

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

CRIMINAL WRIT PETITION NO.1571 OF 2015

Baliram S/o. Iranna Yerpulwar .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Mr.R.N.Dhorde, Advocate for the petitioner
Mr. S.D.Ghayal, APP for the respondent/State
Mr.S.N. Gaikwad, Advocate for the respondent No.3

**CORAM : A.V.NIRGUDE &
INDIRA K.JAIN, JJ.
DATED : 22.02.2016**

P.C. :-

1. On perusal of the complaint and statements of the various witnesses recorded in this case, we are of the view that this complaint and the case initiated thereafter deserves to be set aside. The complainant Gunwant Kale belongs to Scheduled Caste community. He was working as Assistant Teacher in Zilla Parishad Primary School, Umri, Tq. Hadgaon, Dist. Nanded. As an employee of the school sometime of in 2010-2011 the complainant Gunwant Kale was given a sum of Rs.7,44,000/- (Rupees Seven Lacs Forty four Thousand) for construction of additional rooms for the school.

2. On 07.09.2015 the Education Officer, Zilla Parishad Primary, Nanded issued a notice to the complainant Gunwant Kale that he should refund the amount given to him for construction, else a police case would be filed against him. This notice was handed to the accused who was working as Block Education Officer for service. Gunwant Kale has admitted in this complaint that he received this notice and thereafter he went to the office of the accused and questioned the truthfulness of the notice. He also stated to the accused that the notice was wrongly served on him and he was subjected to harassment. Upon this it is the case of the complainant that the accused abused him on the basis of his scheduled caste. He even demanded Rs.50,000/-.

3. This incident according to the complainant occurred inside the cabin of the accused. According to the complainant this incident was witnessed by two persons who were present in the office at that time. It is because of this complaint a crime was registered and investigation was started.

4. The question before us is whether the complaint as well as the case initiated pursuant to it, deserves to be quashed in the light of the judgment of *Supreme Court of India in case of Bhajanlal (AIR 1991 SC 604)*.

5. We are inclined to accept the arguments of the accused that the complaint was spiteful and vindictive. The accused had no grievance against the complainant. He only served notice which was issued by his Superior Officer. He had no concern with the contents of the notice. On the other hand the complainant had strong reason for getting annoyed because of the notice. Even if we assume that the notice was unnecessary and that the complainant had utilized the amount for construction for rooms etc., this was a dispute between Zilla Parishad, Education Department and the complainant. The complainant had no reason to go and meet the accused in his cabin on that day. The complainant could have sent a reply to the notice and dealt with the situation as per law.

6. Instead of taking such constructive steps the complainant had audacity to visit the accused in his cabin for protesting against the contents of the notice. In this situation the accused could not have helped the complainant in any way. The situation was rather desperate for the complainant. Getting berserk with such situation he could file this complaint. The complaint thus is spiteful and vindictive. Besides the incident does not attract the provisions of Section 3 (i)(x) of the the Scheduled Caste and Scheduled Tribe (Prevention

of Atrocities) Act since the incident did not take place within the public view.

7. Learned A.P.P., however, tried to suggest that since there were two witnesses and since these two witnesses support the prosecution case, the incident could be said to have been happened in public view. We did not accept the submission for two reasons. Two witnesses could be partisan witnesses. They had no reason to be present in the cabin of the accused. In absence of these two witnesses whatever happened between the complainant and the accused was a private conversation or altercation at the most. This happened within four walls of the cabin of the complainant and therefore the ingredients of Section 3(i)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act are not attracted to this case. This was a view taken by this Court when the applicant/accused was granted bail.

8. It seems to us that this complaint purposely showed presence of two witnesses favorable to him in the complaint itself. This clearly is an manipulative and engineered complaint.

9. We are therefore inclined to set aside the complaint as well the case started pursuant to it. The application is allowed in terms of prayer Clause **(B)** .

[INDIRA K.JAIN,J.]

[A.V.NIRGUDE,J.]