

(2016) 04 BOM CK 0117

BOMBAY HIGH COURT

Case No: Criminal Application No. 481 of 2016.

Shalini Harpalsingh Dugal and
Others - Applicants @HASH State
of Maharashtra and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: April 29, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 188, Section 482
- Penal Code, 1860 (IPC) - Section 323, Section 326, Section 34, Section 342, Section 4, Section 506

Citation: (2016) 4 BomCR(Cri) 435 : (2016) 5 MhLJCri 542

Hon'ble Judges: A.S. Oka and P.D. Naik, JJ.

Bench: Division Bench

Advocate: Chinmay S. Shah a/w Mr. Chaitanya Jadhav, Advocates, for the Applicants; J.P. Yagnik, A.P.P, for the Respondent No. 1; Kushal Mor, Advocate, for the Respondent No. 2

Final Decision: Disposed Off

Judgement

A.S. Oka, J.(Oral) - Not on board. Taken on board.

Rule. The learned APP waives service for the respondent No. 1 and the learned counsel for the respondent No. 2 waives service. Forthwith taken up for final disposal. Prayer in this application under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.PC") is for quashing the FIR registered at Gamdevi Police Station for the offence punishable under sections 323, 326, 342, 506 read with section 34 of the Indian Penal Code. We have perused the FIR. The FIR is lodged by the respondent No. 2. The respondent No. 2 is the husband of the applicant No. 1. The respondent No. 2 is the father of the applicant Nos. 2 and 3. The FIR relates to an incident of 16th March 2016 at Dubai. The respondent No. 2 stated that at that time, there was an altercation between him and the respondent No. 1 over some

property. It is alleged that the applicants started assaulting him and he was assaulted by a steel rod, leather belt and mobile charger cord and thereafter, he was detained in the bed room. He stated that on the same date in night, he left Dubai at 11.00 p.m and reached Mumbai at 5.00 a.m and got himself admitted in Breach Candy Hospital.

2. The respondent No. 2 has tendered an affidavit. In the affidavit, he relied upon the consent terms dated 13th April 2016. A copy of the consent terms dated 13th April 2016 is annexed to this application at Exhibit-B. The consent terms have been signed by the applicants and the respondent No. 2 before Vice Consul, Consulate General of India, Dubai (U.A.E.). The consent terms record that all the disputes between the applicants and the respondent No. 2 have been resolved. In the consent terms, it is recorded that the respondent No. 2 will assist the applicants for getting the FIR quashed.

3. We have perused the consent terms and affidavit of the respondent No. 2. From the documents on record, it appears to us that the dispute between the applicants and the respondent No. 2 was over a property. The altercation between the applicant No. 1 and the respondent No. 2 led to the registration of the FIR.

4. As stated earlier, the applicant No. 1 is the wife of the respondent No. 2 and the applicant Nos. 2 and 3 are respectively the son and daughter of the respondent No. 2. One of the terms of the settlement is that only the applicant No. 1 and the respondent No. 2 shall co-habit together and no other applicant will reside with them.

5. Thus, the dispute appears to be a personal dispute amongst close family members and now the entire dispute has been amicably settled. In view of the decision of the Apex Court in the case of **Gian Singh v. State of Punjab and another, (2012) 10 SCC page 303**, a case is made out for quashing the FIR. From the report issued by the Breach Candy Hospital and the injuries mentioned therein, offence punishable under section 326 of the Indian Penal Code is not at all made out.

6. Another aspect is whether the FIR could have been registered at Mumbai as the alleged offence is committed at Dubai in U.A.E.

7. Section 4 of the Indian Penal Code is relevant for this purpose which reads thus:

"4. Extension of Code to extra-territorial offences- The provisions of this Code apply also to any offence committed by-

[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be;

(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

Explanation ♦ In this section-

(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000."

8. In view of sub-section 1 of section 4, provisions of the Indian Penal Code will apply to an offence committed by any citizen of India in any place without and beyond India. There is no dispute that the applicants and the respondent No. 2 are the citizens of India. Therefore, the provisions of the Indian Penal Code will extend to the offences committed by the respondent No. 2 beyond India at Dubai. In fact, illustration given below section 4 is very eloquent. Illustration is that 'A' who is citizen of India commits murder in Uganda, he can be tried and convicted of murder in any place in India in which he may be found. The term offence is defined under Cr. PC under clause (n) of section 2 of the said Code. It means any act or omission made punishable by any law for the time being in force.

9. Under sub-section (1) of section 154, it is the obligation of the Officer in-charge of a police station to register FIR when information about commission of a cognisable offence is received by him. Hence, when he receives information about the cognisable offence under IPC committed by a citizen of India, outside India, he is under an obligation to register FIR and investigate into the offence.

10. Our attention is invited to section 188 of the Code of Criminal Procedure which reads thus:

"188 Offence committed outside India ♦ When an offence is committed outside India -

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person not being such citizen, on any ship or aircraft registered in India he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found;

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

11. Firstly, section 188 forms part of Chapter XIII which deals with the jurisdiction of the Criminal Court in inquiries and trials. The same has nothing to do with the registration of the FIR for an offence punishable under the Indian Penal Code committed by a citizen of India outside India. Secondly, in the case of **Thota Venkateswarlu v. State of Andhra Pradesh through Principal Secretary and another, (2011) 9 SCC 527**, the Apex Court has laid down that the question of previous sanction of the Central Government arises only at the stage of taking

cognizance of the offence by the concerned Court. The sanction contemplated under the proviso to section 188 is not required for registration of an offence committed by a citizen of India outside India. We find nothing wrong with the registration of FIR with the Gamdevi Police station. Therefore, the application must succeed.

12. Hence, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (a) which reads:

"(a) That this Hon"ble Court be pleased to quash and set aside C.R.No. 66 of 2016 of the Gamdevi Police station, Mumbai on such terms and conditions as this Hon"ble Court deems fit and proper."

(II) All concerned to act upon an authenticated copy of this Judgment and Order.