courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 03/11/2025

(1982) 1 BomCR 545

Bombay High Court

Case No: Criminal Application No"s. 318 of 1979 and 70, 162, 173 and 174 of 1980

Sk. Bale Mohammad	APPELLANT
Vs	
Hafizoddin and Others Arvind Vinayakrao Savant and Vithalrao Chincholikar and Others Vs Shaikh Bale Mohammad and Others Tukaram Manku Parlikar and Others Vs Sk. Bale Mohammad and Another Sk. Bale Mohammad Vs Arvind Savant	RESPONDENT

Date of Decision: Oct. 6, 1980

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 202, 204, 245(1)
- Penal Code, 1860 (IPC) - Section 223, 323, 34, 395, 488

Citation: (1982) 1 BomCR 545

Hon'ble Judges: C.S. Dharmadhikari, J; B.J. Rele, J

Bench: Division Bench

Advocate: A.G. Godhamgaokar, in Criminal Revision application No. 318 of 1979, V.M. Kanade, in Criminal Revision application No. 70 of 1980, R.M. Agarwal, in Criminal Revision application No. 173 of 1980, M.D. Gangakhedkar, in Criminal Revision application No. 174 of 1980, for the Appellant; N.B. Chapalgaokar, for respondent Nos. 1, 3 to 6, 9 and 11, A.V. Sawant, for respondent No. 7, R.M. Agarwal, for respondent Nos. 12 to 15 in Criminal Revision Application No. 318 of 1979, V.M. Kanade in Criminal Revision Application No. 162 of 1980, R.G. Deo, Public Prosecutor in Criminal Revision Application Nos. 70, 173 and 174 of 1980, for the Respondent

Judgement

C.S. Dharmadhikari, J.
The petitioner Shaikh Bale son of Fateh Mohammad filed a complaint against 16 persons on the allegations that they have committed offences under sections 395, 488, 494, 506(2), 323 read with section 34 of the Indian Penal Code. In this complaint process was issued on 3-2-1975. Some of the witness were also examined on behalf of the complainant. Later on the Magistrate who issued the summons was transferred and succeeded by another Magistrate. The successor Magistrate after going through the entire evidence on record came to the conclusion that the earlier order passed u/s 202 of the Criminal Procedure Code was ab initio void and illegal, and therefore, after scrutinising the whole material he came to the conclusion that the complaint filed is without any substance. Hence he dismissed the complaint u/s 203 of the Criminal Procedure Code.

2. Being aggrieved by this order, a revision petition was filed by the petitioner before the Sessions Judge at Beed. The Session Judge at Beed came to the conclusion that the order passed by the Judicial Magistrate dismissing the complaint u/s 203 of the Criminal Procedure Code which in terms amounted to review was illegal. However after going through the evidence the learned Sessions Judge also agreed with the Judicial Magistrate that the evidence does not disclose even names of the accused persons. Therefore, he maintained the order passed by the learned Magistrate of the trial Court, though under different provision namely u/s 245(1) of the Criminal Procedure Code and hence ultimately he dismissed the revision petition. Against this order the present criminal application under Article 227 of the Constitution of India is filed by the original complainant Sk. Bale.

3. The Criminal Applications bearing Nos. 70 of 1980, 173 of 1980 and 174 of 1980 arise out of the complaint filed by the same complainant Sk. Bale against the petitioners, who are shown as accused persons in the Criminal Case bearing No. 843 of 1979 which is pending before the Judicial Magistrate, First Class at Gevrai. The Criminal Application No. 173 of 1980 is filed by as many as 72 accused persons which included some of the advocates. The Criminal Application No. 70 of 1980 is filed by Shri Savant an advocate of this Court and Criminal Application No. 174 of 1980 is filed by 2 other advocates i.e. Shri Chincholikar and Shri Hitnalikar. It is contended by the petitioners in these criminal applications that the respondent Sk. Bale is harassing them right from the year 1967 by filing false cases and making false allegations. In Criminal Application No. 170 of 1980 the whole history of the previous complaints is enumerated by the petitioners. They have also filed various orders and judgments passed in these earlier proceedings as annexures to the criminal application. As the complainant Sk. Bale was a common party to these cases by consent of parties all these matters were heard together and are being disposed of by this common judgment.

4. Shri Godhamgaokar, the learned Counsel appearing for the petitioner Sk. Bale, contended before us in Criminal Application No. 318 of 1979, that having held that the order passed by the Magistrate of the trial Court u/s 203 of the Criminal Procedure Code is illegal, it was not open to the Sessions Judge to maintain the said order by invoking the provisions of section 245(1) of the Criminal Procedure Code. According to Shri Godhamgaokar, once it is held that the order of dismissal passed by the trial Judge u/s 203 of the Criminal procedure Code was illegal, it was obligatory on the part of the Sessions Judge to remand back the matter for trial in accordance with law.

5. It is not possible for us to accept this contention of Shri Godhamgaokar. We have gone through the complaint filed by the complainant as well as the evidence adduced on his behalf. In our opinion the learned Judicial Magistrate. First Class was right in observing that the evidence adduced by the complainant does not disclose even a prima facie case. In para 5 of his judgment the learned Magistrate has given cogent reasons as to why he came to this conclusion. Apart from the fact that there is no evidence on record to show as to whether the complainant was injured or not the complainant has given different dates of incident is his report to the D.S.P. and in the complaint filed before the Court. He has also not disclosed the names of all the accused persons before the D.S.P. and has tried to implicate some more persons when the complaint was filed before the Court. In substance, therefore, the learned Magistrate found that the complaint does not disclose even a prima facie case against any of the accused persons. Therefore, the learned Magistrate of the trial Court came to the conclusion that no useful purpose would be served by proceeding further into the matter since the evidence on record does not disclose even a prima facie case. He found that it would amount to harassment to the accused and nothing more. The learned Sessions Judge has agreed with the appreciation of the evidence as well as the finding recorded by the trial Court and in our opinion rightly. With the assistance of Shri Godhamgaokar we have gone through the entire evidence and we agree with the finding recorded by both the courts below. If this is so then the order passed by the learned Sessions Judge is wholly justified. In our opinion, there is no evidence on record, which if unregulated would warrant conviction of accused. In any case this is not a fit case wherein the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India could be invoked. Exercising the jurisdiction under Article 227 of the Constitution of India in favour of the complainant will practically amounts to a premium on the false allegations, made by the complainant in his complaint and will result in harassment to the accused. The learned Sessions Judge has done a substantial justice. In this view of the matter, there is no substance in this criminal application and the same is dismissed.

6. So far as the other criminal applications i.e. Criminal Applications Nos. 70 of 1980, 173 of 1980 and 174 of 1980 are concerned, we have heard the Counsel appearing in these criminal applications as well as the learned Public Prosecutor, Shri R.G. Deo. We have also heard the complaint who is present in Court. The learned Public Prosecutor has also supported the applications filed by the petitioners-accused and has contended that the

complaint filed by the complainant is wholly vexatious and false and, therefore, deserves to be quashed. So far as the complainant is concerned to his only submitted that justice should be done in the matter.

7. Since the complainant is appearing in person we have gone though the entire material placed before us and have also perused the records of the trial Court. A copy of the complaint is also filed in Criminal Application No. 173 of 1980 as annexes (C). The allegations made in the complaint relate to conspiracy with the help of police, and snatching away of she buffalo from the custody of police, and thereby disturbing the execution of diary. From the bare reading of this complaint and the allegations made therein, it is quite clear that but for making vague and superficial allegations against the accused persons, the complainant has not given any details about the incident or part played by each of the accused persons. Even in his verification statement or his deposition before the trial Court he has also not disclosed as to how any one of the accused persons have committed any of the offences. Mere general and vague allegations in the complaint or in the evidence cannot make out prima facie case against at the accused persons even for issuing processes. This is more so when even at a late stage the complainant has merely used the expression that "some" of the accused have done this or that. The word "some" is so vague that cannot lead anywhere. It cannot be forgotten that on the basis of some vague allegations involving a petty matter regarding the stealing of a she buffalo ,the complainant has made as many as 169 persons as accused. The complaint was initially filed against 114 persons. Thereafter, the compliant filed an application for adding some more accused on 21-11-1979, which was unfortunately granted by the learned Magistrate on 22-11-1979 this without any application of mind. After this order was passed on 22-11-1979 the number of the accused became 157. After this order was passed on 22-11-1979 some more persons were added as accused and this list has gone upto 169. Surprisingly enough this list includes respectable persons such as medical practitioners and advocates practising at the Bat The Petitioners in Criminal Application No. 173 of 1980 have placed before the Court the whole history of the complainant and have stated as to how they are being harassed by him right from the year 1967. We propose to reproduce the said allegations made in the complaint does not disclose any detail and it will suffice to say that it appears from the record that some of the advocates who are made accused in the present case had on an earlier occasion appeared against the complainant. The allegations made in the complaint does not disclose any offence against anybody, though in the verification statement the complainant has stated that one of them had beaten him. We are really surprised to note that without applying his judicial mind the learned Magistrate, First Class directed issuance of the summons or even warrants against the accused persons, and too on the basis of such flimsy allegations. Not only this we are further surprised that the learned Magistrate granted him permission readily for adding the accused persons. The order u/s 202 for issuance of summons cannot be passed mechanically for mere asking of it. It was the bounden duty of the learned Magistrate to apply his judicial mind to the allegations made in the complaint or subsequent application for adding the accused as

well as to the evidence led in support of it, before issuing any such proem. This is more so when several persons are made accused persons on the basis of flimsy allegations details of which are not disclosed either in the complaint or in the evidence. We are further surprised to note that two of the advocates from Aurangabad i.e. Shri S.A. Meheri and Shri S.N. Moholkar were added as accused persons and though they were not served with the summons. The learned Magistrate straight way issued non-bailable warrants against them. It is further surprising that these warrants were handed over to the complainant himself. Allegations in this behalf are made on oath by the petitioners in the applications filed before us. The learned Magistrate joined as party to this criminal application. The allegations made are not denied nor they are disputed. We have also gone through the various order passed by the Competent Courts in the earlier proceedings filed by the complainant. In Criminal Case No. 1768 of 1976 the Judicial Magistrate, First Class, Beed vide his order dated 21-2-1978 not only acquitted the accused persons but also took action u/s 340 of the Criminal Procedure Code against the complainant, and he was also asked to pay compensation to each of the accused.

8. In para 4 of the Criminal Application No. 173 of 1980 the petitioners have given the details about these previous criminal proceedings. The facts stated therein are duly affirmed on oath by Shri Latkar an advocate. The complainant though appearing before us has not filed any reply denying these allegations. We had specifically asked him as to whether he wants to say anything about these allegations, but even during the course of hearing he has not offered any explanation. He has also not prayed for time either to the reply or to engage a Counsel. The paras Nos. 4, 5 and 6 of the Criminal Application No. 173 of 1980 read as under;

"4. That to substantiate the aforesaid submissions of the petitioners, the petitioners wish to point out to their knowledge and within the short span of time whatever information they could gather, they understand that since 1966 this complainant has been filing various complaint against various persons and some of them are made very often the accused persons in every complaint viz. Criminal Case No. 239 of 1966 was filed by the respondent No. 1 on 8-10-1966 and was disposed of on 27-4-1967 terminating in favour of the accused persons; Criminal Case No. 107/67 filed by him on 11-4-1967 against Najkbuddin and others was also dismissed on 15-9-67 awarding the compensation of Rs. 150/- to each accused person; Criminal Case No. 192 of 1972 filed against Khaja and others on 3-6-72 got disposed of on 22-11-72; Criminal Case No. 436/72 filed against Khaled and others on 7-10-72 terminating in favour of accused persons on 15-5-1973; Criminal Case No. 439 of 1972 filed against Shriram and others on 21-11-72 terminated against him on 25-11-74. Similarly Criminal Case No. 443/73 filed on 12-10-73 ended on 29-3-76 against the complainant. Criminal Case No. 304/74 against Hafijuddin and others also terminated against him on 17-1-77. Similarly is the case with Criminal Case No. 380/74 against Kasturchand and others also ended on 31-12-75 against the complainant. All these cases were filed by him in the Court of J.M.F.C. Gevrai, Similarly, it may be pointed our here itself that in a Criminal Case No. 434/75 filed by the State against this

very complainant in Crime No. 137/75 this Sk. Bale was convicted u/s 341 of I.P.C. and was sentenced to S.I. for a day i.e. still rising of Court with a fine of Rs. 25/-. Similarly, a Criminal case No. 662/71 filed by him in the Court of J.M.F.C., Aurangabad, against Baburao and others also went against him. That the list of criminal prosecutions launched by this complainant is not at all exhaustive but still the petitioner could gather the details of some more complaints, namely, Criminal Case No. 1786/76 filed by him in the Court of J.M.F.C., Beed. The accused persons in the said complaint were not only acquitted but the complainant i.e. the present Sk. Bale was directed to pay the compensation of Rs. 500/-. Further in the said judgment decided by the learned J.M.F.C., Beed dated 21-12-1978 the learned Judge issued notices u/s 340 of Cri.P.C. against the present complainant-respondent and his witnesses and for prosecution u/s 182, 193, 211 read with section 34 of I.P.C. Not only by the said judgment the learned Judge directed the police authorities to place entire antecedents and the details as about the present complainant. Hence to annexed and marked Ex. A is a copy of the said decision given by the learned J.M.F.C. Beed in Criminal Case No. 1786 of 1976. It may be mentioned here itself that the accused persons shown in the said complaint are again arrived as accused persons in this case also including the two accused persons against whom this complainant had dropped the proceedings in the said case. Besides this criminal case a Criminal Case No. 1579/71 was also filed by him against some of the common accused persons u/s 436 of the Cri.P.C. wherein the complaint itself was dismissed u/s 203 of Cri.P.C. against which the revision filed by the present respondent No. 1 in the Court of Sessions Judge, Aurangabad being Criminal Revision Application No. 1/72 came to be dismissed by the then learned Addl. Sessions Judge, Aurangabad, by the decision dated 17-5-72. Here to annexed and marked as Ex. B is a copy of the said decision. In addition to this, a reference be made to a Criminal Case No. 2810/72 which was filed by him in the Court of J.M.F.C., Aurangabad, which also terminated in favour of the accused persons in the last though initially the process was issued in the said case. Here to annexed and make as Ex. C is a copy of the said complaint. In addition to this reference be made to other criminal cases in which judgment in given by the learned J.M.F.C., Gevrai, Dist. Beed, being Criminal case No. 205/67 decided on 5-9-67 and Summary Case No. 107/67 decided on 5-9-67 wherein the strictures are passed against this complainant that how he is in the habit of filing such false complaints and harassing the people coming from various places. Hereto annexed and marked Ex. D (colly) are the copies of the said two decisions which in itself would speak as about the conduct and modus operandi of this complainant. It will be worthwhile to mention here itself that one more distinguishing common phenomenon found in the complaints lodged by this complainant is that out of the so called some of the witnesses in his cases, a few are common and one of them Appasheb Patil is a starred witness against whom a notice is issued in a matter decided by learned J.M.F.C., Beed, referred to as at Ex. A Ex. E is a copy of the Criminal Case No. 192/72 filed in the Court of J.M.F.C. Gevrai, to which a reference has been already made.

5. In the process of appreciating the conduct of this complaint and to seek the justice from this Hon"ble Court and to expose the conduct of this complainant a reference deserves to be made to a notice given by him in Marathi dated 13-4-1977 to the various advocates of Aurangabad, namely, P.R. Ghanekar, advocate (now Civil Judge), Shri Motale, Advocate and Shri Lathkar, Advocate. That all these 3 Advocates of Aurangabad are now accused in the present complaint and out of them as stated earlier Shri P.P. Ghanekar has now joined the judicial service of this State. In addition the said notice was also issued to 6 advocates of Gevrai, namely Shri Chandak, Advocate, Shri Ambadas, Advocate, Shri Vithalrao, Advocate, Shri Mote, Advocate, Shri Prbhakar, Advocate, and last Shri Kazi Salimuddin, Advocate of Gevrai. That the notice dated 13-4-77 issued to 3 advocates of Aurangabad and 6 advocates of Gevrai in itself would go to show that how this respondent No. 1 is in the habit of resorting to all such tactics and contrives to extract money from various persons by resorting to various modes and methods. The petitioners crave leave to rely upon the copy of the said notice which is in Marathi the text of which in itself without any amount of comment and narration would reveal the conduct and character of respondent No. 1. As a result of this notice one of the Advocate, viz. Shri Motal, Advocate from Aurangabad, has even filed a criminal case in the Court of J.M.F.C., Aurangabad, against respondent No. 1 for an offence of extortion being Criminal Case No. 9077/77 which is pending. Petitioners crave leave to rely upon the copy of the said complaint when produced.

6. That besides the aforesaid facts, one more unique feature in the modus operandi resorted to by the complainant in these criminal proceedings deserves to be brought to the notice of this Hon"ble Court and that is he normally chooses the persons for this purpose who are busy in their avocation and occupation and who are the men of status and means in their life and by resorting to such tactics against such persons he wants to get some amount from them by blackmailing and sometimes some persons having taken an attitudes of sympathy and sometimes to avoid the botheration and torture of Court proceedings pay him some amount, as a result of which he has become hold and held and has taken this as his mode of living and a procreative mode of making money and as a result of the same he has been going ahead with his this habit as is evidence from the references made to the various complaints filed by him in the proceeding paras. The advocates who are chosen as accused persons in his complaint are the advocates who had at one or the other time accepted the briefs against his so called adversaries and he feels that by making such advocates accused persons he would a position to prevent them from discharging their professional duties to which they own that allegiance."

9. Shri A.V. Savant, an Advocate of this Court who is petitioner in Criminal Application No. 70 of 1980 has also stated on oath that he was joined as accused to this criminal case filed by the complainant only because he appeared in Civil Revision Application No. 30 of 1979 against the present complainant, in the High Court. He has also stated that on the date of office i.e. 17th and 18th September, 1979, which according to the complainant took place at Gevrai, District Beed, the petitioner Shri Savant, Advocate was in Bombay

and was attending to his work in this Hon''ble Court. He has also stated that even his name and address are vaguely and wrongly mentioned. Thus Shri Savant has stated on oath that he was not near about Gevrai at the relevant days and is falsely implicated in his complaint. The complainant has not filed any say to these allegations nor he has made any submissions before us even during the course of hearing.

10. From these allegations it is quite clear that the petitioner has been filing criminal cases after cases against the accused persons and some of the facts stated there in and some of the accused are also common. Not only this, it appears that notice was also given by him on 13-4-1977 to various advocates at Aurangabad and according to the petitioners before us all these practices are adopted by the complainant Sk. Bale to extract money from the various persons by resorting to this method. We do not want to probe in this question any further since a criminal case is already filed against the complainant for offence of extortion which is pending before the competent Criminal Court. Therefore, from the material placed before us as well as from the bare reading of the complaint we are satisfied that the complaint instituted by the respondent No. 1 Sk. Bale was not only frivolous, false or vexatious but amounts to misuse of the process of the Court. Even if the facts stated in the complaint are accepted, still no offence is made out against the accused persons. The process was issued by the trial Court even though no prima facie case was made out against the accused persons. In these circumstances the complainant cannot be permitted to harass the accused persons by proceeding further with his frivolous complaints against them. We are really surprised to note that the learned Magistrate of the trial Court has acted mechanically in the matter without applying his judicial mind to the allegations made in the complaint or evidence adduced before him. This is one of these cases, wherein it is clear from the mere reading of the allegations made in the complaint or statement of complainant that the same does not disclose the essential ingredients of the offence alleged against the accused. The allegations made in the complaint against as many as 169 accused persons one patently absurd and inherently improbable, and no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. The discretion exercised by the Magistrate from time to time, in issuing processes or adding accused is capricious and arbitrary having no basis in the material placed on record. To say the least, the proceeding initiated was clearly an abuse of the process of the Court. In these circumstances we have no other alternative but to quash the complaint itself i.e. Criminal Case No. 843 of 1979 pending before the Judicial Magistrate, First Class, Gevrai. Hence the complaint filed by the respondent Sk. Bale against all the 169 accused persons and all further proceedings taken and all orders passed there in quashed.

11. It is no doubt true that a prayer is also made by the petitioners praying for compensation u/s 250 of the Code of Criminal Procedure or seeking an injunction from this Court against the respondent-complainant Sk. Bale restraining him from adopting similar proceedings against the petitioners accused persons in future. However, it is not possible for us to grant this prayer in these criminal applications. It is open to the

petitioners to institute appropriate proceedings in this behalf under the provisions of the Maharashtra Vexatious Litigation (Prevention) Act, 1971. We hope that if the complainant again files any such criminal complaints against the accused persons the competent Court will minutely scrutinise the allegations made therein and thereafter will deal with it in accordance with law. Hence the Criminal Applications Nos. 70 of 1980, 173 of 1980 and 174 of 1980 are allowed. Rule is made absolute in these criminal applications.

12. In the view which we have taken the Criminal Application No. 162 of 1980 filed by the complainant and which was kept for admission stands rejected.