

(1987) 10 BOM CK 0051

In the Bombay High Court

Case No : Criminal Revision Application No. 347 of 1986

State of Maharashtra

APPELLANT

Vs

Rajkumar Sitti " Kundanlal Malhotra

RESPONDENT

Date of Decision : 27-10-1987

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 10
Penal Code, 1860 (IPC) — Section 506

Citation : (1988) 1 BomCR 15

Hon'ble Judges : V.P. Tipnis, J

Bench : Single Bench

Advocate : P.M. Vyas, P.P, for the Appellant;

Judgement

V.P. Tipnis, J.—Antop Hill Police Station filed charge-sheet against the respondent herein for an offence u/s 506 (Part II) of the Indian Penal Code on the allegation that on 21st October, 1985, at about 11.30 a.m. at Joy Tailoring Shop No. 3, Municipal Bldg., Punjab Camp, Govandi, the accused gave threats to commit murder of the complainant and witnesses Nos. 1 and 2 and also gave threats to cause damage to the shop of the complainant. The accused preferred an application before the learned Metropolitan Magistrate, 30th Court, Kurla, for discharge as, according to the submission of the accused, the offence u/s 506, I.P.C. is non-cognizable and as no permission u/s 155(2) of the Code of Criminal Procedure has been sought by the police, the whole proceedings are vitiated. A decision of this Court in Prabhakar Pandurang Sanzgiri Vs. State of Maharashtra, was cited in support of the said submission. The learned Magistrate, relying on the same judgment, held that the charge-sheet is not tenable and, therefore, he dismissed the charge-sheet, discharged the accused and closed the proceedings.

2. Shri Vyas, the learned Public Prosecutor appearing for the State, in support of this revision application, submits that by virtue of the Notification issued by the Government of Maharashtra u/s 10 of the Criminal Law Amendment Act, 1932, the offence u/s 506, I.P.C., so far as Greater Bombay is concerned, shall be

cognizable and non-bailable. He further submits that, in fact, this Court (Shah, J.) in (Criminal Revision Application No. 633 of 1979), decided on 1st October, 1980 had considered this aspect and held that, by virtue of the said Notification, the offence u/s 506 (Part II) is non-bailable. Shri Vyas also relied upon the decision of a Division Bench of the Gujarat High Court in Vinod Rao Vs. The State of Gujarat and Another, which held that section 10 of the Criminal Law Amendment Act does not offend Article 14 of the Constitution of India and the Notification thereunder making the offence u/s 506 of the Indian Penal Code cognizable and non-bailable and when committed in the city of Ahmedabad also does not suffer from constitutional infirmity under Article 14.

3. It is undoubtedly true that the learned Single Judge in Prabhakar's case (supra) has held that the offence u/s 506 of the Indian Penal Code being non-cognizable, the investigation into such offence by Police Officer without the order of the Metropolitan Magistrate is contrary to the provisions of section 155(2) of the Cr.P.C. and, therefore, the investigation, filing of charge-sheet and framing of charge are all vitiated and the proceedings are liable to be quashed. However the aforesaid relevant Notification under the Criminal Law Amendment Act was not pointed out to the learned Judge and no arguments, were advanced in that behalf the judgement, therefore, proceeded without any reference to the said Notification and in total ignorance of the said Notification. Shri Vyas has produced before me a copy of the said Notification which is as under :---

"Government of Maharashtra Notification, Home Department (Special) No. S.B. I/CIA/1060/26963, dated the 4th October, 1962 as amended by Notification, Home Department (Special) No. S.B. I/CIA/1061/27115 dated the 10th August, 1962.

No. S.B. I/CIA/1960/26963. In exercise of the powers conferred by section 10 of the Criminal Law Amendment Act, 1932 (XXIII of 1932) and in supersession of Government Notification, Home Department (Political) No. S.B. 7753, dated the 27th December, 1932, the Government of Maharashtra hereby declares that the offence of criminal intimidation punishable u/s 506 of the Indian Penal Code (XLV of 1860) where the threat is to cause death or grievous hurt or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years or to impute unchastity to a woman, when committed in Greater Bombay shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898) (V of 1898), be cognisable and non-bailable.

By order and in the name of the Governor of Maharashtra.

J.R. Gabral

Deputy Secretary to the government

Maharashtra, Home Department."

In view of this Notification and in view of the decision of this Court (Shah, J.) in Criminal Revision Application No. 633 of 1979 dated 1st October, 1980, I hold

that the offence u/s 506 of the Indian Penal Code is cognizable and non-bailable so far as Greater Bombay is concerned. The order of the learned Magistrate discharging the accused is, therefore, obviously, bad in law and deserves to be quashed and set aside.

4. Accordingly, the revision application succeeds and the order of the learned Magistrate discharging the accused is quashed and set aside. The matter is remanded to the learned Magistrate. The learned Magistrate will consider the matter on merits and pass order, in accordance with law.

The rule is made absolute.