

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.5057 OF 2015

Bhausahab s/o Dadaji Thorat,
Age 39 years, Occu. Service
(Tahsildar), R/o Jafrabad,
District Jalna, Permanent
resident of 'Sadbhavana',
Omanagar, Malegaon road,
at Post and Taluka Deola,
District Nasik

..Applicant

Versus

1. The State of Maharashtra
2. Superintendent of Police,
Jalna, through Jafrabad
Police Station

..Respondents

Mr R.P. Mote, Advocate for applicant
Mr R.B. Bagul, A.P.P. for respondents
Mr R.H. Wagh, Advocate for complainant, assisting A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 27th October 2015

PER COURT

Heard.

2. It is the case of the prosecution that the applicant herein, a public servant posted as Tahsildar at Jafrabad has made caste based insulting attributions against the complainant at public place.
3. It is not in dispute that the complainant belongs to backward caste and his case is covered under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Prevention of Atrocities Act' for brevity).

4. Pursuant to the complaint, which was preferred by the complainant wherein he has stated that he had been to the office of Tahsildar on 20th July 2015 in the matter of enquiry pertaining to the fair price shop licence/Kerosene retailer's licence No.1/86, the applicant herein knowing well that the complainant belongs to backward class, has made caste based insulting attributions against him.

5. According to complainant, he has filed complaint on 20th July 2015 to the concerned police station and thereafter on 22nd July 2015 to the Collector and Superintendent of Police, Jalna. As the cognizance of his complaints was not taken, he preferred complaint case before the learned Judicial Magistrate, First Class, Jafrabad on 24th July 2015 praying therein registration of offence under Section 3 (1) (x) of the Prevention of Atrocities Act and under Sections 323, 504, 506 of Indian Penal Code. Learned Magistrate obliged the complainant by directing the investigation in the matter, as such Crime No.3009/2015 came to be registered against the applicant.

6. Learned Counsel for the applicant, while making out the case for grant of pre-arrest bail would urge that perusal of the first information report prima facie does not make out case punishable under the provisions of Prevention of Atrocities Act. He would then urge that the applicant being a public servant, there are hardly any chances that he shall run away from the process of law. According to him, the complainant herein initially filed complaint on 22nd July 2015, wherein

the names of the witnesses are not mentioned. In addition to above, he would urge that alleged incident in question has occurred in the chamber of the applicant, at which time, when nobody was present, it is really difficult to digest that the applicant has committed the crime in question, as same won't satisfy the requirement of the Act. He would urge that the utterances cannot be termed to be in public view.

7. Mr Mote, learned Counsel for the applicant has invited attention of this Court to the report submitted by the applicant to the District Supply Officer in the matter of complaint, which according to him was against the interest of complainant, as such he was falsely implicated in the crime in question. In addition, learned Counsel for the applicant would urge that the complainant is habitual in lodging the complaints against public officers to get his work done from such officers by blackmailing.

8. In support of his contentions, learned Counsel for the applicant relied upon the judgment of this Court in the matter of **Santa Shyam Dake Vs. Sr.Police Inspector & Anr.**, reported in **Mh.L.J. (Cri.) 2008 (1) 494** and **Sau. Suryakanta Ramesh Ajmera Vs.State of Maharashtra**, reported in **2011 ALL MR (CRI) 1970** so as to draw support to the above referred issues.

9. While opposing the bail application, learned A.P.P. would urge that the investigation papers and the scanning of first information report would reflect that the applicant has made caste based insulting attributions against the complainant. According to him, once

Magistrate has referred the matter to the investigating agency in exercise of powers under Section 156 (3) of Cr.P.C., the investigating agency is left with no other option to register the offence. Learned A.P.P. has invited attention of this Court to the statement of two witnesses viz. Gajanan Deshmukh and Davit Shankar Gophane, which were recorded on 11th September 2015. In addition to above, there is supplementary statement recorded which speaks of caste based insulting attributions against the complainant uttered by the applicant.

10. Mr Wagh, learned Counsel for the complainant, while relying upon the judgment of the Apex Court in the matter of **Vilas Pandurang Pawar & Anr., Vs. State of Maharashtra**, reported in **(2012) 8 SCC 795**, particularly paragraphs No.8 and 9 of the said judgment has urged that the bar under Section 18 of the Prevention of Atrocities Act will operate in the present case and in view of prima facie reflex shown in the first information report as regards commission of crime under the special Act, the applicant is not entitled for pre-arrest bail. According to him, the complainant who is a social worker acts in the aid of public in general and as such, the attributions against him of blackmailing are far away from the truth. According to him, the bail application is liable to be rejected.

11. Prima facie, it is required to be noted that on 22nd July 2015, the complaint which is at Page 50-A of the paper-book speaks of utterances of caste of complainant by the applicant herein. Apart

from above, it is also required to be noted that the applicant herein pursuant to the issue raised in the complaint preferred by the complainant, has forwarded a report against claim put forth by the complainant on 21st January 2015 to the District Supply Officer.

12. In addition to above, it is required to be noted that there are copies of various complaints placed on record, initiated by the complainant against the Officers of the State Government alleging therein that the Officers either are not performing their duty properly or indulged in corruption. There also appears to be an incident at page 58 of the paper-book, wherein the complainant has withdrawn the complaint made against the Officer on 14.11.2014, on the ground that he had moved the said complaint against one of the Officers of the State Government out of misunderstanding.

13. Prima facie, from the record it appears that the complainant herein appears to be in habit of making complaints against the Government Officers.

14. It appears from the record that the incident occurred in chamber of the applicant, as is admittedly stated by the complainant in his complaint at record page 50-A dated 22nd July 2015. It is required to be noted that in the said complaint, he has not narrated as to presence of two witnesses named herein above. The said complaint does not speak of presence of any other person than the applicant - Tahsildar and the complainant. In addition to above, it is

also required to be noted that the applicant herein has already brought on record the details in relation to one of the witnesses viz. Gajanan against whom the offence under the provisions of Section 384 of Indian Penal Code was registered pursuant to a successful trap made against him. Apart from above, it appears that the other witness Davit, who claims to have present at the time of the incident, speaks of the utterances by the applicant when he was present outside the chamber of Tahsildar. In my opinion, the attributions as are uttered by applicant and according to witnesses were heard by them, prima facie appears to be complete improbable story. Apart from above, the conduct of the complainant for lodging time and again complaints against the Government Officers is also required to be weighed in favour of the applicant.

15. The fact about non mentioning of the presence of witnesses in his complaint at record page 50-A is also required to be considered in favour of the applicant. The enquiry on the complaint preferred by the complainant in relation to a licence under the Essential Commodities Act was pending, cannot be lost sight of.

16. As such, taking cumulative effect of above referred background, in my opinion, the story narrated by complainant appears to be improbable. Hence, it will be appropriate to protect the applicant in the present case, particularly in the background of the fact that the applicant is a public servant. Hence, I proceed to pass the following order:

(I) In the event of his arrest, the applicant - Bhausahab Dadaji Thorat be released on bail in Crime No.3009/2015, registered at Jafrabad Police Station, District Jalna, for the offences punishable under Section 3 (1) (x) of the Prevention of Atrocities Act and under Sections 323, 504, 506 of Indian Penal Code, upon furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount;

(II) The applicant shall attend the concerned Police Station initially for two days i.e. on 30th and 31st October 2015 between 10.00 a.m. and 11.00 a.m. and thereafter as and when called by the Investigating Officer.

17. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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