

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

CRIMINAL APPLICATION NO. 106 OF 2007

1. Arunsingh s/o Dilipsingh Parihar
age 52 yrs, Occ. Service,
R/o at present P.I. At Bhadgaon Police Station,
Tq. Bhadgaon, Dist. Jalgaon.
2. Shaikh Hyder S/o Shaikh Habib,
age 56 yrs, Occ. Service (P.S.I.),
Police Station, Naigaon, Tq. Naigaon,
District Nanded. ..Applicants..

VERSUS

1. The State of Maharashtra.
2. Dadarao s/o Gangaram Suryawanshi,
age 35 yrs, Occ. Labour,
R/o At Post Narsi, Tq. Biloli,
Dist. Nanded.Respondents..

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Advocate for Applicant : Mr V D Salunke
APP for Respondents: Mr S W Munde
Advocate for Respondent 2 : Mr S V Kurundkar

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CORAM : V.K. JADHAV, J.

Dated: December 19, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order dated 26.10.2005
passed below Exh.224 in Special Case No.27/2000
passed by the Adhoc Additional Sessions Judge, Biloli,
the original accused no.22 and 23 approached this

Court by filing present criminal application.

2. Brief facts, giving rise to the present criminal application are as follows :-

Both the applicants are public servants serving in police department. The applicant no.1 was posted at Bhadgaon Police Station from 4.1.1993 to 23.4.1993. Both the applicants were posted at Naigaon Bazar Police Station, Tq. Biloli District Nanded.

On 19.4.1993 respondent No.2 Dadarao had filed a complaint in the Court of Sessions at Nanded against the present applicants and several others for having committed an offence punishable under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act"). Initially, 3rd Additional Sessions Judge/Special Judge-Nanded was pleased to issue process against the applicants, who are impleaded as accused nos. 22 and 23 alongwith other accused persons. However, at the stage of framing of the charge, it was observed by the Special Judge, Nanded that the said complaint had been directly filed in the Court of

Sessions. Consequently, the learned Additional Sessions Judge has remitted back the said case to the Court of J.M.F.C., Naigaon Bazar by order dated 7.6.1995. Thereafter, by order dated 6.10.1995 the learned J.M.F.C., Naigaon, after securing appearance of the applicants/accused in the case which was remitted to his Court, committed the case to the Sessions Court, Nanded. Initially, the applicant no.1 had filed an application for discharge, however, said application came to be rejected. Both the applicants thereafter, filed an application Exh.224 in the aforesaid Special Case No.27/2000 and the learned Adhoc Additional Sessions Judge, Biloli, by its impugned judgment and order dated 26.10.2005, rejected the said application. Hence, this criminal application.

3. The learned counsel for the applicants submits that, the applicants had registered the crime on the basis of the F.I.R lodged by one Khakiba in respect of the same incident, however, said Khakiba had not made any allegations in his complaint inviting thereby the provisions of Atrocities Act. The learned counsel

submits that, on the basis of the complaint lodged by the rival group, another crime also came to be registered in respect of the said incident. During the course of investigation, statement of the present respondent no.2-complainant came to be recorded which was verified by the superior officers, wherein he had not stated anything about the caste abuses given to his brother Sanjay on the day earlier to the day of incident. Both the applicants are public servants and there is nexus between the act complained of and the official duties performed by them.

Learned counsel has further pointed out that on the basis of the complaint lodged by said Khakiba crime no.44/1993 came to be registered against other accused persons and accordingly those accused persons were tried by the Court in RCC No.40/1993. In that case, the present applicants are not arrayed as an accused. The learned counsel has produced the copy of the judgment delivered in the said RCC No.40/1993 and pointed out that, the witnesses in the said case, including present respondent no.2 complainant, had not supported the prosecution case. Thus, the learned J.M.F.C., Naigaon

(Bazar) by its judgment and order dated 21.4.1994 in the said RCC No.40/1993 acquitted all the accused. Learned counsel has further pointed out that even in the present Special Case No.27/2000, the learned Additional Sessions Judge, Biloli, District Nanded by its judgment and order dated 24.12.2011 acquitted all the accused except the present applicants, who are original accused nos. 22 and 23 for the reason that this court had stayed further proceedings in the said case as against the present applicants. Learned counsel submits that, the applicants being public servants, sanction as required under section 197 of the Cr.P.C. is necessary and further in the backdrop of the aforesaid facts, no purpose would be served by continuing the prosecution against the present applicants at this stage.

4. Learned counsel for respondent no.2-original complainant submits that, in respect of the incident dated 7.3.1993, respondent no.2 has made a specific allegations that other accused persons have prevented one person belonging to Mang community to touch the fire of Holi by abusing the people of Mang community in

filthy language. Learned counsel submits that the applicants, even though respondent-complainant had orally reported the said incident to them, failed to register the crime under the provisions of Atrocities Act and further insisted respondent-complainant to bear expenditure to prosecute the said accused persons. Even the applicants misused their powers as police officers and registered the crime against the people of Mang community. Learned counsel submits that, the documents submitted at later stage before this Court cannot be considered for deciding the application for discharge. Learned counsel submits that, both the applicants have committed an offence for which no sanction under section 197 of the Cr.P.C. is required. The learned Adhoc Additional Sessions Judge, Biloli has rightly rejected the application Exh.224. No interference is required. There is no substance in the criminal application.

5. I have also heard the learned APP for the respondent State.

6. It appears from the impugned order that prior to filing of application Exh.224, applicant no.1 has filed an application for discharge and same came to be rejected by the court. The learned Adhoc Additional Sessions Judge has entertained application Exh.224.

7. On careful perusal of the complaint, it appears that the complaint was filed in respect of the incident that has occurred on 8.3.1993 at about 9.00 a.m. In the complaint, a reference has been given to the incident that has occurred on 7.3.1993, wherein the other accused persons named in the complaint abused the people of Mang community on caste basis when one of them tried to touch the fire of holi festival. It is a matter of record that, so far as incident dated 8.3.1993 is concerned, the applicants have registered the crime No.44/1993 on the basis of the complaint filed by one Khakiba. So far as the complaint filed by one Khakiba is concerned, it has only alleged in the said complaint that other accused persons formed an unlawful assembly with a common object to cause hurt to the complainant and witnesses and in prosecution of common

unlawful object, the other accused persons committed the offence of riot with a deadly weapons like axes, sticks, stones, chain etc., It is also a matter of record that the present applicants during the course of investigation of crime No.44/1993, recorded statement of present respondent No.2-Dadarao. Even at subsequent stage, when the statement of respondent Dadarao came to be recorded by the S.D.P.O., he has accepted that in his statement recorded by the present applicant no.1 on 8.3.1993, he had not made allegations against the other accused persons inviting thereby the penal provisions of Atrocities Act. It further appears that belatedly, respondent-complainant Dadarao approached to the Sessions Court, Nanded and filed a complaint by making allegations against other accused persons in respect of the incident dated 7.3.1993. For the first time, in this complaint the allegations have been made against other accused persons for having committed an offence punishable under the provisions of the Atrocities Act.

8. The learned counsel for the applicant has produced on record certified copies of the judgment and order of acquittal delivered in RCC No.40/1993 and judgment and order of acquittal delivered in RCC No.39/1993 and further the judgment and order of acquittal passed by the Additional Sessions judge, Biloli District Nanded dated 24.12.2011 in the case which is subject matter of the present criminal application Special (Atrocity) case No.27/2000.

9. In the case of ***Rukmini Narvekar v. Vijaya Satardekar and others, reported in AIR 2009 SC 1013***, in para 9 and 29 of the judgment, the Supreme Court has made the following observations:-

“9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in [Section 227](#) Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under [Section 482](#) Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording [Sections 227](#) and [228](#) the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.

“29. *In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by*

the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted."

10. In the light of aforesaid ratio laid down by the Supreme Court in paragraph no. 9 and 29, there cannot be an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charge, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted and then the court is justified in looking into the material produced by the defence at the time of framing of charge.

11. On perusal of the judgment and order of acquittal passed by the Additional Sessions Judge, Biloli dated 24.12.2011 in Special Case No.27/2000, it appears that the Additional Sessions Judge has given reference to Judgment and order of acquittal passed by the learned

Magistrate in RCC No.40/1993. It is not out of place to mention here that, RCC No.40/1993 was registered on the basis of complaint lodged by said Khakiba in respect of the incident dated 8.3.1993. In RCC No.40/1993 the Court has recorded the statement of said Khakiba and present respondent-complainant Dadarao. In paragraph no.17 of the judgment of atrocity case no.27/2000, the learned Additional Sessions Judge, Biloli has specifically observed that the complainant and his witnesses did not state about the abuses on the caste given by the accused persons to them in a case bearing RCC No.40/1993. On perusal of the judgment and order of acquittal passed by the J.M.F.C., Naigaon Bazar in RCC No.40/1993, it appears that present respondent-complainant Dadarao deposed before the Court that on 8.3.1993, somebody beat them. On perusal of the said judgment, it appears that there is no whisper about the said incident dated 7.3.1993 and abuses given to the complainant and his witnesses on caste basis.

12. It thus appears that in respect of the incident dated 8.3.1993 on the basis of complaint lodged by

Khakiba, present applicants have registered crime no.44/1993 and during the course of investigation also recorded statement of the present respondent-complainant Dadarao. In a complaint which is subject matter of crime No.44/1993, said Khakiba had not made any allegations about the caste abuses given to the people of Mang community on 7.3.1993. It is also a part of record that on the basis of the complaint lodged by rival group applicants have registered crime No.45/1993 against the present complainant and other persons. It is also a part of record that present respondent-complainant has admitted in his subsequent statement recorded by the S.D.P.O. that in his earlier statement, recorded by the present applicant no.1, he had not stated about the incident, allegedly occurred on 7.3.1993.

13. In view of the above discussion, a necessary reference can be given to the observations made by the Supreme Court in the case of ***D.T. Virupakshappa Vs. C. Subash, reported in (2015) 12 SCC 231***. The Supreme Court in para 8 and para 5 of the said judgment, has

referred the case of ***Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another*** and quoted paragraphs 32 and 41, respectively, of the said judgment, which read as under:-

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood. (Emphasis supplied)”

41. *The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any*

documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea.”

14. In the instant case, there is a close nexus between the act complained of and the official duties performed by the applicants for which sanction under section 197 of the Cr.P.C. is required. It further appears that, no purpose would be served in continuing of the prosecution as against the present applicants since other accused persons came to be acquitted by the Additional Sessions Judge, Biloli in Special Atrocity Case No.27/2000. Furthermore, in respect of the same incident, on the basis of the complaint lodged by said Khakiba and also statement of the present respondent no.2, the accused named therein were tried by the learned Magistrate vide RCC No.40/1993 and all accused came to be acquitted in the said case. The learned Additional Sessions Judge has not considered these aspects.

15. In view of this, I proceed to pass following order.

O R D E R

- I. Criminal application is hereby allowed.
- II. The order passed by the Adhoc Additional Sessions Judge, Biloli, dated 26.10.2005 below Exh.224 in Special Case No. 27 of 2000 is hereby quashed and set aside.
- III. The application Exh.224 in Special Case No. 27 of 2000 is hereby allowed. The applicants original accused Nos. 22 and 23, respectively, are hereby discharged in Special Case No. 27 of 2000.
- IV. Rule is made absolute in the above terms.
- V. Criminal application is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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