



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

912 CRIMINAL APPLICATION NO. 2952 OF 2023

- 01] Ashok Murlidhar Lute
Age: 61 years, Occu- Retd.,
- 02] Sou. Vaishali Ashok Lute,
Age:- 52 years, Occu- Housewife,

Both R/o – Behind Swami Vivekanand
Statue, Gujar Galli, Shani Chowk,
Ahmednagar

... APPLICANTS
(Orig. Accused)

VERSUS

- 01] Madhavi Sunil Gore,
Age:- 63 years, Occu.- Retd.,
R/o. Behind Swami Vivekanand
Statue, Gujar Galli, Ahmednagar (R-1 Orig. Complainant)
- 02] Smt. Suman Mohinraj Gandhe,
Age: 75 years, Occu- Household,
R/o C/o-Manisha Ambekar,
Plot No.205, C-Building,
Aloknagri, Kasbapeth, Pune

... RESPONDENTS
(R-2 Ori. Accused No.3)

....
Mr. Ajit M. Gholap, Advocate for the Applicants
Mr. Sujit S. Kulkarni and Mr. Murar D. Deshpande, Advocate for
Respondent No.1

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 25.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of both the sides heard finally.

2. By the present Application under Section 482 of Cr.P.C., the Applicants put forth prayer clause (B) as under:-

“[B] By allowing this Criminal Application, the proceeding of the S.C.C. No.1964/22 pending before 7th Jt. C.J.S.D. and Additional C.J.M. Ahmednagar instituted pursuant to order dtd.16.04.22 passed by 12th JMFC, Ahmednagar in Criminal M.A. No.764/21 may kindly be quashed and set aside.”

3. The Non-Applicant No.1 is the original complainant and the Applicants are the original accused Nos. 1 and 2 in Criminal M.A. No.764/21 re-registered as S.C.C. No. 1964 of 2022 and pending on the file of learned 7th Jt. C.J.S.D. and Additional C.J.M. Ahmednagar. For the sake of brevity, I would like to refer the parties to the present Application in their original entity.

4. Initially, the Complainant filed the Criminal M.A. No.764 of 2021 and prayed for penal action against the Accused because though she lodged the reports dated 28.04.2018 and 08.07.2019

against the Accused, but no cognizance has been taken by the Kotwali Police Station against them for the offences u/s 323,418,504,509 r/w 34 of IPC. On 16.04.2022, the learned J.M.F.C., passed an order and issued process against the accused for the offence under Sections 323, 504, 506, 509 read with 34 of I.P.C. On 12-08-2021, the learned Chief Judicial Magistrate passed an order below Exh. 1 in Criminal M.A. No.764 of 2021 and directed to register Summary Criminal Case. Therefore, Criminal M.A. No.764 of 2021 re-registered as SCC No. 1964 of 2022.

5. The Complainant filed the Criminal M.A. No.764 of 2021 alleging that, on 03.07.2009, her husband Sunil Sarvottam Gore and Mr. Mohanraj Dattatraya Gandhe, the husband of accused No.3 executed the deed of Memorandum Of Understanding (MOU) before the Notary and agreed about consolidation of their plots standing on City Survey No.5097-A and 5097-C. The area of Plot bearing City Survey No.5097-A is measuring 50.3 Square Meter, whereas area of complainant's plot bearing City Survey No 5097-C is measuring 32.8 square meter. As per MOU, both of them agreed to consolidate both the plots and to construct two floor apartment. Accordingly, two floor building has been constructed. She and her husband residing at

ground floor, whereas, the accused No.3 is retained first floor and the cost of construction was incurred by both of them. The accused No.3 is residing at Pune. The accused Nos. 1 and 2 are residing on first floor with consent of accused No.3 from the year 2009. However, the Accused nos. 1 & 2 obstructed her from using common staircase and caused nuisance. Therefore, on 02.08.2021, she has filed Civil Suit i.e. R.C.S. No.339 of 2021 before the Civil Judge Senior Division, Ahmednagar and said suit is pending before the Civil Court.

6. In criminal complaint, the complainant narrated incident/ acts on part of the Accused as under:

- a) The accused Nos. 1 and 2 always cause nuisance to her with an intention that she (complainant) would leave her premises and the accused No.3 would use the entire building.
- b) The window of her kitchen room is situated next to common staircase and while passing from staircase, the accused No.2 always peeps into her kitchen and makes indecent gestures to outrage her modesty, hence, she has been compelled to close the window of her kitchen room, hence, she is deprived of the enjoyment of easementary rights.

c) There is common duct beside her kitchen room and all drainage pipes are passing through said duct but due to leakage of drainage water from kitchen room of the accused Nos.1 & 2 and due to leakage from cement outlet drainage pipe dirty water accumulates in her kitchen.

d) On 18.03.2021, the accused Nos. 1 and 2 permanently covered outlet cement pipe and when she tried to remove the same at that time the accused Nos. 1 and 2 pushed her and issued a life threat on 02.04.2021.

e) The accused No.1 always throwing garbage on the ground floor in front of the door of her house, hence, there is a possibility that she may suffer from diseases.

f) On 20.03.2021, when she visited on slab of first floor for collection of flowers, at that time, the accused No.1 intentionally abused her in filthy language and showed indecent gestures to outrage her modesty.

g) There is a common staircase, but the accused Nos.1 and 2 always dumps garbage in passage, which prevents her from using the staircase.

h) At midnight, at about 1.00 a.m., to 2.00 a.m., accused Nos. 1 and 2 are playing music on computer in loud voice.

i) On 27.04.2018, the accused No.2 quarreled with her and assaulted her and at that time the accused No.1 visited her with stick with an intention to assault and issued a life threat but entered her house and closed latch of the door.

j) The accused Nos. 1 and 2 always abuse her caste by saying "Baman-Baman".

k) The drainage pipe fitted on first step of common staircase is under broken condition due to which drainage water always flows, therefore, there is some slippery portion, hence, the possibility of occurrence of an untoward incident cannot be ruled out.

7. Therefore, in view of the above conduct, the accused have committed offence under Sections 323, 504, 506, 509 read with 34 of I.P.C. On 28.04.2018, she lodged a report with Kotwali Police Station but no cognizance was taken. Therefore, she filed a report with the Superintendent of Police on 08.07.2019 but no action has been taken, hence, she filed a private complaint and prayed for awarding of

appropriate punishment for the offences u/s 323, 418, 504, 509 r/s 34 of IPC.

8. On 16.04.2022, the learned J.M.F.C., passed an order and issued process against the accused for the offence under Sections 323, 504, 506, 509 read with 34 of I.P.C.

9. After service of summons, the accused Nos. 1 and 2 have filed the present Application u/s 482 of Cri. P. C. and prayed for quashing of criminal complaint on the following grounds:-

- (i) In view of the institution of the R.C.S. No.339/21 on 02.08.21 and filing of Criminal M.A. No.764/21 on 09.08.21 is an attempt to harass them and their Landlord so that accused would vacate the premises, which is purely a civil dispute, but a criminal colour has been given by the Res.No.1 to harass them.
- (ii) The pleading of the civil suit and S.C.C. No. 1964 of 2022 are similar but the complainant has filed false report and various complaints with various authorities by making up concocted stories.
- (iii) The Res.No.1 is annoyed due to occupation of premises of the Accused no. 3, therefore, the complainant taking up quarrels and filed criminal proceeding, which is nothing but abuse of process of law.
- (iv) While issuing process the learned Judicial Magistrate did

not issue process for Sec.418 of I.P.C. even though the complainant prayed for issuance of process for the offence u/s 418 of IPC and the complainant has challenged said order in revision, therefore, it shows that allegations made in complaint are false and concocted.

- (v) There substantial material are on record to fulfill essential ingredients of offences and to issue process for the offences u/s 323, 504, 506, 509 read with 34 of I.P.C.
- (vi) The proceeding of the S.C.C. 1964 of 2022 is otherwise also amounts to abuse of process of law, hence, prayed for quash and set-aside the complaint.

10. Per contra, the learned counsel for the complainant canvassed that, the Regular Civil Suit No.339 of 2021 and Criminal complaint for the offence under Sections 323, 504, 506, 509 read with 34 of I.P.C. are on different cause of actions. The complainant specifically alleged in her complaint that the accused persons intentionally and deliberately throwing garbage in front of the door of the complainant's house and releasing a drainage water in her kitchen. On 18.03.2021, the accused Nos. 1 and 2 permanently fitted outlet pipe by using cement but the complainant tried to remove said outlet pipe on 02.04.2021 but accused pushed her and issued a life threat. Further, the accused No.1 always showing indecent gestures,

due to which day by day the complainant's modesty being outraged. Further at midnight playing a song loudly on computer by the accused Nos. 1 and 2 always disturbed peace of the complainant. Therefore, the complainant has made out *prima-facie* case for issuance of process.

11. On 16.04.2022, the learned Judicial Magistrate passed an order and issued process after satisfying that, the complainant has made out the *prima-face* case. Therefore, the complainant's complaint is not baseless and it is not amount to abusing process of law.

12. The learned counsel for the complainant further canvassed that the accused prayed for quashing and set aside order of issuance of process, therefore revision u/s 397 of Cri. P. C. is maintainable, hence, prayed for dismissal of the application.

13. Needless to say that, as per law laid down in the case of ***Madhu Limaye Vs. The State of Maharashtra, (1977) 4 SCC 551***, revision under Section 397 of Cr.P.C., is maintainable challenging the order of issuance of process, which is not an interlocutory order. In case-in-hand, the accused have filed present application u/s 482 of Cri. P. C. for quashing of Criminal Complaint and no prayer is set out

for setting aside order of issuance of process. Section 397 of Cr.P.C., does not empower the Revisional Court to quash criminal proceeding. Therefore, to my mind, the application under Section 482 of Cr.P.C. is maintainable. Therefore, the submission canvassed on behalf of the complainant is not acceptable to me.

14. On face of record it *prima-faice* appears that, the Non-applicant/complainant has already instituted R.C.S. No.339 of 2021 on 02.08.2021 and prayed for decree of declaration on the same cause of action and facts which are in similar nature as pleaded in the suit as well as in criminal complaint. It is submitted that, though the complainant alleged that she suffered hurt as defined under Section 319 of I.P.C., however, the complainant has not produced any material on record to show that the accused Nos. 1 and 2 caused hurt to her i.e. either bodily pain, disease or infirmities of any kind. The allegations made in the complaint are also not sufficient to provoke breach of peace and criminal intimidation as contemplated under Section 503 punishable under Section 506 of I.P.C.

15. No doubt, the complainant has made a bald allegation that the accused No.1 always making some indecent gestures,

however, the complainant has not specifically elaborated on the type of gestures or particular words of abuse uttered by the accused. Merely making omnibus allegations about indecent gestures and causing hurt or issuance of life threat is not sufficient to constitute the offences, unless the complainant specifically elaborate said acts of the accused to fulfill essential ingredients of the particular offences. However, in case-in-hand, averments made in the complaint are totally silent about the existence of essential ingredients to constitute offences under Sections 323, 504, 506, 509 read with 34 of I.P.C. Not only this but on the same cause of action, civil suit is pending between the complainant and accused. Therefore, to my mind, continuation of criminal proceeding would certainly amount to abuse of process of law.

16. In view of above discussion, it appears that, the applicants/accused have made out a substantial ground for quashing the criminal complaint bearing Criminal Misc. Application No.764 of 2021 which is re-registered as S.C.C. No.1964/22 and pending on the file of learned 7th Jt. C.J.S.D. and Additional C.J.M. Ahmednagar. Accordingly, I proceed to pass the following order:-

ORDER

- (i) The Criminal Application is allowed.
- (ii) The Criminal Misc. Application No.764 of 2021 reregistered vide S.C.C. No. 1964 of 2022 pending on the file of learned 7th Jt. C.J.S.D. and Additional C.J.M. Ahmednagar is hereby quashed and set aside.
- (iii) Accordingly, Rule is made absolute in terms of prayer clause (B).
- (iv) No order as to costs.

[Y. G. KHOBRAGADE, J.]

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