

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5018 OF 2019

Chandrakant @ Vishal Narayan Lasure,
Age 42 years, R/o.C-4, Flat No.7,
Renuka Nagar, Nashik-422001.

Petitioner

versus

1. The State of Maharashtra
2. The Commissioner of Police,
Nashik City.
3. Deputy Commissioner of Police,
Nashik City.
4. Senior Police Inspector,
Bhadrakali Police Station, Nashik City.
5. Mangalsingh Suryavanshi,
former Sr.PI,Bhadrakali Police Station,
6. Mrs.S.P.Lokhande, API,
Bhadrakali Police Station,
7. Santosh Sable, API,
Bhadrakali Police Station,
8. Vijay Londhe,
Bhadrakali Police Station,
9. Ashirwad Ramanlal Bhavsar,
R/o.Flat No.16, 3rd floor,
Bhadrakali Apartment, Nashik City,
Nashik-422001.

Respondents

Mr.Harshad Sathe i/by Mr.Sachin B.Chandan, Advocate for Petitioner.

Mr.Y.M.Nakhawa, APP, for State.

Mr.KetanArun Dhavle, Advocate for Respondent no.9.

Mr.Santosh Narute, PI and Mr.Sachin Ahirao, H.C, Bhadrakali Police Station, Nashik City, present.

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CORAM : PRAKASH D. NAIK AND
N.R.BORKAR, JJ.

DATE : 21st March 2024

PC :

1. Petitioner has prayed for following reliefs :

(a) That this Hon'ble Court please to issue writ and/or order or direction thereby directing to respondent no.1 to take appropriate legal action in accordance with law against the Respondent NO.5 to 8 with further direction to pay compensation to the Petitioner;

(b) That this Hon'ble Court please to issue writ and/or order or direction thereby quash and set aside FIR being C.R No.I-485/2017 registered Bhadrakali Police station, Nashik as well as the charge sheet No.97/2017 pending before learned JMFC, Nashik being R.C.C case No.1620 of 2017;

(c) That this Hon'ble Court be pleased to direct the Respondent no.4 to register offence and investigate the same on basis of the complaint dated 03.08.2017 (Exhibit O) addressed to Respondent NO.4, with further direction to check the call details and location of the Petitioner and Respondent No.5 to 9.

2. The FIR was registered with Bhadrakali Police Station vide C.R No.I-485 of 2017 for offences u/s.386, 120-B r/w 34 of Indian Penal Code.

3. The case of prosecution is that the accused are residing in the area where complainant resides. They are conducting a shop near the shop of complainant. Accused were dealing in money lending. In 2012 the complainant was in need of money. He obtained loan of Rs.1,30,000/- with interest @ 10% from accused. The complainant used to pay amount of Rs.14,000/- towards interest. In 2013 the father of complainant was ill. For the purpose of treatment the

complainant was in need of money. He approached the accused with a request of loan of Rs.50,000/-. The accused told him that rate of interest would be 10% and he has money lending license. The complainant obtained loan of Rs.50,000/- with interest @ 10% from the accused. Subsequently he also borrowed loan of Rs.30,000/- with interest @ 10% from the accused. The complainant was paying Rs.10,000/- towards interest. In 2014 complainant suffered from heart decease. He took treatment. He was admitted in hospital. He again borrowed Rs.1,00,000/- from the accused. The amount was parted to him by deducting interest of two months in the sum of Rs.20,000/-. The complainant underwent angiography. He was paying Rs.18,000/- per month interest to the accused. In the event of delay in paying interest, the accused was imposing penalty upon complainant. On 17th March 2015 the complainant parted amount of Rs.80,000/- in cash to the accused. On 10th November 2015 he handed over Rs.50,000/- to the accused. He returned entire amount to the accused of Rs.1,80,000/- with interest to the accused. The complainant had also returned the amount obtained by him from the co-accused Nitin Lasure by handing over amount of Rs.1,30,000/- up to October-2015. On 1st November 2015 accused Nitin Lasure called him at his residence and demanded money. He was assaulted. He was claiming amount towards interest. He was threatened of dire consequences. He was demanding Rs.50,000/- from him. Petitioner and the co-accused were visiting his shop or residence and threatening the complainant with demand of money. The complainant had made applications against accused with Sub Registrar. The accused abused and threatened him. On 17th July 2017 Petitioner called the complainant near old Prabhat Theatre. He demanded Rs.90,000/- for closing the account. Since complainant

does not have money he expressed his inability to fulfill the demand. Petitioner threatened him of dire consequences. The complainant forwarded his complaint to Police Commissioner on 19th July 2017. The FIR was registered on 31st July 2017. On completing investigation charge sheet was filed.

4. Learned advocate for Petitioner submitted that Petitioner is businessman. He had filed Public Interest Litigation No.152 of 2015 before this Court seeking relief against illegal sale of crackers. This Court had passed various orders. Bhadrakali Police Station had registered various offences against illegal sellers of fire crackers. Petitioners had made a complaint against person indulging in illegal sale of fire crackers. This Court vide order dated 27th July 2017 directed police authorities to record statement of Petitioner. Petitioner made statement against police authority on the issue of illegal sale of fire crackers. Police had grudge against Petitioner. Statements were recorded on 27th July 2017 and 31st July 2017. The impugned FIR was registered against Petitioner on 31st July 2017. The complainant had obtained money for the treatment of his father. In spite of demands he neglected to repay the money taken from Petitioner. Petitioner made a complaint dated 12th July 2017. The complaint was lodged by sister-in-law of Petitioner regarding assault upon wife of Petitioner which was recorded as N.C complaint of 12th July 2017. Petitioner was called at the police station in response to his complaint. Settlement was made at the police station. The dispute between Petitioner and Respondent no.9 was settled. Respondent no.9 accepted that he has received the money. The statement of Petitioner was recorded. The statement of Respondent no.9 was recorded. Petitioner was called for inquiry regarding complaint dated 12th July 2017. Petitioner was threatened by

Respondent no.8 to withdraw PIL No.152 of 2015. Petitioner made complaint on 26th June 2017 against Respondent nos.4 to 8. No action was initiated. Petitioner also made a complaint to Respondent no.4 for conducting inquiry about false FIR against Petitioner. No inquiry was conducted. The FIR is false. No offence is made out against Petitioner. There is no evidence in the entire charge sheet to substantiate the offence registered against Petitioner. Police do not take cognizance of complaint registered by Petitioner. Appropriate action is required to be initiated against Respondent no.8. Petitioner was subjected to harassment by registering FIR. Petitioner is entitled for compensation from Respondents. Petitioner had made a complaint to Bhadrakali Police Station on 3rd August 2017 for taking action against Respondent no.9. Directions be issued to Respondent no.4 to register the offence and investigate same on the basis of complaint made by Petitioner on 3rd August 2017. The required ingredients to constitute offence u/s.386 of IPC are lacking the police ought not to have registered the FIR. The police allegedly have misused the powers while registering the FIR. Departmental action is required to be initiated against police for registering false FIR against Petitioner.

5. Learned APP submitted that pursuant to registration of FIR investigation was conducted. Statements of witnesses were recorded and charge sheet was filed. The complaint has alleged that accused kept on threatening him and his family members and demanded money. There is sufficient evidence against Petitioner to substantiate the offence u/s.386, 504, 506, 120-B of IPC. The charge sheet is filed for the offence u/s.386, 120-B, 504 and 506 of IPC. Statement of one Prasad Bhavsar was recorded on 13th August 2017. He has corroborated the version of complainant. Petitioner made a

complaint to police on 3rd August 2017 alleging that false complaint is lodged against Petitioner. The allegations in the FIR registered against Petitioner are to be tested in the court of law.

6. Learned advocate for Respondent no.9 submitted that no case is made out for quashing the charge sheet. The offence is of serious nature. The accused kept on threatening the complainant and his family members. Huge amount is extorted from complainant. There were repeated threats of dire consequences. The complainant was forced to part with amount although the principle amount and amount towards interest was paid to the accused. The complaint lodged by the Petitioner is false and frivolous. Police have rightly not taken cognizance of his complaint. Complainant had lodged the complaint with police in June-2020. It was recorded as N.C complaint.

7. We have perused the FIR and charge sheet. The grievance of complainant spelt out from the FIR dated 31st July 2017 is that he had borrowed the money from Petitioner and co-accused and that accused were charging interest towards amount. The FIR indicate that complainant had obtained money from the co-accused Nitin Lasure in 2012 with interest. In 2013 he obtained money from Petitioner for treatment of his father. Amount of Rs.50,000/- was parted to him. Subsequently complainant borrowed Rs.30,000/- from Petitioner. In 2014 the complainant again borrowed Rs.1,00,000/- from Petitioner. Thus, complainant repeatedly borrowed money as alleged by him from Petitioner, although he was informed that interest would be charged on the principle amount. Amount was borrowed in 2013 and 2014 from the Petitioner. According to complainant he had repaid the money. The amount

was allegedly repaid by paying cash. The FIR was registered in the year 2017. The complainant was allegedly threatening from time to time. In spite of that the FIR was registered belatedly. If accused had demanded money purportedly borrowed by complainant which was to be repaid with interest, it cannot be said that demand would amount to offence u/s.386 of IPC. Shockingly the police had also invoked Section 120-B of IPC. The FIR itself indicate that transactions with Petitioner and co-accused are distinct. The question of conspiracy against him or acting in furtherance in common intention does not arise. Police conducted investigation and filed charges sheet. In the entire charge sheet we do not find any element of extortion or conspiracy to prosecute Petitioner for the said offence.

8. The other prayers of Petitioner are regarding compensation for false registration of FIR or for taking action against police and for taking cognizance of his complaint. We are not inclined to grant such relief. Petitioner is at liberty to initiate appropriate proceedings.

9. However, in the light of the observations made hereinabove we find that it would be an abuse of process of law to continue the proceedings against Petitioner which were initiated by registering FIR dated 31st July 2017 with Bhadrakali Police Station. The proceedings are required to be quashed and set aside.

ORDER

(A) The Petition is allowed;

(B) The proceedings in R.C.C No.1620 of 2017 pending before the Court of J.M.F.C.Nashik arising out of First Information Report dated 31.07.2017 registered with Bhadrakali Police Station, Nashik vide

C.R No.485 of 2017 are quashed and set aside;

(C) The petitioner is at liberty to resort to appropriate remedy in respect to the other prayers in the petition.

(N.R.BORKAR, J.)

(PRAKASH D. NAIK, J.)

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