
(1988) 07 BOM CK 0034

In the Bombay High Court

Case No : Criminal Application No. 385 of 1988

Indravadan Killawalla and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 05-07-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 482

Citation : (1988) 07 BOM CK 0034

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

1. This petition under S. 482 of the Cr.P.C. 1973 is to quash a show-cause notice issued to the petitioners and the anticipated proceedings pursuant to the said notice.

2. The background to the question that arises for determination in this petition is thus :

Petitioner 2 Smt. Padma Indravadan Killawalla is the owner of a building known as "Madhu-Kunj" at Chittaranjan Road, Vile Parle (East), Bombay - 400 057. The ground floor of the said building was in the occupation of Daulatrai who died and who it may be mentioned here was the grandfather of respondent 4 - respondent 3 being the wife of the said fourth respondent. Alleging that the ground floor was not needed by Daulatrai as he had obtained alternative accommodation, Smt. Padma instituted a suit for ejectment against the said person. A decree was passed in favour of Smt. Padma and was confirmed in appeal and also a writ petition in this Court. The heirs of Daulatrai who were brought on record after the death of the said person, have taken the matter to the Supreme Court vide a Special Leave Petition. The execution has been stayed. In the meantime, certain occurrences have either taken place or are alleged to have taken place. These consist of incidents in the month of June 1987 and September 1987. To be brief, the petitioners are said to have abused, threatened and quarrelled with respondents 3 and 4. Reports of these occurrences have been duly lodged at the

Vile Parle Police Station. That Police Station has registered the reports as giving rise to non-cognizable cases - the informants being left to take recourse to their own remedies. In other words, respondents 3 and 4 have been advised, if they so wish, to move complaints in a Court of the Magistrate having jurisdiction. The police having given this advice have yet thought it necessary to move a Special Executive Magistrate who also is the Assistant Commissioner of Police to initiate proceedings under S. 107 of the Cri.P.C., 1973. The notice refers to the threats and abuses allegedly given by petitioners on different dates, these alarming respondents 3 and 4 and the resultant situation likely to occasion a breach of peace and/or disturb the public tranquillity. Petitioners have been called upon to show cause why they should not be required to enter into bonds of Rs. 5,000/- to be supplemented by surety bonds in like sum to ensure that they maintain the peace. It is this notice which is questioned in the petition.

3. Mr. Shah relies upon the judgment of Mehta, J. in Criminal Appln. No. 1015 of 1983, (reported in 1986 (1) Crimes 405). To quote from that judgment :

"I have briefly set forth the provisions of S. 107 to S. 110 in order to show that the powers vested in an Executive Magistrate under these Sections have to be exercised only in cases of a serious nature and not in cases involving trivial quarrels, and certainly not, as in the present case, to be used as a vehicle for private vendetta."

These observations apply on all fours to the present case. What transpired on 2-6-1987 is that respondent No. 3 Sudha was intimidated by petitioners 1 and 2 - the latter in addition abusing her. On 6-6-1987, respondent 3 Sudha complained of petitioners 1 and 3 abusing and threatening her because of the report given by her for the occurrence that took place on the preceding Tuesday. The third report of 13-6-1987 given by respondent No. 4 is directed against petitioners 1 and 3. It alleges that petitioners 1 and 3 are always abusing respondent No. 4 and the members of his family thereby annoying them. In addition, it is said that petitioners 1 and 3 speak harshly and in an intimidatory language. The incident of 4-9-1987 consists of petitioner 1 abusing respondent No. 4 and threatening to beat him. On each occasion the person complaining was directed to move the Magistrate having jurisdiction. If the person reporting did not consider it necessary to take the advice, the police should not have taken upon itself the task of initiating preventive proceedings. The reports given at the Police Station were of trifling incidents and more in the nature of a trial of nerves between two parties determined to get at each of other's throats and utilising all methods available at their disposal. No case warranting the initiation of preventive proceedings had been made out. That apart, it stands to reason that threats given by the 60 years old petitioner 1, the 50 years old petitioner No. 2 and the 20 years old petitioner No. 3 could not have alarmed respondents 3 and 4. The abuses allegedly given are not said to have caused any breach of peace. All that the persons complaining mentioned is that they are being annoyed and inconvenienced pursuant to the acts of petitioners. To check this sort of the

behaviour is not the object of S. 107.

In the result, the petition succeeds and the show cause notice issued to the petitioners stand quashed. Rule in the above terms made absolute.

4. Petition dismissed.