alleged act, mentioned by her in her complaint. In this regard, I come to the conclusion that, the evidence placed on record by the complainant is only against accused No.-3. Nirmala Kadam, pertaining to the act of abusing her and assaulting her by snatching her hairs. In the result charge is required to be framed only against accused No.-3. Nirmala Kadam. Hence, I passed following order.

ORDER

1. Charge be framed only against accused No.3 - Nirmala Kadam for the offence P. U. Sec. 323, 504 of Indian Penal Code.
2. Rest of the accused i.e. Accused No.-1 Prashant Sharma, No.-2 Rajendra Hanuman Prasad Sharma, No.-4 V. C. Manoj and No.-5 Narayani Bai, are hereby discharged, as per section 245 of Criminal Procedure Code, from offences P.U. Sec. 323, 504, 506 (ii) of Indian Penal Code."

7. Being aggrieved by the order passed by the trial Court, the petitioner/original complainant filed the revision application under Section 397 of the Code of Criminal Procedure before the Court of Sessions for Greater Bombay.

8. Several contentions were raised by way of the said revision. It was pointed out that there are materials to indicate that the revisional applicant was badly beaten by the accused no.1-Prashant Sharma and other accused and they were harassing her on daily basis. It was also one of the contention that the applicant's deposition was not

recorded properly by the Metropolitan Magistrate. In the revision application it was contended that it is the builder Prashant Sharma who is responsible for the entire harassment caused to the applicant and instead of proceeding against him, the charge is directed to be framed only against the accused no.3- Nirmala Kadam who was working as a maid servant. The regular salary was paid to her by the said builder. The case of the applicant was that the entire assault by the accused no.3 was at the instigation and at the behest of other accused persons including accused no.1- Prashant Sharma.

9. The revisional Court for the reasons recorded in the order dated 2/12/2016 rejected the revision application. The relevant portion of the order reads thus:-

“9. Before framing the charge applicant has examined himself at Exh.39 per section 244 of Cr.P.C.. It is testified by applicant on oath that on 30.2.2011 at about 1.00 to 11.00 am at Bholenath Temple in Powai, Mumbai respondent no.2 and others were engaged in secrete vigiling her activities and upon questioning the same the relations were worsened. It is further affirmed that respondent no.2 Nirmala abused her and on the same day applicant was assaulted by the wife of respondent no.2 and respondent no.3 by snatching her hair and falling her down by fist and blow. Thereafter number of persons were assembled. However, the accused rushed to police station, Powai and then she visited to the police station she was referred to the hospital.

10. In respect of the incident dtd.30.9.11, for which the

Ld Magistrate has taken the cognizance and issued the process, the only whisper on oath is against the respondent no.3 and Nirmalabai. It is to be noted that on the day her evidence was recorded it was adjourned for filing the original copies of the NC. The roznama speaks that on number of time adjournments sought and on 12.3.2015 the purses is filed to close the evidence. The grievance is made that purses is filed adventively without consulting with the applicant. However, it is to be noted that till filing of the passing to the order, no such grievance was made. Moreover, on consideration of the documents on record, and others also NC with the provisions of section 244(2) of Cr.P.C., the order of the Ld. Metropolitan Magistrate to frame the charge against the respondent no.3, in my considerable view, the Ld Magistrate has not committed any error.”

10. I have carefully perused the complaint, the impugned orders and the materials on record. I have also gone through the examination-in-chief of the petitioner at Exhibit 39. The allegation in the deposition is mainly against the accused No.3 Nirmala Kadam against whom the charge is directed to be framed. Having perused the impugned orders, I see no reason to take a view different from the one taken by the trial as well as revisional Court. There is nothing on record of the trial Court to indicate that the petitioner was not given a proper opportunity to examine herself while recording her deposition.

11. Learned counsel for the petitioner submitted that accused Nirmala Kadam is not co-operating with the trial Court and there is no progress in the trial. Considering that

the petitioner is a senior citizen and having regard to the nature of the accusations, learned trial Court is requested to expedite the trial. The observations made by me are *prima facie* in nature and the trial shall proceed on its own merits and in accordance with law uninfluenced by any observations made by me or those in the impugned orders.

12. The writ petition is rejected and disposed of accordingly.

(M. S. KARNIK, J.)