

(1998) 03 BOM CK 0003

In the Bombay High Court

Case No : Criminal Writ Petition No. 245 of 1998

Kiran N. Makasare

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 345
Penal Code, 1860 (IPC) — Section 228, 380, 448, 457

Citation : (1998) CriLJ 1939

Hon'ble Judges : S.S. Parkar, J;A.P. Shah, J

Bench : Division Bench

Advocate : V.M. Kanade, for the Appellant; R.L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

A.P. Shah, J.—Rule. Mr. Patil, learned Addl. P.P. waives service for respondent No. 1. Name of respondent No. 2 is deleted. By consent, petition is taken up for hearing forthwith.

2. The petitioner, an Advocate, was arguing an application for anticipatory bail before the learned Additional Sessions Judge, Mumbai on behalf of one Hawaldar Singh s/o Lalata Singh. The said Hawaldar Singh was apprehending arrest by M.R.A. Marg Police Station in C.R. No. 488/97 for offences punishable under Sections 448, 457 and 380 of the IPC for committing house trespass and theft. Before the Sessions Court the case of Hawaldar Singh was that he took possession of the premises from one Freny Dinshaw, proprietor of General Typewriters (Bombay) Company. During the course of the hearing of that application, the learned Judge made a query as to how much consideration Hawaldar Singh had paid to Freny Dinshaw. The learned Judge was told that there was no occasion to pay any consideration to Freny Dinshaw as Hawaldar Singh had taken possession of the premises directly from the landlord. After conclusion of the arguments, learned Judge started dictating the order in the open Court. The learned Judge recorded in his order that when he asked the

petitioner as to how much consideration was paid to Freny Dinshaw, the petitioner made a statement before the Court, after taking instructions from his client, that there was no occasion to pay any consideration to Freny Dinshaw as the possession was taken from the landlord. At that stage the petitioner submitted before the learned Judge that such a statement was not made by him and that the Court had put the question directly to his client and the same was answered by his client. Thereupon the learned Judge appears to have told the petitioner that he as well as his client made similar statements before the Court. It seems that the petitioner persisted in his objection that the statement was not made by him but it was made by his client in reply to the query put by the Court directly to his client. The learned Judge felt that the conduct of the petitioner prima facie constitutes an offence punishable u/s 228 of IPC. The learned Judge told the petitioner that he will have to take legal action against him and might take him into custody. Thereupon the petitioner allegedly said "Yes, Yes I may be taken into custody". The petitioner was directed to be detained to custody and was called upon to show cause why he should not be convicted u/s 345 of Criminal Procedure Code (Cr.P.C.). The learned Judge directed the release of the petitioner on execution of PR Bond of Rupees Five Hundred.

3. During the hearing of the petition, the petitioner filed his affidavit before this Court describing the incident in the following terms :

It was never my intention nor desire to either insult or interrupt the learned Judge. However, when I observed that the learned Judge was recording certain statements and attributing the same in my name, I wanted to clarify that I had not made those statements and the record to that effect may be clarified. I felt that it was my duty as an Advocate representing my client and also an officer of the Court to assist the Hon''ble Court. However, it appears that the learned Judge, misunderstood my good intention and felt that I was trying to insult and interrupt the Hon''ble Court and said that I would be arrested. At that stage I was shocked and taken by surprise by the sudden threat given to me. Under those circumstances I said that if the learned Judge felt that by trying to assist him and protect the interest of my client I should be arrested, the learned Judge may do so. It was again never my intention in insulting the learned Judge in saying so, but I was merely trying to point out I was merely doing my duty.

I would like to submit before this Hon''ble Court that I sincerely regret the entire incident dt. 9-1-1998 that took place.

4. We have heard learned Advocates for the parties. The proposed action has been taken by the learned Judge u/s 228 of IPC. To constitute an offence under this section, the act must be done intentionally and with intent to insult the Court. In the instant case, we do not think that there was intention on the part of the petitioner to insult or interrupt the Court. In our opinion, the whole affair has been blown out of proportion and might have been more quietly settled. There is no doubt that a Judicial Officer is entitled to maintain the dignity of the Court but he should not be too sensitive and too ready to take offence where none is

intended. The law allows some latitude to a member of the Bar acting bona fide in the discharge of his professional duty so long as his conduct is not so gross so as to lead to an inference that his intention is to insult or interrupt the Court. We feel that the incident was of a trivial nature and there was really no need to resort to the provisions of Section 345, Cr.P.C. It is true that the petitioner repeatedly protested against recording certain statements in the order as being made by him. But every protest made in fact does not interrupt the Court but it is the duty to listen to such protest even if they may delay the proceedings. So long as they are made bona fide, they do not constitute interruption which the section punishes as contempt. In somewhat similar matter arising out of proceedings against a pleader u/s 228 of IPC, this Court in *In re Dattatraya Venkatesh Belvi* (1904) 6 Bom LR 541 observed that there ought to be a spirit of give and take between the bench and the Bar in such matter and every little persistence on the part of a pleader should not be turned into an occasion for a trial unless the pleader's conduct is so clearly vexatious as to lead to the inference that his intention is to insult or interrupt the Court. We, however, make it clear that we do not say that we approve the petitioner's persistence but after he had expressed his sincere regrets in his affidavit, we do not see any point in continuing with the proceedings u/s 345, Cr.P.C. We, therefore, quash the show cause notice issued by the learned Judge u/s 345, Cr.P.C. Petition is accordingly disposed of. Rule is made absolute accordingly. The bail bond given by the petitioner stands cancelled.