

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

CRIMINAL APPLICATION NO. 5682 OF 2015

Baliram s/o Iranna Yerpulwar **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

.....

Mr. R.N.Dhorde, Senior Counsel,

i/b Mr. V.R.Dhorde, Advocate for Applicant.

Mrs. M.A.Deshpande, A.P.P. for Respondent-State.

.....

CORAM : INDIRA K. JAIN, J.

DATE : 17th NOVEMBER, 2015

ORAL ORDER :-

1. Here is an application for pre-arrest bail in Crime No. 85/2015 registered at Hadgaon police station, district Nanded for the offences punishable u/ss 385,504,506 r/w 34 of the Indian Penal Code and u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Prosecution case in brief is as under.

Gunwant Punjaram Kale is serving as Assistant Teacher in Zilla Parishad Primary school, Umari (South), district Nanded. In 2010 and 2011 work of construction of two rooms of the resident school of

Rambapunagar, Taluka Hadgaon was entrusted to the complainant under the scheme Sarva Shiksha Abhiyan. Govt. of Maharashtra disbursed ₹ 7,44,563/- [Rupees Seven Lacs Forty Four Thousand Five Hundred Sixty Three] to carry out the said work. It is the contention of complainant that he had completed the work of construction of two rooms and accordingly submitted written report to the applicant/accused.

3. Applicant is serving as Block Education Officer. On 07/09/2015, Education Officer issued a notice to the complainant through the applicant to deposit amount of ₹ 7,44,563/- within 24 hours as the work entrusted to the complainant was not completed. It was stated in the notice that on failure to deposit the amount, action would be taken against the complainant and he would be given in the custody of police.

4. On receiving notice, complainant had been to the office of applicant on the same day. He informed the applicant that he had completed the construction work and still the notice was issued to him. It is alleged that on being questioned by the complainant, applicant got annoyed and abused the complainant in the name of his caste. The incident occurred in presence of witnesses Madhav Sambhaji Wankhede and Digambar Bapurao Kadam. According to complainant, accused and other officers were frequently insulting him and making demand of money. They threatened the complainant that the crime would be registered against him. On

29/09/2015, report came to be lodged by the complainant, on the basis of which the above crime was registered.

5. According to applicant, in June, 2013 Block Education Officer was transferred and additional charge of Block Education Officer was given to him. Junior Engineer had visited the site and found that construction of the rooms which was entrusted to the complainant was not complete. As work of construction remained incomplete, villagers submitted a representation and Education Officer directed the Block Education Officer to make inquiry and submit the report. On 23/08/2012 and 25/04/2013, the then Block Education Officer issued notices to complainant for incomplete work. On 22/11/2013, applicant issued notice to complainant and submitted report to the Education Officer on 17/12/2013.

6. Thereafter on 03/07/2015, Education Officer (Primary) issued show cause notice to complainant which was replied by him and he reiterated that work of construction was completed. Junior Engineer visited the spot on 31/08/2015 and reported that construction was incomplete. Ultimately on 02/09/2015 final show cause notice was issued by the Education Officer through the applicant to complainant.

7. It is the contention of applicant that being enraged by the show cause notice, First Information

Report came to be lodged against him. It is submitted that he was performing his duty as per the directions of his superior and to take revenge, he has been falsely implicated.

8. Heard Mr. R.N.Dhorde, learned Senior Counsel for the applicant and Mrs. M.A.Deshpande, learned A.P.P. for the respondent – State. Perused case papers.

9. In the course of arguments, learned Senior counsel for the applicant vehemently contended that the alleged incident had not taken place within the public view and provisions of section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would not be attracted.

10. In support of the submissions, learned Senior counsel for applicant strenuously placed reliance on the following decisions - (i) **Pradnya Pradeep Kenkare and another Vs. State of Maharashtra, 2005 (3) Mh.L.J. - 368**; (ii) **Dr. Sau. Suryakanta Ramesh Ajmera Vs. State of Maharashtra & Ors., 2011 ALL MR (Cri.) 1970** and (iii) **Ramchandra Govindrao Watkar and another Vs. State of Maharashtra, 1995 (2) Mh.L.J. 669.**

11. Learned counsel in his extensive arguments referred to the various notices issued to the complainant and the statement of applicant recorded by Police Inspector, Hadgaon police station on 19/09/2015 in

which applicant has explained in detail that his action was strictly in accordance with the direction issued to him by the Education Officer.

12. Per contra, learned A.P.P. submitted that at this stage only complaint will have to be looked into and the other material, as referred by the learned Senior counsel for applicant, need not be considered as the scope of appreciation of evidence is limited in an application for anticipatory bail. In support thereof, learned A.P.P. placed strong reliance on Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra & Ors., 2012 AIR (SC) 3316.

13. On going through the authorities referred by the learned counsel for parties this Court does not find force in the submission of learned A.P.P. that except complaint no other material can be looked into while considering an application for anticipatory bail. What is required in such a case is to see from the F.I.R. and the material available in the case diary and find out whether an offence is constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or not.

14. In the present case on hand on 19/09/2015 Police Inspector of Hadgaon police station recorded statement of applicant. In the said statement applicant disclosed chronological events in detail. It is not in dispute that before registration of crime applicant had served show cause notice on the complainant as per the

direction of Education Officer. Another significant factor in the instant case is that incident occurred in the office of applicant. To constitute an offence u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it is necessary that the offence should occur within the public view. There is no material to show that the place of occurrence was visible to the public at large. In the absence of such material offence u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can not be said to be attracted in the matter.

15. In this premise submission of the applicant that he is not involved in the commission of alleged crime can not be said to be without substance. Considering the F.I.R. and material collected during investigation this Court finds it a fit case to exercise judicial discretion.

16. Hence, the following order.

- (i) Criminal Application No. 5682 of 2015 is allowed in terms of prayer clause 'B'.
- (ii) Interim protection granted on 19/09/2015 stands confirmed.

[INDIRA K. JAIN]
JUDGE

