

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.312 of 2014

Atul Nilkanth Deshpande & ors .. Applicants

Versus

The State of Maharashtra & Anr .. Respondents

WITH**CRIMINAL REVISION APPLICATION NO.323 of 2014**

Prasad Chintluri Prasad Venkat Satya .. Applicant

Versus

The State of Maharashtra & Anr .. Respondents

Ms.Kiran V. Tiwari with Ms.Jyoti V. Tiwari, Advocates i/b
V.B.Tiwari & Co. for the applicants.

Mr.Rizwan Merchant, Advocate for respondent no.2.

Mrs.M.R.Tidke, APP for the Respondent State.

Ms.Chitra Salunkhe, Respondent No.2 present in person.

CORAM : ABHAY M. THIPSAY, J.**DATED : 2nd JULY, 2015**

ORAL ORDER :-

1 These two Revision Applications can be conveniently disposed of by this common order as the applicants in both these Revision Applications are the accused in one and the same case i.e. Special Case No.16 of 2013 pending before the Special Court at Bombay. The applicants had applied for discharge, as contemplated under section 227 of the Code of Criminal

Procedure, but the learned Judge of the Special Court, by an order dated 28th July 2014 rejected the discharge application filed by the applicants.

2 Being aggrieved thereby, the applicants have approached this Court by filing the above two Revision Applications.

3 The case against the applicants arose on a report lodged by the respondent no.2 herein with the Chembur Police Station which was treated as the First Information Report. After completion of investigation, the police have filed a charge-sheet alleging commission of the offences punishable under sections 294 of the IPC, 506 II of the IPC, 509 of the IPC read with section 34 of the IPC, as also the offence punishable under section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989. (hereinafter referred to as 'Atrocities Act') by the applicants.

4 I have heard Ms.Kiran Tiwari, learned counsel for the applicants. I have heard Mr.Rizwan Merchant, learned counsel for respondent no.2 and Mrs.M.R. Tidke, learned APP for the State.

5 Though a number of contentions are advanced, the basic contention advanced by the applicants is only one i.e. that the allegations made by the First Informant, are false. It is submitted that the First Informant is in the habit of making such false allegations, and that in some previous cases wherein she had filed cases in respect of offences punishable under the Atrocities Act, the accused persons therein were acquitted by holding that the First Informant had failed to prove that she is a member of any Scheduled Caste or Scheduled Tribe. It is also submitted that a finding that the respondent no.2 herein does not belong to any Scheduled Caste or Scheduled Tribe, has already been recorded by this Court in a Writ Petition which is pending.

6 Curiously, it was not contended that taking the material in the police report and accompanying documents at face value, there is no sufficient ground for proceeding against the applicants, or any of them. Even then, I have gone through the First Information Report and the statements recorded during investigation, as are found in the copy of the charge-sheet that is annexed to the Revision Applications. I have also gone through the impugned order.

7 The learned Judge, in his order, noted the contentions advanced before him and also discussed the material in the charge-sheet. He came to the conclusion that there was a case for proceeding against the applicants. He noted the contentions raised by the applicants before him and observed that, at that stage, he was required only to see whether there existed a *prima facie* case. He also observed that the question whether the charges would be ultimately proved or not, could not be determined at that stage, and it could be determined only after evidence would be recorded in the case. He then discussed the material in the charge-sheet, and came to the conclusion that there were sufficient grounds for proceeding against accused persons – i.e. the applicants.

8 This view of the matter, as taken by the learned Special Judge, was proper and in accordance with law.

9 What is submitted before this Court is that the First Informant i.e. the respondent no.2 actually is not a member of any Scheduled Caste or any Scheduled Tribe. This contention is based on the so-called 'conclusion' arrived at by a Division Bench

of this Court in Writ Petition No.2789 of 2010 as reflected in the order dated 11th February 2011. I have gone through the said order. It appears that the petitioner therein, against whom an FIR *inter alia*, in respect of an offence punishable under section 3(1) (x) of the Atrocities Act had been registered, apparently at the instance of the respondent no.2 herein, had approached this Court for quashing the FIR. It also appears from the said order that the petitioner therein contended that the petitioner was previously prosecuted at the instance of the same First Informant (i.e. the present respondent no.2) on the allegation of having committed an offence under the Atrocities Act vide Special Case No.2/03, but by the judgment and order dated 16th September 2005, delivered in the said special case, the learned Special Judge concluded that the First Informant Chitra Salunkhe i.e. the present respondent no.2 did not belong to the 'reserved category'. It also appears from the order that the petitioner also pointed out to this Court that in another case instituted against him – being Special Case No.9/07 – also, the petitioner had been discharged by the Court by once again holding that the First Informant i.e. the respondent no.2 herein did not belong to 'either of the reserved category'. It appears that in reply thereto, it was submitted before this Court that an Appeal had been filed against the decision rendered in

Special Case No.9 of 2007, and that the same was pending. It was however, accepted that the decision in Special Case No.2/03 dated 16th September 2005 had not been challenged. It is on the basis that 'the finding recorded by the Special Judge in Special Case No.2 of 2003 had been allowed to attain finality' that interim relief came to be granted to the petitioner in the said Writ Petition by the said order dated 11th February 2011. Admittedly, the petition is still pending. Mr.Merchant, the learned counsel for the respondent no.2 submitted that interim relief came to be granted to the petitioner in the said petition by the aforesaid order dated 11th February 2011 on the basis 'that the order passed by the Special Judge in Special Case No.2 of 2003, was not appealed from, and was allowed to attain finality'. Mr.Merchant submits that the observation that the order was not appealed from, was based on a statement made by the Public Prosecutor before the Court which was wrong; and that actually, such an Appeal had been filed – being Criminal Appeal No.897 of 2006 decided on 26th September 2007. From a copy of the order passed in the Appeal which is annexed to the counter affidavit filed by the respondent no.2, Mr.Merchant wanted to show to this Court that though the accused in Special Case No.2 of 2003 were acquitted, it was not on the ground that the respondent no.2 had failed to

establish that she belonged to a Scheduled Caste or Scheduled Tribe.

10 In my opinion, all this discussion is wholly misplaced.

The question of relevancy of judgments given in other matters is governed by sections 40 to section 44 of the Indian Evidence Act. Sections 40 to 43 of the Evidence Act lay down as to when a previous judgment would be relevant to the extent indicated therein. The judgment in Special Case No.2 of 2003 (which is not a part of the charge-sheet in the Special Case No.16 of 2013) is sought to be brought in aid to 'prove' that respondent no.2 does not belong to a Scheduled Caste or Scheduled Tribe, is not only not conclusive, but apparently cannot even be treated as relevant in the proceedings of Special Case no.16 of 2013.

11 Apart from this, the real question is whether the applicants can bring the matters and materials which do not find a place in the charge-sheet on record, and require the Court to take those matters and materials into consideration for deciding whether or not there is sufficient ground for proceeding against the applicants. The answer has to be categorically in negative. In fact, in the case of **State of Orissa Vs. Devendra Nath Padhi**¹, a

¹ (2003)2 SCC 711

Three Judge Bench of the Supreme Court of India specifically considered the question as to 'whether a trial court can at the time of framing of charge, consider the material filed by the accused'. Their Lordships after examining the case law in that regard, came to the conclusion that it was not permissible for the Court at that stage to look into the material, as may be produced by, or on behalf of the accused. Their Lordships categorically observed that the view to the contrary, taken in some other cases including that of **Satish Mehra Vs. Delhi Administration & Anr** ¹, was contrary to law.

12 The contentions raised on behalf of the applicants are essentially factual. What they want the Court to believe is that the facts alleged by the respondent no.2 and the facts reflected in the statements of witnesses that have been recorded in the course of investigation, which support the version of the respondent no.2, are not true. This conclusion they want to be arrived at by looking at the documents which the applicants intend to show, and by looking into certain orders passed by different Court in some other proceedings. This is simply impermissible.

13 The respondent no.2 has come out with a specific case. In the course of investigation, material supporting her

¹ (1996) 9 SCC 766

allegations, is said to have been found. Whether the version of the First Informant and the accusation levelled against the applicants, is true or not, cannot be decided without holding a trial. These are essentially the disputed facts for the decision of which trial procedure has been prescribed.

14 All this is undoubtedly quite elementary, but inspite of pointing out the well settled position that while considering the prayer for discharge, the Court could not have looked into the material that was being produced on behalf of the accused i.e. the applicants; and that in any case, the Court could not have disbelieved the version in the FIR and the statements recorded during investigation, same line of arguments i.e. '*that the case against the applicants is false*', was continued for some time. When however, it was made clear to the learned counsel for the applicants that no further arguments in that regard would be heard and that the real question was whether the material in the charge-sheet, even if taken at face value did not make out a case for proceeding against the applicants which was not at all touched, it was submitted that in the charge-sheet there was no material to show that the respondent no.2 belongs to a Scheduled Caste or Scheduled Tribe. It was submitted that the charge-sheet did not

contain any caste certificate. In view of this contention, the Record and Proceedings from the trial court were called for. On examining the record, I find that a copy of the caste certificate is contained in the charge-sheet.

15 When this was revealed, and the copy of the caste certificate was shown to the learned counsel for the applicants, she submitted that 'the caste certificate is not genuine'. Now, it would be too much to expect the Court to come to such a finding in these revision proceedings. If the caste certificate is not genuine, it would be so revealed only during the trial. The applicant shall be free to establish before the trial court that the caste certificate is not genuine.

16 It was next contended that the caste certificate has not been verified by Caste Scrutiny Committee. This is also absolutely irrelevant. The verification by the Caste Scrutiny Committee is required in cases where the person concerned wants to avail of the benefits provided for the special category. Non-verification of the caste certificate by the Caste Scrutiny Committee would not mean that the person would be prevented from claiming that he belongs to a Scheduled Caste or Scheduled

Tribe, and that an offence against him or her punishable under the provisions of the Atrocities Act, has been committed. In any case, the validity or legality of the caste certificate can be gone into only during the trial.

17 It was then contended that the police action in this case is malafide. It is submitted that no caste certificate was submitted along with the First Information Report, but still the police investigated into the matter, and got the applicants apprehended in the midnight. If the police have acted malafide, or have violated the fundamental or human rights of the applicants, the applicants would be at liberty to take necessary steps against them by instituting appropriate proceedings. This, however, cannot be a ground to discharge the applicants.

18 At the cost of repetition, it may be observed that a reading of the charge-sheet makes out a *prima facie* case for proceeding against the applicants. The factual disputes raised by the applicants can be determined only on the basis of evidence adduced during the trial.

19 The learned counsel for the applicants has brought to my notice a decision rendered by the Supreme Court of India in **Rukmini Narvekar Vs. Vijay Satardekar & Ors** {Criminal Appeal No.1576/08 and 1577/2008 arising out of Special Leave Petition (Criminal) Nos.7387-88 of 2008}, dated 3rd October 2008, a copy of which is annexed to the additional affidavit-in-rejoinder filed by the applicants. I find that the Hon'ble Judges constituting the Bench of the Supreme Court of India had given two separate judgments. My attention was drawn to paragraph no.17 of the judgment delivered by His Lordship The Hon'ble Mr.Justice Katju. It is contended that a different view from that expressed in **Devendra Nath Padhi's** case (supra) has been taken in this judgment. I am unable to agree with this. In the first place, the judgment in **Devendra Nath Padhi's** case has been rendered by a Three Judge bench, whereas the judgment in **Rukmini Narvekar Vs. Vijay Satardekar & Ors** (supra) has been delivered by a two Judge Bench. Moreover, what has been observed in paragraph no.17 is that 'paragraph no.29 of the judgment in **Devendra Nath Padhi's** case observes that the width of powers of the High Court to section 482 and Article 226 of the Constitution was unlimited, and where-under in the interest of justice, the

High Court can make such orders, as may be necessary to prevent abuse of the process of the Court, or otherwise to secure the ends of justice within the parameters laid down in **Bhajan Lal's** case'. It is not possible to hold that these observations – or any other observations in this judgment, for that matter – can be construed as having been brought about a change in the legal principle laid down in **Devendra Nath Padhi's** case which is to the effect that, *'at the stage of framing of charge, the Court cannot consider the material which is not contained in the charge-sheet, and which is being produced by the accused persons; and that it would not be permissible for the accused persons to produce such material before the Court at that stage, in an attempt to persuade the Court that the prosecution case is false'*.

20 In these revision proceedings, what needs to be examined is the legality, propriety and correctness of the order passed by the learned Judge in rejecting the application for discharge. A perusal of the impugned order shows that the learned Judge was absolutely right in rejecting the application for discharge. There is no error, illegality or impropriety in the impugned order. As such, there is no merit in the Revision Applications.

21 Revision Applications are dismissed.

22 Interim stay stands vacated.

(ABHAY M.THIPSAY, J)