
(1991) 06 BOM CK 0004

In the Bombay High Court

Case No : Criminal Application No. 917 of 1990

Thekkineth Joseph

APPELLANT

Vs

Hemant A. Adhau and Another

RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) 3 BomCR 602

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : J.M. Gandhi, S.D. Gandhi and A.R. Jindal, for the Appellant; Anjan De, for the N.A. No. 1 and G.C. Choubey, Public Prosecutor for N.A. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

B.U. Wahane, J.—It pains me to begin with that instead of the case being listed in weekly list, none on behalf of the applicant as well as on behalf of the non-applicants except Shri Choubey, the learned Public Prosecutor for the State, appeared to make their submissions. The circumstances compelled me to study the brief with the active co-operation of Mr. Choubey.

2. By this petition u/s 482 of the Code of Criminal Procedure the petitioner challenged the order of issue of process against the accused/applicant for the offences punishable under sections 426 and 341 of the Indian Penal Code, passed by the learned Chief Judicial Magistrate, Nagpur on 24-7-1990 in Criminal Case No. 263 of 1990.

3. It is trite that the jurisdiction u/s 482 of the Criminal Procedure Code which save the inherent powers of the High Court to make such orders as may be necessary to prevent abuse of process of law or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction, the High Court would not embark upon the enquiry whether the

allegations in the complaint are likely to be established by the evidence or not. That is the function of the trial Magistrate. This Court is guided by the allegations and whether those allegations set out in the complaint, do or do not, in law, constitute or spell out any offence and that resort to the criminal proceedings would, in the circumstances, amount to an abuse of the process of Court or not. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out, then the High Court is justified in quashing the proceeding in exercising its powers u/s 482 of Criminal Procedure Code.

4. With the assistance of Mr. Choubey, the learned P.P., I have gone through the complaint filed by the non-applicant No. 1 in the Court of C.J.M., Nagpur. The complainant specifically submitted in the complaint that he is the lawful occupant of Flat No. 604 of Shewalkar Towers, Durga Layout, Nagpur. He is working in the restaurant run by M/s. Shewalkar Hotels known as 'Parnakuti'. He further submitted that on 21-7-1990, the complainant was threatened by the accused that he would not permit the complainant to enter the premises and would not allow the complainant to enjoy the premises. The accused demanded money from the complainant, although the accused was not entitled to make any such demand from the complainant. The complainant lodged the report with the Police of Ambazari on 21-7-1990. Thereafter too, while the complainant was going to his premises, the accused came rushing and obstructed the complainant from entering the premises which are under his occupation. The accused demanded money from the complainant amounting to Rs. 600/-. It is submitted by the non-applicant No. 1 complainant that he has got legal right to proceed to his premises and apartment occupied by him and the accused has no legal right to obstruct the complainant from proceeding towards his apartment. The accused is neither the landlord nor the owner of the complainant. It is alleged by the complainant that mischievously, the accused disrupted the electricity supply to his premises. Thereby, it is alleged that the accused committed offence punishable under sections 341 and 426 of Indian Penal Code.

5. Section 341 of I.P.C. reads as under:

"Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

Wrongful restraint" is defined u/s 339 of I.P.C. which is as follows:

"Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

The averments made in the complaint lodged by the complainant wherein he has specifically stated that he is in possession of Flat No. 604 of Shewalkar Towers, Durga Layout, Nagpur and the accused is neither landlord nor the owner of the complainant. Without any authority he obstructed the complainant from

entering into the premises occupied by him as well as the electricity which the complainant was enjoying, also disrupted. It is not a simple case about the demand or recovery of the contribution amount. Even if the petitioner/accused is empowered to recover the amount of contribution, the process which he adopted is not just and proper. If the complainant fails to pay any contribution, instead of taking recourse to the criminal act, the accused can definitely knock the doors of the Civil Court to recover the amount.

7. Considering the facts and circumstances of the case as made out by the complainant in the complaint and the submissions which have been raised by the petitioner/accused in the petition, I do not think that it is a dispute of civil nature only. Therefore, the order of taking cognizance and order to issue process against the accused for the offences punishable under sections 426 and 341 I.P.C., is just and proper. Therefore, I do not want to interfere with the order passed by the learned C.J.M., Nagpur, on 24-7-1990. While the oral judgment was in progress, Shri De, the learned Counsel for the respondent No. 1, appeared. In the result, the instant petition is dismissed.