

Bombay High Court

Hemant S/O. Fakirrao Gangurde vs State Of Maharashtra Thr. In ... on 1 September, 2017

Bench: V.A. Naik

0109apl10.17-Judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 10 OF 2017

APPLICANT :-

Hemant S/o Fakirrao Gangurde, aged about
39 years, Occ:- Tahsildar, General
Administration, Collectorate, Yavatmal, R/o
Yavatmal.

...VERSUS...

NON-APPLICANTS :-

- 1) State of Maharashtra, Through In-charge,
Police Station Arni, Dist. Yavatmal.
- 2) Shivraj S/o Ashok Shinde, Aged about 29
years, R/o Sakur, Taluka Arni, District
Yavatmal.

Mr. R.J. Mirza, counsel for the applicant.
Mr. A.M.Deshpande, Addl. Public Prosecutor for the non-applicant No.1.
None for the non-applicant No.2.

CORAM : SMT. VASANTI A NAIK &
M. G. GIRATKAR
, JJ.

DATED : 01.09.2017 O R A L J U D G M E N T (Per : Smt.Vasanti A Naik, J.) The criminal application is admitted and heard finally as the respondents are duly served.

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2. By this criminal application, the applicant seeks the quashing and setting aside of the first information report bearing No.624 of 2016, registered against the applicant for the offence punishable under section 324 read with section 34 of the Penal Code.

3. The applicant is working as a tahsildar in Yavatmal district. According to the applicant, his service record is clean and unblemished. It is stated in the application, that while working as a tahsildar, the applicant had lodged a report against the non-applicant No.2 on 26/02/2015 that the non-applicant No.2 had committed theft of sand that was illegally excavated by him without any licence from the competent authority. The applicant-tahsildar took appropriate action against the non-applicant No.2 and the first information report was registered against the non-applicant No.2. After nearly 22 months from the date of registration of the said first information report against the non-applicant No.2, the non-applicant No.2 lodged a report on 22/12/2016 that on 26/02/2015, the applicant-tahsildar had illegally seized his truck and had also beaten up the non-applicant No.2. It is stated that the driver of the non-applicant No.2 had fled away from the spot and the applicant started beating the non-applicant No.2 with a plastic stick that is used in the police department. It is alleged in the report that the non-applicant No.2 was beaten with the stick by the applicant on his leg and thigh and hence an offence may be registered 0109apl10.17-Judgment 3/7 against the applicant. On the basis of the report lodged by the non-applicant No.2, the first information report was registered against the applicant for the offence punishable under section 324 read with section 34 of the Penal Code. The applicant has sought the quashing and setting aside of the said first information report.

4. Shri Mirza, the learned counsel for the applicant, submitted that the non-applicant No.1 committed a serious error in registering the first information report against the applicant on the basis of a false complaint made by the non-applicant No.2, nearly 22 months from the date of the alleged incident, i.e., 26/02/2015. It is stated that the complaint was lodged by the non-applicant No.2 against the applicant with a view to pressurize the applicant, who had while performing his duties as a tahsildar, seized the truck of the non-applicant No.2 as the non-applicant No.2 was involved in illegal excavation and transportation of sand. It is stated that since the applicant had lodged the first information report against the non-applicant No.2, the non-applicant No.2 had filed a false complaint against the applicant. It is stated that the non-applicant No.1 should not have taken cognizance of the complaint as it was filed nearly 22 months from the date of the alleged incident. It is stated that even if the allegations made in the complaint by the non-applicant No.2 are accepted at their face value, in the entirety, prima facie an offence 0109apl10.17-Judgment 4/7 punishable under section 324 of the Penal Code cannot be made out against the applicant. It is stated that the provisions of section 324 of the Penal Code would apply only when the accused causes hurt by means of any instrument for shooting, stabbing or cutting or any instrument which if used as a weapon of offence is likely to cause death. It is submitted that in the first information report, it is alleged that the applicant had hit the non-applicant No.2 with the help of the plastic stick which is used by the police department. It is submitted that it cannot be said at any stretch of imagination, even if it is assumed that the applicant had hit the non-applicant No.2 with a plastic stick, that the hurt caused by the said stick was likely to cause the death of the non-applicant No.2.

5. Shri Deshpande, the learned Additional Public Prosecutor for the non-applicant No.1, submitted that the first information report was registered against the applicant on the basis of the report lodged by the non-applicant No.2 on 22/12/2016. It is stated that it is alleged in the complaint made by the non-applicant No.2 that the applicant had given blows on the thigh and the leg of the non-applicant No.2 with a plastic stick. It is stated that by considering the allegations in the

complaint made by the non-applicant No.2, the first information report was registered against the applicant.

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6. It appears on a reading of the first information report dated 22/12/2016 that even if the allegations made in the same are accepted at their face value, in the entirety, prima facie an offence cannot be made out against the applicant for the offence punishable under section 324 of the Penal Code. Firstly, the non-applicant No.1 ought to have considered that an offence was lodged by the applicant against the non-applicant No.2 for the illegal excavation and transportation of the sand on 26/02/2015. The proceedings in pursuance of the said report were in progress and the non-applicant No.1 ought to have considered that the non-applicant No.2 must have filed a false complaint, 22 months later with a view to pressurize the applicant. The fact that the applicant had lodged a first information report against the non-applicant No.2 on 26/02/2015 and that a first information report was lodged by the non-applicant No.2 belatedly, 22 months after the date of the alleged incident was also not considered by the non-applicant No.1.

7. Be that as it may, even if we accept the allegations made in the complaint dated 22/02/2016 at their face value, in the entirety, prima facie an offence punishable under section 324 of the Penal Code cannot be made out against the applicant. It would be necessary to refer to the provisions of section 324 of the Penal Code which reads thus:-

0109apl10.17-Judgment 6/7 "324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

It is apparent from the provisions of section 324 of the Penal Code that the ingredients of the offence of voluntarily causing hurt by dangerous weapon by means of any instrument could be made out against a person only when the person voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting or any instrument which if used as a weapon of offence is likely to cause death. In the instant case, the allegation in the report lodged by the non-applicant No.2 is that the applicant hit the non-applicant No.2 on his thigh and leg with a plastic stick. If a beating is given to a person with a plastic stick, it cannot be said that the plastic stick would be a weapon of offence which is likely to cause death, more so when the non-applicant No.2 alleged that he was beaten by the applicant on the thigh and the leg. The offence punishable under section 324 of the 0109apl10.17-Judgment 7/7 Penal Code, cannot be prima facie made out against the applicant, even if the allegations in the complaint made by the non-applicant No.2 on 22/12/2016 are accepted at their face value, in the entirety. The guidelines laid down in the judgment in the case of State of Haryana v. Bhajan Lal, reported 1992 (Supp.1) SCC 335 would be applicable to the facts of this case

for quashing and setting aside the first information report registered against the applicant. It would be an abuse of the process of the court, if the first information report is not quashed and the non-applicant No.1 is permitted to take further action against the applicant in pursuance of the same. Hence, it would be necessary to quash and set aside the first information report registered against the applicant with a view to prevent the abuse of process of court and to secure the ends of justice.

8. Hence, for the reasons aforesaid, the criminal application is allowed. The first information report bearing No.624 of 2016 registered against the applicant for the offence punishable under section 324 of the Penal code is hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE

KHUNTE