

(2009) 11 BOM CK 0040

In the Bombay High Court

Case No : Criminal Application No. 2219 of 2008

Aniruddha Pathak

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 100, 107, 116(3), 155(2), 156
Human Trafficking Act, 2005 — Section 3, 4, 5, 6
Penal Code, 1860 (IPC) — Section 120(B), 186, 294, 307, 323

Citation : (2008) 2 ALD(Cri) 463

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.V. Sirpurkar, for the Appellant; S.S. Doifode, APP for the Non-Applicants 1 to 3, for the Respondent

Judgement

S.S. Shinde, J.—This application is filed with prayer to quash the F.I.R. dated 15-5-2008 lodged with non-applicant No. 1 vide Crime No. 229/2008 for the offence punishable under Sections 353, 186, 294 and 506 along with Chapter Proceeding No. 130/08 under Sections 107 and 116(3) of Cr.P.C. and so also the Chargesheet No. 280/2009 pending before the Judicial Magistrate First Class, Court No. 1, Akola arising out of Crime No. 229/2008.

2. Background facts of the case as disclosed in the application are as under:

The applicant is permanent resident of Akola(State of Maharashtra). The applicant is a Bachelor of Technology from Shivaji College, Akola. The applicant after completing his graduation, has further taken his Law Degree and has started practice at District Court, Akola in September, 2004 and since then is actively practicing before the District Court, Akola and the High Court. The applicant has also cleared the examination conducted by the M.P.S.C. for the post of Civil Judge (Junior Division) and Judicial Magistrate (First Class) in the year 2008. The applicant also appeared for interview on 31st April, 2008 and has

been selected for the post of Civil Judge (Junior Division) and Judicial Magistrate (First Class) on 7th May, 2008.

3. The applicant's father namely, Shri Ganesh Pathak was a District Government Pleader in Akola for about ten years. A report was lodged against him on 12th February, 2008, by one Ruby @ Urvashi Rajendra Thada, on the basis of which offence under Sections 120(B), 376, 363, 365, 342, 307, 323, 506 r/w Section 34 of the Indian Penal Code was registered against the father of the applicant. The father of the applicant had, therefore, moved the Hon'ble High Court for anticipatory bail, which was rejected and had further moved the Hon'ble Apex Court for anticipatory bail. The father of the applicant was pursuing all the remedies available to him under the law.

4. It is the case of the applicant that while the process was going on, the father of the applicant was pursuing his remedies, the C.I.D. Officials were inquiring from the applicant and his family members about whereabouts of Ganesh Pathak though they did not have any knowledge. The said C.I.D. Officials probably wanted to take Ganesh Pathak in their custody and Ganesh Pathak at that point of time was not protected by the orders of the Court. The said C.I.D. Officials earlier to 3-5-2008 had visited and enquired from the applicant and his family members which consists of his sister and mother, however, since they did not have any information, accordingly they had told the same to the officials. In spite of this on 2nd May, 2008, the complainant in the above crime namely, Sunita Meshram, A.P.I. visited the house of the applicant at night time and enquired from the sister of the applicant and was pressurizing the sister of the applicant for about two hours. That on 3rd May, 2008 she came again at 12-30 in the afternoon and enquired about the mother of the applicant. She further told that she wanted to investigate in respect of the offence u/s 376 of the Indian Penal Code registered against Ganesh Pathak. The applicant and his sister namely, Vaidehi Sachin Ahirrao informed the said Sunita Meshram that their mother is not in the house and has gone to the temple. In spite of telling so, she entered in the house and went up to the kitchen and to the bedroom without there being any written permission for doing so. The applicant had, therefore, registered his mild protest against the same, to which she reacted threatening the applicant to implicate him in a false case. The applicant, therefore, had immediately reported the matter to the Human Rights Commission by sending a telegram on 3-5-2008. Perusal of the telegram would show that the applicant has raised his apprehension before the Human Rights Commission that he would be falsely implicated in the offence since he objected to the arbitrary behaviour of the said A.P.I. Sunita Meshram. To the utter surprise and dismay of the applicant, the apprehension of the applicant came true on 15-5-2008 i.e. subsequent to twelve days after the incident F.I.R. came to be lodged.

5. It is the case of the applicant that his selection to Civil Judge (Junior Division) and Judicial Magistrate (First Class) conveyed to the applicant on 7th May, 2008. According to the applicant, the false report is lodged by the office with

vengeance against the applicant and same was registered as 0/08. The said crime was subsequently transferred to Civil Line Police Station, Akola and offence under Sections 353, 186, 294 and 506 along with Chapter Proceeding No. 130/08 under Sections 107 and 116(3) of the Criminal Procedure Code came to be registered against the applicant on 15-5-2008. The applicant did not even has knowledge of these developments.

6. The applicant was called to the Police Station on 15-5-2008 in the evening at 8.30 p.m. The applicant went to the Police Station thinking that his police verification report must have come from the M.P.S.C., and hence for inquiry, he might have been called. However, to the utter surprise and dismay of the applicant, the applicant was taken into custody and subsequently released on bail on the next day. Therefore, the applicant filed this application for quashing the said F.I.R. on 19th June, 2008. Mean time the chargesheet came to be filed, therefore, applicant amended the application with leave of the Court and even prayed for quashing the chargesheet No. 280/2009.

7. The learned Counsel appearing for the applicant submitted that, though the alleged incident took place on 3rd May, 2008, the F.I.R. came to be lodged on 15th May, 2008. According to the learned Counsel, there is an inordinate delay in filing the F.I.R. and on this ground alone the F.I.R. and further proceedings based upon F.I.R. including chargesheet is required to be quashed and set aside. The learned Counsel further submitted that, since the applicant protested against the complainant and told the complainant that in case complainant visits again and again to the house of the applicant without any written permission of the superior, he will report this matter to the Human Rights Commission and accordingly the applicant on 3rd May, 2008 itself sent telegram to the State Human Rights Commission. Since complainant was annoyed as the applicant sent telegram to the State Human Rights Commission with vengeance registered the F.I.R. on 15-5-2008. According to the leaned Counsel, if the alleged incident was taken place on 3-5-2008, there was no reason for the complainant, who is responsible Police Officer to file F.I.R. after twelve days i.e. on 15-5-2008.

8. The learned Counsel further submitted that the complainant, who is A.P.I. In the Police Force has visited the house without holding any valid document to enter into the house of the applicant and therefore, the applicant did ask the complainant about written permission or search warrant issued by the department or the superior officer for entering in the house of the applicant and further search of the house. The learned Counsel appearing for the applicant further submitted that the complainant when entered in the house and went inside the kitchen and bedrooms in the house and therefore, the applicant protested against behaviour of the officer to enter in the house and make search without holding any written permission to do so.

9. The learned Counsel invited my attention to the reported judgment of the Hon"ble Apex Court in case of State of Haryana and others Vs. Ch. Bhajan Lal and others, and submitted that, where the allegation made in the First

Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused, in that case such F.I.R. needs to be quashed and any further proceedings based upon such F.I.R. needs to be quashed. The learned Counsel invited my attention to paragraph 108 of the judgment cited Supra and submitted that in the instant case even if the allegations made in the F.I.R. if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence under Sections 294, 353 and 506 of the Indian Penal Code. Therefore, the learned Counsel submits that no further investigation or proceedings can be continued, on the basis of F.I.R. lodged by the complainant.

10. The learned Counsel invited my attention to the contents of the F.I.R. and submitted that to attract provisions of Section 294 of the Indian Penal Code, the necessary ingredients are that if there is any obscene act in any public place and if anybody sung, recited or uttered any obscene song or word in or near any public place, then only the provisions of Section 294 are attracted. According to the learned Counsel, the applicant has not uttered any obscene words or song. According to the learned Counsel, it is undisputed position that, the place of incident is house of the applicant. Therefore, the learned Counsel submits that to attract provisions of Section 294 if there is any obscene act in any public place, then only the provisions of said section are attracted.

11. The learned Counsel further submitted that so far provisions of Section 353 of the Indian Penal Code is concerned, to attract said section there should be assault or criminal force to deter public servant from discharging his/her duty. In the instant case on reading F.I.R. there is nothing to indicate that there was assault or use of criminal force by the applicant to deter the complainant from discharging her duty.

12. The learned Counsel further submitted that to attract the provisions of Section 506 of the Indian Penal Code, there should be criminal intimidation and on plain reading of the complaint there is no such criminal intimidation. The learned Counsel invited my attention to Section 503 to explain "criminal intimidation". The learned Counsel further submitted that the applicant has not threatened the complainant with any injury to her person, reputation or property. Therefore, the learned Counsel would submit that provisions u/s 506 of the Indian Penal code are not attracted in case of the applicant.

13. The learned Counsel further submitted that the provisions of Section 186 cannot be invoked without permission of the Magistrate and no further investigation can be proceeded without permission. The learned Counsel invited my attention to the provisions of Section 156 of Cr.P.C. and contended that unless specific permission is taken from the Magistrate to investigate alleged offence u/s 186 of the Indian Penal Code no further investigation or proceeding can go on. The learned Counsel invited my attention to Section 100 of Cr.P.C. and submitted that if any officer wants to visit the house or to take search of the

house, the concerned officer has to come with necessary warrant for search and in the instant case the complainant admittedly did not carry any written permission or search warrant of the house of the applicant. Therefore, the learned Counsel submits that any further investigation of the crime alleged and further proceedings based upon the said complaint filed by the complainant would be abuse of process of law and abuse of process of Court and therefore, this is a fit case in which this Court may exercise jurisdiction u/s 482 of Cr.P.C. to quash the F.I.R. and proceedings based thereon.

14. The learned APP invited my attention to the affidavit in reply filed on behalf of the non-applicant. The learned APP submitted that the chargesheet is already filed in the matter and therefore, this Court may not entertain this application u/s 482 of the Criminal Procedure Code. The learned APP further submitted that on plain reading of F.I.R. the offence is made out under Sections 186, 294, 353 and 506 of the Indian Penal Code and rightly F.I.R. is lodged against the applicant and after investigation chargesheet is filed and therefore, this Court may not interfere at this stage. The learned APP further submitted that though the alleged incident took place on 3rd May, 2008 for filing the complaint, necessary permission was sought by the Higher Officer and after receiving the permission which was granted on 8th May, 2008 the F.I.R. came to be lodged on 15th May, 2008. Therefore, the learned APP submits that there is no delay in lodging the complaint. The learned APP invited my attention to the statement of the sister of the applicant and submitted that, the sister of the applicant has stated that incident in question had taken place and the applicant herein had exchanged words with the complainant and therefore, when sister of the applicant admits about commission of alleged offence, in that case the further proceedings based upon the F.I.R. needs to be proceeded. Therefore, the learned APP submits that this application may be rejected.

15. I have heard the learned Counsel appearing for the applicant at great length. I have also perused the contents of the application, annexures thereto and reply filed on behalf of the complainant.

16. This Court heard this application on 1st July, 2008 for admission. While this Court granting Rule passed following order

I have perused the complaint. The incident took place on 03-05-2008 and the First Information Report came to be registered on 15-05-2008 i.e. after delay of 12 days. After perusal of the complaint, prima facie I am of the opinion that the complaint does not make out any offence under Sections 353, 294 and 506 of the I.P.C. So far as offence u/s 186 is concerned, the same is non-cognizable and bailable.

In that view of the matter, RULE interim relief in terms of prayer Clause (ii).

17. Today the matter is taken up for final hearing. At this juncture, it would be relevant to refer to paragraph 108 in case of State of Haryana and Ors. v. Bhajan Lal cited Supra.

Paragraph 108 of said judgment reads thus:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. -----

3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. -----

6. -----

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. At this juncture, it would also be relevant to refer the relevant portion of the F.I.R. from true translated copy placed on record by the applicant, which reads that ;

On the above mentioned subject I, the applicant submit the report that under orders of the Special Inspector General of Police, Amravati Region I having gone for making investigation into Crime No. 16/2009 under Sections 376, 366, 307 of Indian Penal Code read with Sections 3, 4, 5, 6 of the Prohibition of Human Trafficking Act being at Akola today at about 11.30 to 12.40 hours in the morning under oral orders of the Police Superintendent, National Police Security Force, Camp, Akola I had gone for making enquiry/ investigation with the accused by name Advocate Ganesh Pathak for making enquiry with the wife of Advocate Ganesh Pathak by name Sou. Suhasini Pathak to their house. Having knocked the door of the house son of Ganesh Pathak came out and said to me, "who are you ?" Thereupon I told that I am A.P.I. Sunita Meshram and I have come from C.I.D. Office. Even though I showed my Identity Card to him, he said, "who are you and why have you come here ?" "Who is your C.P., give me his number, I will talk to him" and shouting loudly like this he came on my person and uttered a filthy language. Thereupon I told him that I have come here on Government duty and I have to make some enquiries with your mother. Thereupon he said that he was not going to allow me to make enquiry with his mother. You do whatever you have to do, tell your C.P. and go immediately from here or I will see you. At that time lady police constable Anita Buckle No. 1767 was with me. Thereafter Ms. Vaidehi Ahirrao came there. She told Aniruddha not to create any obstruction and

allow to meet his mother, even then he did not allow to meet Mrs. Pathak. Aniruddha Pathak threatened me that he will see all of us. I shall make a complaint against all of your officers with the Human Rights Commission. I having gone to the house of Pathak on my Government duty, Aniruddha Pathak created obstruction in my work and misbehaved with me by giving filthy abuses.

19. The first point which is required to be considered in the present application is inordinate delay in filing the F.I.R. It is admitted position that the alleged incident took place on 3rd May, 2008 at about 12.00 noon. It is also admitted position that, on 3rd May, 2008 when the complainant entered in the house of the applicant, she was not holding any written permission or warrant for making entry in the house or for further search of the house. The F.I.R. discloses that the complainant went for making inquiry/investigation with the accused by name Advocate Ganesh Pathak and his wife Sou. Suhasini Pathak at their house on oral directions of superior officer. Therefore, it follows from the contents of the F.I.R. that the visit of the complainant on 3rd May, 2008 to the house of the applicant for enquiry/ investigation or search, as the case may be, was not with written permission from the department or superior officers. Therefore, admittedly the complainant was not holding with her either written permission or warrant for search of the house of the applicant and rightly applicant questioned the authority of the complainant and permission to enter house and take further search by the complainant.

20. On perusal of the reply filed by the non-applicant, it is stated in the said reply that "A.P.I. Sunita Meshram informed by the application to the Superintendent of Police, State 3rd C.I.D., Akola on May, 2008 about the incident. The Superintendent of Police, State C.I.D., Akola has referred the matter to the Superintendent of Police, Akola on 8th May, 2008 and thereafter Superintendent of Police, Akola given letter to the Police Station, Ramdaspath, Akola for registering 8th the offence against the applicant on May, 2008. Accordingly, F.I.R. was came to be registered against the applicant on 15-5-2008."

21. Mere reading of portion extracted here in above from the affidavit in reply would clearly demonstrate that, the complaint/F.I.R. which came to be filed by the complainant was after thought. Though the alleged incident took place on 3rd May, 2008, the F.I.R. is lodged after twelve days i.e. on 15-5-2008. It is not expected from the vigilant Police Officer to make inordinate delay of lodging the F.I.R. The delay of twelve days in filing F.I.R. speaks voluminous and strengthen the contention of the applicant that, the alleged F.I.R. has been lodged only with vengeance to counter the telegram dated 3rd May, 2008 sent by the applicant to State Human Rights Commission. The applicant protested about the illegal entry of the complainant in the house of the applicant and further behaviour to visit kitchen and bedrooms. The inordinate delay in filing F.I.R. can be one of the ground to quash F.I.R. and further proceedings. In the instant case, it cannot be forgotten that the complainant himself is Police Officer and well aware about the

provisions of law and more particularly, Criminal Procedure Code and therefore, in the instant case, it can be safely concluded that the delay of twelve days in filing F.I.R. speaks voluminous and said F.I.R. is lodged after thought since applicant protested against the complainant by sending telegram to the State Human Rights Commission on the date of incident i.e. on 3rd May, 2008 itself.

22. Though the learned APP has relied on the statement of the sister of the applicant, said statement is to the extent that the complainant came to the house of the applicant and started enquiry and upon such enquiry/investigation, the applicant exchanged words with the complainant and shown mild protest. That necessarily does not mean that the applicant had used filthy language or any criminal force. The sister of the applicant in her statement had stated that, the applicant did not use any filthy or abusive language.

23. I find considerable substance in the contention of the learned Counsel for the applicant that since the applicant told the complainant that her entry in the house is without any written permission and therefore, illegal would be reported to the Human Rights Commission. The applicant protested against the behaviour of the complainant and to that effect immediately telegram was sent to the State Human Rights Commission on 3rd May, 2008 itself. On plain reading of the F.I.R. it appears that, the maximum harsh language which is used by the applicant is that, the applicant would write to the State Human Rights Commission about the entry by the complainant in the house without written permission or search warrant. Therefore, on plain reading of the F.I.R., it appears that no any offence is attracted as alleged in the complaint.

24. The learned Counsel for the applicant is rights in contending that the alleged incident took place in the house of the applicant, which is not the public place and no obscene language used by the applicant so as to attract the provisions of Section 294 of the Indian Penal Code. On careful and plain reading of the F.I.R., it clearly appears to me that no any obscene act has been committed by the applicant that too at public place. The incident in question admittedly even as per the version in the complaint took place in the house of the applicant. The complaint discloses that, the applicant/accused has used obscene language, however, there is no mention in the F.I.R. what words and sentences are used by the applicant in obscene language. The general statement is made in the F.I.R. that the obscene language is used by the applicant. The complaint further discloses that the applicant misbehaved with the complainant by using filthy language. On careful perusal of the contents of the complaint, does not disclose that, the applicant has used any criminal force or assaulted the complainant so as to attract provisions of Section 353 of the Indian Penal Code. The provisions of Section 353 of the Indian Penal Code contemplates that, "assault or criminal force to deter public servant from discharging of his duty". The plain reading of the said section would show that, "whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such

public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

25. On careful reading of F.I.R., there is no any assault or criminal force used by the applicant to complainant and the applicant did not interfere in discharging the public duty by the complainant. The entry of the complainant in the house of the applicant was admittedly without any written permission or warrant. Even accordingly to the complainant, there was oral permission and there was no any written permission or any warrant so as to visit the house of the applicant. It has come on record that even on earlier occasions the complainant visited the house of the applicant for same purpose for which again complainant visited the house of the applicant on 3rd May, 2008. The complainant visited the house of the applicant even on 2nd May, 2008. If there are repeated attempts by the complainant to enter in the house of the applicant that too without any written permission or warrant, and further entry in bedroom and kitchen would certainly amounts interference in the personal liberty of the person. Though the complainant is officer appointed by the State Government, unless there is written permission or warrant for search of the house, no casual attempts can be made by the officers to enter in the house of the common citizens, thereby disturbing the personal life and liberty of the person. Therefore, the applicant was absolutely justified in questioning the authority of the complainant to enter in the house without any written permission or warrant.

26. On plain reading of provisions of Section 506, said provisions does contemplate criminal intimidation. However, on plain reading of the F.I.R. the provisions of said Section 506 are not attracted in the present case. There was no any criminal intimidation by the applicant to the complainant.

27. So far provisions of Section 186 of the Indian Penal Code are concerned, those can be invoked only with the permission from the Magistrate, no police can take cognizance of the said provisions and investigate on their own. Admittedly no permission has been taken for investigation under said section by the Police Officer.

28. After careful reading of the affidavit in reply filed by the complainant, it would show that the contents of the said affidavit in reply are general in nature and do not answer the averments in the application in detailed. No endeavour is made in the affidavit in reply to show that the offences alleged against the applicant are attracted on the strength of contents of the complaint.

29. On careful reading of the F.I.R., I am of the considered view that no offence is made out against the applicant. The F.I.R. is lodged after twelve days and the F.I.R. can be quashed on this ground alone. By any stretch of imagination, it is not expected from the vigilant Police Officer, to file F.I.R. belatedly after twelve days from the date of incident. On careful reading of affidavit in reply, there is no

explanation for filing the F.I.R. on 15th May, 2008 though 3rd the alleged incident took place on May, 2008. The explanation given in affidavit in reply is eye wash and said explanation is given just to cover up the case. Even if the explanation in the affidavit in reply for delayed F.I.R. is taken into consideration, admittedly the Higher Officer had given permission to lodge the F.I.R. on 8th May, 2009. There is no any reason to file the F.I.R. on 15th May, 2009. Secondly, the applicant is absolutely rights in contending that, just to take vengeance for filing report against the complainant with State Human Rights Commission for her behaviour, the said false complaint is lodged against the applicant. Thirdly, the allegations in the F.I.R. and other material, even if taken at their face value and accepted in their entirety do not prima facie make out any offence or make out a case against the applicant. It would not be out of place to mention that, the applicant has passed the M.P.S.C. Examination for the post of Civil Judge (Junior Division) & Judicial Magistrate (First Class) and he is selected for the same. There was nothing wrong on the part of the complainant to protest against the said Police Officer i.e. complainant, who entered in the house of the applicant without any written permission or warrant for recording the statement or search of the house and rightly the applicant has protested against the complainant by filing report to the State Human Rights Commission. The officers though appointed by the State Government, have no rights to enter anybody's house unless they hold written permission or warrant, as the case may be, as required under law. After all entering into anybody's house without holding written permission or warrant, if any, would be interfering in the privacy and liberty of the person.

In the instant case, already officer visited the house of the applicant even on 2nd May, 2008. Therefore, repeatedly visiting the house that too without any permission or warrant amounts to interference in the privacy or liberty of the person. Therefore, in natural course the applicant reacted to the entry of the complainant without any written permission in the house of the applicant and protested against the complainant and to that effect he also lodged report with the Human Rights Commission on 3rd May, 2008 itself. On careful reading of the complaint, I do not find that any offence is made out against the applicant.

30. While exercising powers under Article 226 and Section 482 of Cr.P.C. this Court is guided by the observations in para 108 of the reported judgment in case of State of Haryana and Ors. v. Bhajan Lal cited Supra. Therefore, for the discussion herein above, any further investigation or proceedings based upon the chargesheet filed by the prosecution, would be abuse of process of Court. No purpose would be served by continuing such proceedings based upon the chargesheet filed by the State. Therefore, the application succeeds and same is allowed in terms of prayer Clause (i).

In the result, F.I.R. dated 15-5-2008 lodged with non- applicant No. 1 vide Crime No. 229/2008 for the offence punishable under Sections 353, 186, 294 and 506 along with Chapter Proceeding No. 130/08 under Sections 107 and 116(3) of the Criminal Procedure Code, so also chargesheet No. 280/2009 is quashed and set

aside.

The Rule is made absolute in above terms.

The application is allowed and disposed of.

Criminal miscellaneous applications, if any stand disposed of in view of disposal of Criminal Application No. 2219/2008.