

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

CRIMINAL APPLICATION NO. 1609 OF 2019

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Mohan Chitranjan Agarwal ...Applicant

Versus

The State of Maharashtra & anr. ...Respondents

Mr. Ujjwal Gandhi, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent No.1.

Mr. Girish Shukla, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 16th JANUARY, 2024

ORDER:-

1. This application under Section 482 of the Code of Criminal Procedure, 1973 ("the Code") calls in question the legality, propriety and correctness of an order dated 24th September, 2019 passed by the learned Additional Sessions Judge in Criminal Revision Application No.207 of 2017, whereby the revision preferred by the applicant assailing an order dated 30th June, 2017 passed by the learned Magistrate in C.C.No.70/SW/2007 to frame charge against the applicant and the co-accused for the offences punishable under Sections 324, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") came to be dismissed.

2. Shorn of superfluities the background facts can be stated as under:

(a) The complainant is a Chartered Accountant by profession. The applicant is the proprietor of MCA Construction Company. The complainant was residing at Babuli Chawl, Parsi Wada, Andheri (E), Mumbai, in a ground plus first floor premises having height of 18 ft. since several years. Accused No.1 had allegedly demolished the said structure unauthorisedly under a SRA scheme. The complainant was thus pursuing the matter with the authorities including MHADA. Accused Nos.2 to 4 were the employees of accused No.1.

(b) On 12th July, 2007 when the complainant had been to the office of MHADA, the applicant and co-accused had allegedly threatened him to withdraw the complaint lodged with the authorities. At about 4.00 to 4.15 pm. the applicant and the co-accused again allegedly accosted the complainant. The applicant exerted the co-accused to beat the complainant while hurling abuses. Thereupon the co-accused Sandip Satam, Sudhir Kumar Singh and Avinash Kambli allegedly assaulted the complainant by means of

dangerous weapons. The complainant was shifted to Cooper Hospital. The matter was reported to police.

(c) The complainant alleged that the concerned Police Officer simply recorded a NC. The injury certificate of the complainant was not delivered to him. After realising a deliberate dereliction of the duties on the part of the concerned Police Officer, the complainant approached the superior police officers. Eventually, the complainant lodged a private complaint.

(d) The learned Magistrate recorded evidence before charge. In addition to examining himself, the complainant's witness No.2 Ranjana Ben (PW-2), his mother, was examined. The applicant and the co-accused reserved the right to cross-examine the complainant and his witness. After recording evidence and considering the material on record, the learned Magistrate formed an opinion that there were grounds for presuming that the accused had committed the offences under Sections 324, 504 and 506 read with 34 of the Penal Code.

3. Being aggrieved, the applicant preferred criminal revision application, being Revision Application No.207 of 2017 in the Court of Sessions at Dindoshi. By impugned

order 24th September, 2019, the learned Additional Sessions Judge was persuaded to dismiss the complaint holding that there was adequate material to form an opinion that there were grounds for presuming that the accused had committed the offences punishable under Sections 324, 504 and 506 read with Section 34 of the Penal Code and the order passed by the learned Magistrate to frame charge did not merit any interference in exercise of revisional jurisdiction.

4. The learned Counsel for the applicant submitted that the learned Additional Sessions Judge committed an error in not interfering with the order passed by the learned Magistrate framing charge against the applicant. A two-pronged submission was canvassed. One, in the NC complaint lodged by the complainant on the very day of the occurrence (NC No.1538/2017), the complainant had not named the applicant as one of the assailants, only Sandip Satam and Sudhir Kumar Singh were named as the persons, who abused, assaulted and committed criminal intimidation. Two, it was submitted that there was material variance between the versions of the complainant and his mother, as regards the sequence of events that ensued. Therefore, the

continuation of the prosecution would amount to abuse of the process of the Court.

5. The learned APP and the learned Counsel for respondent No.2 resisted the prayers in the application. It was submitted that the allegations in the complaint find *prima facie* support in the injury certificate (a copy of which is placed at page 91 of the application) and the contemporaneous record. Moreover, the testimony of the complainant and his mother has gone unchallenged, as the applicant reserved the right to cross-examine the complainant and his mother. In the circumstances, the learned Magistrate committed no error in forming an opinion that there were grounds to presume that the applicant and the co-accused had committed the said offences.

6. At the outset, it is imperative to note that the complainant has given a vivid account of the incident which had transpired. The evidence of the complainant and his mother, before charge, went unchallenged. *Prima facie* there is medical evidence in the form of injury certificate which lends support to the version of the complainant.

7. The thrust of the submission on behalf of the applicant was that the complainant had not named the applicant as

one of the accused in the NC recorded on 12th July, 2007. I am afraid, at this stage, the said omission, even if construed to be one, enures to the benefit of the applicant. There is contemporaneous material to indicate that the complainant had made grievances to the authorities about not recording the FIR in the manner reported to by the complainant and non-furnishing of the copy of the injury certificate. The complainant had even approached this Court in Criminal Writ Petition No.1417 of 2007 which came to be disposed with liberty to the complainant to avail the remedy of approaching the concerned Magistrate for necessary redressal. In this backdrop, the alleged omission in the NC complaint cannot be pressed into service to throw the complainant's version overboard. At any rate, the NC complaint, at best, would construe a previous statement.

8. What is of material significance is the fact that the applicant chose not to cross-examine the complainant and his witness, before framing the charge. Having reserved the right to cross-examine the complainant and his witness, the applicant allowed the evidence to go unchallenged, up to the stage envisaged by Section 246 of the Code. The learned Magistrate was thus justified in appraising the said

unchallenged evidence and ordering the framing of the charge against the applicant and the co-accused for the offences punishable under Sections 323, 504 and 506 of the Penal Code.

9. The learned Counsel for the applicant submitted that there is inconsistency in the version of the complainant and his mother. I am afraid that ground can be urged at this stage. The veracity of the version of the witnesses would be a matter for trial.

10. Lastly, reliance was sought to be placed by the learned Counsel for the applicant on the decision of the Delhi High Court in the case of *Deepa Bajwa vs. State and others*¹ wherein, in the facts of the said case, the Delhi High Court found that the supplementary statement indicated a crude falsity introduced at the behest of the police to implicate the petitioner therein under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The aforesaid pronouncement simply does not govern the facts of the case.

11. In the case at hand, there is *prima facie* material to indicate that the complainant was allegedly abused,

¹ CDJ 2004 DHC 1041.

assaulted and intimidated on the day of occurrence. In the circumstances, the learned Magistrate committed no error in forming an opinion to frame the charge against the applicant and co-accused. The learned Additional Sessions Judge was justified in declining to interfere with the said order in exercise of revisional jurisdiction.

12. Hence, the following order:

: O R D E R :

- (i) Application stands dismissed.
- (ii) Ad-interim relief dated 11th October, 2023 granted by an order dated 14th January, 2020 stands vacated.
- (iii) No costs.

[N. J. JAMADAR, J.]