

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

CRIMINAL APPLICATION NO. 6081 OF 2015

Sumanbai W/o Himmat Sonawane
and others

.. Applicants

Versus

The State of Maharashtra and another .. Respondents

Shri B. R. Waramaa, Advocate for Applicants.

Shri D. R. Kale, A.P.P. for the Respondent No. 1.

Shri Girish Rane, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 27TH NOVEMBER, 2015.

PER COURT :

. The present application is filed for quashing of complaint filed by respondent No. 2 for offences punishable U/Sec. 143, 147, 341, 304, 323, 504, 506 of I. P. Code and Sec. 3(1)(x) and (xi) of the S. C. and S.T. (Prevention of Atrocities) Act. The matter was moved in vacation on 10th November, 2015. This Court granted protection to applicants, however, imposed a condition that applicants shall make themselves available for investigation and shall co-operate with investigating agency. The investigation is proceeding and is not yet completed. The learned A. P. P. submits that, statements of eye witnesses are recorded, who have stated

the occurrence of the incident as alleged.

2. Mr. Waramaa the learned counsel submits that, the complaint filed by the present respondent No. 2 against present applicants is counter blast to the complaint filed a day earlier against the respondent No. 2 and other persons. The said complaint was filed by the applicant No. 6 herein.

3. The learned counsel further submits that, the complaint alleges the acts on the part of the applicant on 01st November, 2015, at about 8.30 and on 2nd November, 2015, at 7.00. According to the learned counsel some of the applicants were admitted in the hospital for treatment for post starvation and weakness, as they were on hunger strike. They were admitted on 01.11.2015 at 7.00 p.m. and were discharged on same day at 9.00 p.m.. The discharge certificate is issued by the Medical Officer and same is annexed at Exh. E. When some of the applicants were admitted in the hospital i. e. Sumanbai, Pramila the applicant Nos. 1 and 2, they could not have been present at 8.30 p.m. As such, the alleged incident complained of dated 01.11.2015 at 8.30 p.m. is per-se false. The learned counsel further submits that, on 2nd November, 2015, at about 7.00 p.m., the applicants 4, 7 and 8 were in the police station. When these applicant Nos. 4, 7 and 8 were in police station, they cannot be present at the place of the alleged incident. The C. C. T. V.

footage would testify the said fact. The allegations of outraging modesty are made against applicant Nos. 7 and 15. The applicant No. 7 was in the police station and was giving information to A. P. I. Salunke. There is no question of applicant No. 7 being present at the place of the incident. These averements are not refuted by the respondent No. 2. If, when these allegations have not been refuted, they have to be considered. The learned counsel submits that, when the complaint on the face of it appears to be false, the same is required to be quashed at this initial stage itself. The learned counsel relies on the judgment of the Apex Court in the case of **Rajiv Thapar and others Vs. Madan Lal Kapoor** reported in ***AIR 2013 SC (Suppl.) 1056*** and in the case of **Rishipal Singh Vs. State of U. P. and others** reported in ***2014 AIR (SC) 2567***. According to the learned counsel, the copy of discharge certificate is a public document issued by the public officer. The same is required to be considered. The learned counsel relies on the judgment of the Apex Court in the case of **Anita Malhotra Vs. Apparel Export Promotion Council and another** reported in ***2012 AIR(SC) 31***. The learned counsel submits that, the object of exercise of power U/Sec. 482 of the Code of Criminal Procedure is to prevent the abuse of the process of law. When the complaint filed by the respondent No. 2 is a counter blast to the first complaint and when on the face of it, the same appears to be

improbable and false, the same deserves to be quashed. The learned counsel relies on the judgment of the Apex Court in the case of **D. P. Gulati, Manager Accounts M/s Jetking Infotrain Ltd. Vs. State of Uttar Pradesh and another** reported in **2015 AIOL 228**. The learned counsel submits that, the master mind of complaint is one Ramesh Kashinath Patil. It is at the behest of said Ramesh Kashinath Patil, the respondent No. 2 has filed the present complaint, as against the said person the hunger strike was taken up for running fair shop in illegal manner.

4. The learned Assistant Public Prosecutor submits that, the investigation is in progress. The statement are recorded. The witnesses named in the F. I. R., have given their statements. They support the complaint filed.

5. Mr. Rane, the learned counsel for respondent No. 2 submits that, the respondent No. 2 has no relation with said Ramesh Kashinath Patil, nor in the petition any such linkage is shown.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The application is for quashing of complaint. The powers U/Sec. 482 of the Code of Criminal Procedure are to be exercised

sparingly and in exceptional cases. The arguments are advanced by applicants that, the master mind of the complaint was one Ramesh Kashinath Patil and respondent No. 2 is acting at the behest of the said person. However, there is nothing on record to show any relation between the respondent No. 2 and said Ramesh Kashinath Patil. The complaint, if read as it is makes out the commission of offence against applicant Nos. 7 and 15. The allegations are about outraging the modesty. The applicant No. 7 is taking the plea of alibi i. e. he was not present at the time of incident and he was present at the police station for other purpose. The investigation is in progress. The investigation is not yet concluded. Whether really the applicant No. 7 was present at the relevant time or not, would be required to be investigated, which is being investigated.

8. It is submitted that, applicant Nos. 1 to 6 are from the Scheduled Caste category and as such the provision of the S.C. and S.T. (Prevention of Atrocities) Act would not be attracted against them. The caste certificate are not filed on record to testify said fact.

9. The discharge certificate, which is produced is dated 06th November, 2015. There are two instances which are complained of i. e. first on 1st November, 2015, at 8.30 p.m. which is only alleged against three persons. Whereas the second incident is of

2nd November, 2015, which is alleged against all the applicants. The investigation is in progress. The learned A. P. P. has submitted that, the witnesses named in the complaint have given their statements and they have supported the allegations made in the complaint.

10. The reference to the notice of no confidence motion has no relevance. The respondent No. 2 at the relevant time was never a member of the Gram Panchayat. There is also nothing on record even to remotely suggest that respondent No. 2 has any relation with Ramesh Kashinath Patil.

11. Considering all the aforesaid aspects of the matter, the complaint if read as it is shows the offence been made out coupled with that the investigation is in progress. In case, after the investigation is complete and if charge sheet is filed, naturally, if the sufficient evidence is not on record, the applicants have remedy to move for discharge, which they can resort to. At this stage reading the complaint as it is, it cannot be said that, no offence is made out. In the light of that, the application is rejected. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]