

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 358 OF 2021

Jeetendra Navlani,
Age : 45 years, Occ: Business,
R/o. 72, Satyavan, Colaba Causeway,
Colaba, Mumbai – 400 005. } ...Applicant

Versus

The State of Maharashtra
(Through Gamdevi Police Station
C.R. No. 223/2019) } ...Respondent

Mr. Abad Ponda, Senior Advocate, with Mr. Ravi Mishra
i/by MZM Legal for the Applicant.

Mrs. A.S. Pai, PP for Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

RESERVED ON : MARCH 31, 2022.
PRONOUNCED ON : APRIL 12, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, matter is taken up for hearing and disposal, at admission stage.

2. The present Application was filed initially, seeking prayer for quashment of the first information report bearing C.R. no. 233/2019 dated 23rd November, 2019 registered Gamdevi Police Station for the offence

punishable under Sections 332, 224, 225, 186, 189, 160, 504, 506, read with 34 of IPC and subsequently, by way of an amendment, the Applicant principally prayed as follows:

a. That this Hon'ble Court may please to quash the FIR No. 223 of 2019, registered at the Gamdevi Police Station and the charge-sheet bearing no. 216/PW/2021 filed in furtherance of the said FIR for the offences punishable u/s. 332, 224, 225, 186, 189, 160, 504, 506, r/w 34 and Sections 66(1) and 85 of the Bombay Prohibition Act, 1949 qua the Applicant.

3. Mr. Ponda, learned Senior Counsel appearing for Applicant vehemently submitted that the lodgment of the FIR and the proceedings arising out of the first information report against the Applicant, is an act of abuse of process of law and the facts of the present case squarely fall under 7th category as described by the Hon'ble the Apex Court in the matter of State of Haryana and Others Vs. Bhajan Lal and Others¹ and the action of the Respondent Authorities, is clearly unsustainable.

4. Our attention firstly invited to the copy of first information report and the complainant's

1 1992 Supp (1) SCC 335

statement dated 23rd November, 2019, the same is placed on record at page 19. Mr. Ponda submitted that the Applicant is having a good academic background on his credit and as an entrepreneur, he is carrying out multiple business activities including certain hotels and restaurants. Mr. Ponda further submitted that in the late hours of 23.11.2019, the Applicant was in his restaurant namely, Bombay Cartel and Dirty Buns Sobo along with his family members. The said day being the birthday of the Applicant, the Applicant was celebrating the same with his family members and some of his friends. Mr. Ponda further submitted that restaurant of Applicant is having a liquor license and though some of the guests were served with liquor, the Applicant had not consumed liquor.

5. Mr. Ponda further submitted that the complaint can be separated in two parts. In first part of the complaint, it is alleged that the Applicant kept open his restaurant beyond permissible time limit and in second part it is alleged that the Applicant resisted the action of the police officials who were discharging their duty and assisted one of an unknown accused to

flee away from the restaurant. Mr. Ponda further submitted that though it is alleged in first part that the Applicant kept open his restaurant beyond permissible time limit, there was no such provisions relating to breach of any rules is invoked against the Applicant at the time of lodgment of the report and only offences under IPC are alleged against the Applicant.

6. It would be useful for our purposes to refer the relevant parts of the complaint. It is stated in the first part of statement of Shri Santosh Pawar who was discharging his duties at the relevant time as Police Naik on 23.11.2019 that he was discharging his duty as Peter Operator and was attached to patrolling squad. PI Dange was leading the squad. The squad was patrolling at about 00.15 hours and at 01.20 hours they approached the area namely, Bhulabhai Desai Road and entered in the building to verify whether the establishments namely, Bombay Cartel and Dirty Buns Sobo is closed or not. One Sachin Narsale, Manager of the said establishment met with PI Dange and informed that the establishment is closed and all the customers

have already left. At that point of time, the Applicant came there and by introducing himself to PI Dange, he made request to permit him to run establishment beyond permitted hours. When PI Dange refused to permit him, the Applicant made an attempt to impress upon him by stating names of certain Senior Police Officers and made an attempt to pressurize PI Dange. When PI Dange refused to pay any heed to the request of the Applicant, the Applicant uttered the following words "आज रात तुम तुमारा पावर दिखालो, कल सुबह देखो तुमारा क्या हाल होता है!" and then Applicant directed his employees to remove the guests from the restaurant.

The second part is about the nature of incident, i.e., when the police officials were verifying the spot as to whether all guests / customers have left the premises, they heard sound from the lift. When they approached near the lift, they found that three persons were abusing and fighting with each other. They also found that there were three ladies in the lift. When Mr. Pawar, the complainant and other police constables made attempt to pacify those three persons. Out of those three persons, one person rushed on Mr. Pawar and gave fist blows to him and also

snatched the shoulder strip of the uniform. Out of those three ladies, who were in the lift, they rushed over Mr. Pawar. The Applicant then pulled one of the persons who were indulged in fighting and asked that person to go from another lift. Two other persons who were fighting were nabbed by Mr. Bhatwad and Mr. Patil. While PI Dange directed that person to stop, to whom Applicant told to go, the Applicant blocked the way of Mr. Dange and uttered the words "Muze haath mat lagao" and assisted that person to flee away. Then there is a description of the person who was successful in fleeing away from the spot and it reads that : height of that person approximately 5"7", a strong built person, fair complexion , 25-30 years of age, wearing dark colour trousers and black colour t-shirt.

7. Then there is description of the lady who rushed on the police personnel. The other three persons were brought to the police. They have disclosed their identity as one Yash Rajiv Mehta, Rohan Bakul Parekh and Yohan Palan Daruwala. Mr. Ponda further submitted that the complaint itself discloses that after the incident three persons were brought to police station,

but Applicant was not brought and he was permitted to go. After two day of the incident on 25.11.2019, the Applicant received a notice calling upon him to remain present at Gamdevi Police Station on 26.11.2019 at 11.00 am.

The Applicant in response to the communication attended the said police station on 26.11.2019 and it was informed to him that the police station officer was not available and he directed to attend the police station on 27.11.2019. Then Applicant immediately submitted a communication to investigating officer Shri. Nanasaheb Jadhav, and in response to communication he attended the police station and it was informed to him that the concerned police officer is not available and he was called upon to attend the police officials on next day i.e., 27.11.2019. The Applicant informed the concerned police officer that due to his pre-occupation on that day i.e., 27.11.2019, he be permitted to attend the police officials after 04th December, 2019. Copy of the said communication is placed on record at page 34. It is specifically stated in the communication that the Applicant is having a pre-scheduled travel program from 27.11.2019 until

03.12.2019. He had also annexed the copies of his travel tickets and requested the investigating officer to grant him time after 04.12.2019. It is also stated in the communication that Applicant is ready and willing to co-operate the investigation and assist the investigation by all means and in accordance with law. The endorsement of receipt of this letter also finds place on the copy.

8. Mr. Ponda further submitted that after his return as per the scheduled travel plan on 04.12.2019, the Applicant came to know that he has been arrayed as an accused in the FIR and certain news items are published in the news paper. The staff members of the Applicant were directed to close down the establishments. Being aggrieved by the action of police officials the applicant immediately approach the Deputy Commissioner of Police, Zone 2, Mumbai. Copy of the said communication dated 05.12.2019 is also placed on record at Exhibit 'G'.

9. Perusal of the communication shows that the Applicant gave certain details about the incident dated 23.11.2019, the communication received by him and his

response dated 26.11.2019 and 27.11.2019. It is also stated in the communication that CCTV's are installed in the premises and he is ready to hand over the entire CCTV footage to the investigating agency. It is also submitted in the communication that though the Applicant in clear words expressed that he is ready to extend all cooperation to the investigating agency, it is alleged against the Applicant that he is not cooperating the investigating agency and thus, by said letter the applicant requested Sr. Police Officer to look into the matter.

10. Mr. Ponda further submitted that by taking recourse to RTI the Applicant sought for information as to whether any inquiry was conducted in pursuant to communication of Applicant and whether any action was initiated in response to his application/communication dated 06.08.2020. Then Applicant was informed that an inquiry was conducted and action was initiated against erring officers concerned. Copy of the said is also placed on record at Exhibit ' F'.

11. Mr. Ponda further submitted that the material in the form of an inquiry conducted in pursuant to the

letter to Applicant, is only an additional material in support of his submissions. Mr. Ponda further submitted that even the basic material namely, the statements collected during the course of investigation by investigating officer, would clearly indicate that the independent witnesses namely, the customer or guest present at the time of incident and whose statements were recorded, clearly show that the Applicant asked the customer to leave or vacate the restaurant. Mr. Ponda further submitted that in none of these statements any reference is made to the abuse or overt-act by the Applicant. Mr. Ponda further submitted that the statement of one of the eye witnesses clearly show that no such incident as alleged against the Applicant that there was one person wearing dark trouser and black t-shirt and the Applicant assisted him to flee away. The eye witnesses gave an entire different version of the incident and the allegations leveled against the Applicant are reflected only in the statement of police officials. Thus, the submission of Mr. Ponda is, when there are two set of versions are available on record, the set of independent witnesses would clearly washout the theory of police officials.

Therefore, it would be unsafe to rely on those statement to ask the applicant to face criminal proceedings, is the submission of Mr. Ponda.

12. Mr. Ponda, by inviting our attention to the statements also submitted that though initially the fourth unknown accused who is referred to by physical description and the apparels worn by him, and the material in the form of charge-sheet, indicate that he is one Satya Jahangir and in the statement of witnesses it clearly reflects that said Satya and one of other customer had quarrel and the Applicant played no role so as to take up Satya independently and assisting him to flee away. Mr. Ponda also placed heavy reliance on the statement of independent witnesses. In support of his submissions, Mr. Ponda relied on following judgments: Vineet Kumar and Others Vs. State of Uttar Pradesh and Another², Ahmad Ali Quraishi and Another Vs. State of Uttar Pradesh and Another³, Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Others⁴, Himachal Pradesh Cricket Association V. State of

2 (2017) 13 SCC 369

3 (2020) 13 SCC 435

4 (2019) 18 SCC 191

Himachal Pradesh⁵, Kartik Chandra Majee Alias Kartik Chand Majee and Others Vs. State of Jharkhand and Another⁶, Rashmi Chopra Vs. State of Uttar Pradesh and Another⁷, Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and Others⁸ & Priyanka Yadav Vs. The State of Uttar Pradesh & Others⁹. Thus, Mr. Ponda, learned Counsel appearing for Applicant prayed for allowing the Application.

13. *Per contra*, Mrs. Pai, learned PP appearing for Respondent – State submitted that the statement of witnesses clearly indicate that the Applicant assisted accused to flee away from the spot. Mrs. Pai further submitted that the Applicant cannot place reliance on the inquiry report as this is not the material either in the form of FIR or material forming part of charge-sheet. Learned PP, in support of his submissions, placed heavy reliance on following judgments: Kaptan Singh Vs. State of Uttar Pradesh and Others¹⁰ & Amol s/o. Marotirao Talwadkar Vs. The State of Maharashtra &

5 2018 SCC OnLine SC 2419

6 (2018) 13 SCC 747

7 (2019) 15 SCC 357

8 2021 SCC OnLine SC 315

9 Criminal Appeal No. 292 of 2022 arising out of SLP(Cri) No. 3579 of 2020

10 (2021) 9 SCC 35

Anr¹¹. Mrs. Pai, learned PP appearing for Respondent – State prayed that Application may be rejected.

14. Considering the rival submissions, as well as considering the material to which reference is made in our earlier part of order, we are of the opinion, that the Counsel for Applicant made out a case for allowing the Petition.

15. We shall now examine the statement of witnesses who are supporting the theory of prosecution. On bare perusal of these statements it transpired that the depositions are stereo type and more or less similar to complainant's statement. We can categorise these witnesses in two sets i.e., one is police officials and those who are supporting the theory of prosecution and other set of witnesses are independent witnesses. In first set of witnesses stated that the Applicant resisted the action of the police officials who are discharging their duty and assisted one of an unknown accused to flee away from the restaurant.

The second set of witnesses clearly denied the theory of prosecution and have given different story.

11 2021 ALL MR (Cri) 1629

In the statement of these witnesses neither any overt-act of the Applicant is ascribed nor any act as alleged of assisting one of the accused to flee away from the spot is spelt out. The statement of Hitesh Govind Sarai clearly shows that Applicant asked Satish Jahangir alias Staya to vacate the premises and not assisted him to flee away from the spot. It is further stated by this witness that on 22.11.2019 at 11.00 pm he along with his friends Satish Jahangir alias Satya, Sara and Rupal had gone at Dirty Buns Pub in Kamla Mill. Satya was not consuming liquor. Sara, Rupal and this witness had drink. He has further stated that as they were not enjoying the party, they decided to go to Dirty Buns Sobo restaurant located at B.D. Road. At that time, Satya and this witness requested their common friend – Mariyam to come and join them for party at Dirty Buns Sobo at B.D. road. Thereafter, Satya, Sara, Rupal and this witness at around 12.00 to 12.30 reached Dirty Buns Sobo Pub, B.D. Road, Mariyam also joined them for the party and they started dancing after having drink. At about 01.30 hours, after the pub was closed, they were going out by lift. This witness Hitesh has further stated that at that time, one Sachi Maker along with

her three friends entered the lift. As One of Sachi's friend had lot of drink, he was unable to keep his balance, he felt on the body of Satya. Satya told him to stay away. This witness – Hitesh told Satya to ignore them. Thereafter, the friend of Sachi again felt on Satya and Satya pushed him back. At that time, that other fellow abused Satya. Satya again pushed him back. At that time, the other friend of Sachi started assaulting Satya. This witness has further stated that he did not intervene in the fight going on between Satya and Sachi's two friends. Satya's friend arrived on the spot and he gave punch to one of the persons assaulting Satya. At that time, police came in the lift and intervened in the fight. At that time, the owner of restaurant by name Jeetendra Navlani told this witness to "leave this place", and therefore, this witness and Satya came down by staircase. Thereafter, Sara, Rupal and this witness left the spot in the car of Satya. Satya dropped this witness at St. Ridges Hotel, Lower Parel and went ahead to drop Sara and Rupal at Bandra.

16. If we peruse the above statement of Hitesh it cannot be said that the Applicant has anyway assisted

the Satish Jahangir alias Satya to flee away from the restaurant. In fact, the Applicant requested Hitesh to leave the restaurant in order to pacify the persons fighting there. The statement clearly indicates that the Applicant was no way interested or concerned to help Satya to run away from the restaurant.

17. Mr. Ponda was also justified in submitting that inquiry initiated on the application of the Applicant was only an additional material and as additional material in the inquiry an reference is made to CCTV footage giving clean chit to Applicant and it was an independent electronic material apart from oral statement of witnesses.

18. There is also merit in the submission of Mr. Ponda that after the incident the police officials had not brought the Applicant to the police station nor effected arrest and a notice was issued after two days of incident to the Applicant calling upon him to give his statement, as such Applicant bonafidely believed that he is treated as a witness in the incident.

19. At the cost of repetition, we may state that

the Applicant in his response to the notice in clear and unambiguous words submitted that he is ready to extend all cooperation to the investigating agency. It is also important to note that initially Applicant was not arrayed as an accused and only after few days of the incident i.e., at the time of filing of the charge-sheet the Applicant is arrayed as an accused.

20. Considering the above referred facts, and proposition of law, it can safely be said that the initiation and continuity of proceedings against the Applicant would be an abuse of process of law.

21. In view of the above observations, only conclusion which can be drawn is that the present case is fit case for exercising the powers of this Court under Section 482 of Code of Criminal Procedure so as to secure the ends of justice. Accordingly, the Criminal Application is allowed in terms of amended prayer clause 'a'. Rule made absolute in above terms.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)