

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 29 OF 2016.

Smt. Husana Banu, W/o Shri Shaikh
A. Rashid, Major Of Age, R/o A1
Rakha, Near Nandu Hotel, Voilem
Bhat, Mercedes P.O., Santa Cruz, Goa. Petitioner.

Versus

1. State of Goa, Through Deputy
Superintendent of Police, North
Goa, Panaji-Goa.
2. Police Inspector, Old Goa Police
Station, Old Goa, Tiswadi-Goa.
3. Mr. Ravishekhar Nipanikar, Major
in age, R/o. H. No.923/1, Voilem
Bhat, Mercedes – Goa. Respondents.

Shri Sahish Mahambrey, Advocate for the petitioner.

Shri Mahesh Amonkar, Additional Public Prosecutor for the
respondent nos.1 and 2.

Shri Devidas J. Pangam, Shri Parikshit Sawant and Ms. Aditi Naik
Advocates for the respondent no.3.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

**Reserved on:- 30th June, 2016.
Pronounced on:-3rd August, 2016.**

JUDGMENT (Per Nutan D. Sardessai, J)

Heard Shri Sahish Mahambrey, learned Advocate for the petitioner, Shri Mahesh Amonkar, learned Additional Public Prosecutor for the respondent nos.1 and 2 and Shri Devidas J. Pangam, learned Advocate for the respondent no.3.

2. Rule.

3. Heard forthwith with the consent of the learned Counsels appearing for the respective parties.

4. Shri M. Amonkar, the learned Addl. Public Prosecutor waives notice on behalf of the respondent nos.1 and 2 and Shri D. J. Pangam, learned Advocate waives notice on behalf of the respondent no.3.

5. Shri Mahambrey, learned Advocate came to be heard on behalf of the petitioner who submitted that there was no material on record against her and therefore it was a fit case to quash the proceedings against the petitioner. He invited our attention to the complaint and the other supplementary

statements to buttress his case. Shri D. J. Pangam, learned Advocate came to be heard on behalf of the respondent no.3 who too adverted to the complaint and submitted that there was adequate material to fasten the liability on the petitioner for the offence alleged against her. Besides, the chargesheet was filed in 2014 and moreover an alternate remedy of appeal was available to the petitioner. There was also a background for the case inasmuch as the petitioner alongwith the other family members were causing constant nuisance and harassment to the complainant and his family on their caste and had thereby attracted the offences under the special statute. Last but not the least it was his contention that in view of the presumption under Section 8(b) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989("the Act" for short hereinafter), the petitioner was not entitled to any relief as claimed and the petition had to be dismissed.

6. Shri Mahambrey, learned Advocate for the petitioner once again invited our attention to the FIR which was registered against the petitioner and the others on 18.6.2014 for the alleged commission of the offences punishable under Sections 3(1) (ii)(iii)(v) (viii) (x) (xv) of the Act. There were no specific

allegations in the complaint against the petitioner and the supplementary statement recorded later could not be taken into consideration which was not available at the time of registering the FIR on 18.6.2014. Last but not the least the petitioner was a permanent resident of Dubai and she was not available in India at the relevant time and therefore, the FIR had to be quashed. Shri M. Amonkar, learned Addl. Public Prosecutor on behalf of the respondent nos.1 and 2 submitted that the offences alleged against the petitioner were under the special statute and there were allegations borne out from the material on record against the petitioner and their family members and therefore it was not a case to grant the relief in favour of the petitioner.

7. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted to prevent the commission of the offences/atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. Special Courts have been designated under the Act for trying the offence thereunder and being the Court of Sessions designated as the Special Court

in terms of Section 14 of the Act. Section 3 deals with punishment for the offences of atrocities and 3(1) (ii) reads that where anyone acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premise or neighbourhood, Section (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water; (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

8. Section 8 of the Act deals with the presumption as to offences and reads thus in a prosecution for an offence under this Chapter, if it is proved that - (a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the

Special Court shall presume, unless the contrary is proved, that such person had abetted the offence; (b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object. Section 20 clearly provides that the Act shall override other laws and save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

9. A bare reading of the complaint indicates that the complainant had carved a case that the **family of Shaikh** were residing next to his residence which was constructed in 1975 and since then the family of Shaikh had a serious prejudice against their family as they belonged to the Scheduled Caste community. The family of the accused used to pass derogatory remarks against him and his family members and as such their relations were not cordial. He has also carved out a background to the

strained relationship with one of the accused Rashid Shaikh who had started purchasing the lands surrounding his residence and also behind his house and that he had approached his late father to purchase their land but his late father had not agreed to dispose of and since then the family of Rashid Shaikh started harassing the complainant's family so that they were compelled to leave their land and premises.

10. The complaint has also borne out that the accused had started dumping waste matter, wet garbage, other obnoxious substance in his neighbourhood and at his entrance and which continued further during the time of the major festivals like Diwali. The accused had also insulted his mother on his caste when he was requested to clean up the waste matter and was threatened to leave the house as they would not stop dumping waste matter. The sum and substance of the complaint boils down to the fact that the accused and his family which included the petitioner had intimidated the complainant and made it known that they had to leave the premises and land as otherwise they would continue with their harassment on account of their caste.

11. This complaint was lodged on 16.6.2014 which was received in the office of SDPO on 17.6.2014 followed by another complaint to the Superintendent and the Deputy Superintendent of Police alleging the acts of harassment, nuisance and intimidation caused to them by the **family of Shaikh** by making insinuations about their caste. The accompanying papers reveal that the relationship between the complainant and the family of the petitioner have been strained over several issues including the construction activities undertaken by the family of the petitioner apart from causing them nuisance and humiliation on their caste. Moreover unlike the submission of Shri S. Mahambrey, learned Advocate for the petitioner, there was no material to substantiate the contention on his behalf that she was not in any way in the vicinity to support her case that she was a resident of Dubai and had been falsely roped in the offence.

12. The allegation which has been made in the complaint includes all the family members of the petitioner including the petitioner and therefore at this stage and looking to the seriousness and gravity of the offence and the protection afforded to the complainant by virtue of the Statute it cannot be

heard on behalf of the petitioner that there is material to quash the FIR. Quite on the contrary the presumption as to the offences in terms of Section 8(b) of the Act would also work against the petitioner and on that premise too there is no justification to quash the FIR against the petitioner.

13. In the result, we pass the following:-

O R D E R

- i. The Petition is dismissed.
- ii. Rule stands discharged.

NUTAN D. SARDESSAI J.
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F. M. REIS, J.