

(2000) 07 BOM CK 0058

In the Bombay High Court

Case No : Criminal Writ Petition No. 167 of 1993

Govind Ramchandra Nadkarni

APPELLANT

Vs

Chandbibhi Hyder (Smt.) and Another

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 289, 34, 341, 342

Citation : (2001) 5 BomCR 206

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : G.R. Nadkarni, for the Appellant;

Final Decision : Allowed

Judgement

Pratibha Upasani, J.—This criminal writ petition is filed by the petitioner/original complainant, being aggrieved by the order dated 3rd December, 1992 passed by the Additional Chief Metropolitan Magistrate, 4th Court, Girgaum, Bombay, in Case No. 6/S of 1991, discharging accused No. 2 Smt. Chandbibhi for offences punishable under sections 289, 341, 427 read with section 34 of the Indian Penal Code, directing that the case will proceed only against accused No. 1 R.J. Metha.

2. Few facts which are required to be stated are as follows:

The petitioner filed a complaint dated 11th April, 1984 in the Court of Metropolitan Magistrate, 40th Court, Girgaum, Bombay, against both the accused under sections 289, 341, 427 read with section 34 of the Indian Penal Code. It is stated by him in the said complaint that he is a practising Advocate, having his office situated at Room No. 5 on the second floor of Kennedy House near Kennedy Bridge, Bombay-7. Petitioner is the tenant of this office premises and has been using the said office since the year 1961, and is in occupation and possession of it since 1993. Accused No. 2 is residing on the second floor of the said building in Room No. 3. Accommodation was provided to her on account of

her being in the employment of the said union. She is working as Private Secretary to accused No. 1 and is in the good books of accused No. 1. She controls the office staff of the Engineering Mazdoor Sabha.

3. The petitioner has further stated in the said complaint that in the year 1976-77 original accused No. 1 R.J. Metha, who is the President of the Engineering Mazdoor Sabha (a Labour Union), purchased the said building, "Kennedy House" in the name of its union "Engineering Mazdoor Sabha", and that, since that time, he started harassing all the tenants of the said building Kennedy House. It is the contention of the petitioner that original accused No. 1 carried out extensive repair work, after obtaining no objection certificate from Housing Board and Bombay Municipal Corporation. According to the complainant, the plan of accused No. 1 was to effect structural changes and to deprive the tenants and occupiers of their premises permanently. The repair work started somewhere in the year 1979 and continued till the year 1983. Several Verandas, staircase at one place and the toilet blocks were demolished by him and false promises were given to the tenants that he would carry out construction within two months, and got the building vacated. The petitioner, however, apprehending the plan of the said Mehta of depriving the petitioner by change of plans, moved the Court of Small Causes in the year 1982, and obtained stay orders, which frustrated his plans. Thereafter, the veranda and the staircase were constructed by the accused No. 1, but that, the new iron construction was too weighty for the wooden framework and big cracks developed because of the illegal construction carried on by the accused No. 1 on the fourth floor and the terrace above that. He also constructed a big cement tank and garden with trees and also kept hundreds of flower pots on the terrace.

4. According to the complainant, he started using the very same premises from 2nd April, 1984. R.J. Mehta felt frustrated, as his plans could not be materialised, and started harassing all the occupants, who had occupied their respective premises. He started harassing the petitioner more because, he being an Advocate, was acting as a protector of all other tenants. Accused No. 1 began to tie five ferocious dogs outside the petitioner's premises with long straps, so that, the dogs could reach the doorstep of the petitioner's premises, causing obstruction and preventing petitioner from having access. If the access was at all obtained, it was impossible to leave the premises till the employees of the accused took the dogs away. The visiting clients were driven away stating that no Advocate by name Nadkarni (petitioner) was having office there. The accused also kept benches just beside the petitioner's office, and used to tease the dogs with signals, with the result that all the five dogs used to bark in chorus, creating hell of the place and used to cause mental torture and harassment to the petitioner. Furthermore, right at the entrance on two sides and in front, barrels full of mud mixed fertilizers were kept, which were meant for feeding plants on terrace. The mud mixed fertilizer emitted obnoxious smell and bred white ants and weevils used to encroach upon the premises of the petitioner, resulting in damage to the furniture and books belonging to him. Many times, he had to

throw away expensive books and furniture because of the damage caused to them.

5. Petitioner therefore lodged written complaints to the Police and Municipality on 10th April, 1984, and also filed present complaint dated 11th April, 1984 in the Court of the Metropolitan Magistrate, 40th Court, Girgaum, Bombay, praying that process be issued against the accused under sections 289, 341, 427 read with section 34 of the Indian Penal Code.

6. The learned Magistrate took cognizance of the said complaint and issued process against both the accused. They however, filed Criminal Writ Petition No. 379 of 1999 under Article 227 of the Constitution of India and u/s 482 of the Code of Criminal Procedure, 1979 in this Court, which was dismissed by this Court by the order dated 12th September, 1984 (coram: Mr. G.M. Khandekar, J.), wherein it was held by this Court that order of issue of process against the revision-petitioners was correctly passed and direction was given to the accused to appear before the Lower Court on 15th October, 1984. Thereafter, it appears that the accused approached the Supreme Court, but could not succeed. In the meantime, the complainant also approached the Small Causes Court and obtained injunction order, restraining the respondents Nos. 1 and 2 (original accused), their servants, agents, etc. from keeping the dogs in common passage outside the suit premises i.e. Room No. 5 (of which, petitioner herein, is the tenant) on the second floor of Kennedy House, Gamdevi, Bombay-400 007, or any part of the passage leading to the suit premises or leading to the common lavatory on the second floor etc. This order was again challenged by the original accused in the High Court, however, the High Court (T.D. Sugla, J.) by its order dated 13th March, 1989, dismissed the Civil Application filed by both the accused. The accused approached the Supreme Court once again, but lost for the second time in this matter also. Thereafter, the trial commenced. The petitioner/complainant entered the witness box on 27th August, 1992 and his examination-in-chief was recorded by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Bombay. Thereafter, Advocate for the accused asked only one sentence in cross-examination. Thereafter, shortly, Advocate, who was appearing for both the accused, made an application for discharge dated 23rd September, 1992 on behalf of accused No. 2 Chandbibi Hyder, stating that in the examination-in-chief or in the complaint, no case was made out against accused No. 2, and therefore, the accused No. 2 be discharged. On this, the learned Additional Chief Metropolitan Magistrate, 40th Court, after hearing both the sides, passed the impugned order dated 3rd December, 1992, discharging accused No. 2 for offences punishable under sections 289, 341, 427 read with section 34 of the Indian Penal Code. He directed that the case be proceeded only against accused No. 1. Being aggrieved by this order, the petitioner/original complainant has approached this Court by filing the present criminal writ petition.

7. I have heard Mr. Nadkarni original complainant, who is appearing-in-person, and Mr. Salvi, the learned A.P.P. appearing for the state. I have perused the

proceedings, including the orders passed by the High Court in Criminal Writ Petition No. 379 of 1984 and order dated 13th March, 1984 passed in Civil Revision Application No. 564 of 1984, and in my opinion, the learned Magistrate committed error in passing the impugned order.

8. It is to be highlighted that initially process came to be issued by the Metropolitan Magistrate, 40th Court, Girgaum by his order dated 21st April, 1984 against both the accused namely R.H. Mehta and Chandbibi. This order of issuance of process was challenged by both the accused in the High Court by filing Criminal Writ Petition No. 379 of 1984, and this Court, after hearing both the sides, came to the conclusion that the order of issuance of process was correctly passed, and dismissed the petition filed by the accused. This Court also directed the accused to appear before the Lower Court on 15th October, 1984, so that, trial could proceed. This order was again challenged, as submitted by Mr. Nadkarni, in the Supreme Court, with no success. Thereafter, the trial commenced and what was before the learned Magistrate before passing the impugned order, was only the examination-in-chief of the petitioner/original complainant. That means the material before the learned Magistrate was the same which was there at the time of issuance of process. He did not proceed to record the entire evidence, but, the Magistrate hurriedly, immediately after examination-in-chief of the complainant, discharged accused No. 2 on the ground that charge was groundless against accused No. 2. This was done by the Magistrate on the face of the order dated 12th September, 1984 passed by this Court in Criminal Writ Petition No. 379 of 1984, endorsing as correct and lawful, the initial order of issuance of process against both the accused by the Magistrate. The learned Metropolitan Magistrate, 40th Court, Girgaum, ought not to have gone behind the order of the High Court, which in no uncertain terms, had held that the order of issue of process against both the accused was maintained. The learned Magistrate ought to have therefore proceeded with the trial and should have come to its logical end. However, instead of doing that, he hurriedly passed the impugned order dated 3rd December, 1992, when the same material was before him, which was before the earlier Magistrate, when the initial order of issuance of process was passed by him. This was obviously erroneous. Hence, the following order:

Criminal Writ Petition No. 167 of 1993 is allowed. The order dated 3rd December, 1992 passed by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Bombay in Case No. 6/S/91 discharging accused No. 2, is hereby quashed and set-aside. Trial to proceed against both the accused. The learned Magistrate to proceed with the matter in accordance with law.

Writ to go down expeditiously.

Petition allowed.