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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 188 of 2016.

Mohan Dattaram Desai and OrsApplicants.

Vs

The State of Maharashtra & AnrRespondents.

Mr Chaitanya Pendse a/with Bakul Bhasak for the applicants.

Mr A.S. Khandeparkar i/by Khandeparkar & Asso. for the respondent no.2.

Smt. P.P. Bhosale, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 11th August, 2016

PC.

1) By this application under section 482 of Cr.PC., the applicants have questioned the correctness of the Order dated 23/11/2015 passed below Exh.31 by the learned Special Judge, at Oras, Sindhudurg in Special Case No.2 of 2015, rejecting the application preferred by them for discharge in the offence under sections 143, 147, 504, 506 (II) of the Indian Penal Code and under section 3(1)(x) of the Schedule Castes and Schedule

Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(d) of the Protection of Civil Rights Act, 1955.

2) The applicants are accused in C.R. No.96 of 2014 registered with Sawantwadi Police Station, District Sindhudurg dated 28/11/2014 for the offences under sections 143, 147, 452, 504, 506(II) of Indian Penal Code and under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 7 (1) (d) of the Protection of Civil Rights Act, 1955. The first informant Dnyaneshvar Ankush Talkatkar, resident of Talkat, Taluka Dodamarg, District Sindhudurg has lodged the report dated 28/11/2014, stating that he is working as peon in Shri Pancham Khemraj College, Sawantwadi. He resumed his duty at about 8:00 a.m. on 27/11/2014. That between 11:00 to 11:20 a.m. the applicants along with other persons came at the scene of offence and tried to enter in the premises of the College and when the said persons were proceeding in front of the complainant, he stopped them and asked them, what is the work and where the persons are going? At that time, the

applicants hurled abuses relating to the caste of the complainant and in filthy language threatened him. The complainant has stated that he belongs to the scheduled caste and the applicants herein have abused him on the basis of his caste at the public place and in public view. He has also stated that the said abuses were hurled at him in the presence of the staff of the said college. The police after completion of investigation the police have, filed charge-sheet. The application for discharge preferred by the applicants under section 227 of the Code of Criminal Procedure is rejected by the Trial Court by the impugned order dated 23/11/2015 as stated herein above.

3) The learned counsel for the applicants submitted that there is ongoing dispute between the applicants on one hand and the Chairman of the said Trust which runs the college on the other hand. He submitted that at the instance and behest of the Chairman of the said Trust which runs the said college, the complainant has lodged the present false complaint against the applicants. He submitted that the litigation between the said two groups is pending before the Charity

Commissioner. He also submitted that though the college is a public place and the alleged offence though has taken place at a public place, it did not take place in the public view as the complainant himself in the FIR has stated that the witnesses have subsequently arrived at the scene of offence. He submitted that the FIR is filed with mala fide intention and, therefore, the appellants needs to be discharged from the said case.

4) Per contra, the learned APP vehemently opposed the present application and submitted that the police have recorded statements of nine witnesses who are the eye-witnesses to the incident and, therefore, the present offence has taken place in the public view. She submitted that there is sufficient material on record to frame charge against the applicants and, therefore, the present application may be rejected.

5) At this stage, it will be useful to refer to the following decisions of the Supreme Court pertaining to section 227 of the Code of Criminal Procedure.

(i) A useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of Union of India v.

Prafulla Kumar Samal, reported in AIR 1979 SC 366. It is necessary to refer to paragraph 10 of the said judgment which reads as under :-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused,

he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth- piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.

(ii) The Supreme Court in the case of R.S.Nayak vs. A.R.Antulay and Anr. reported in AIR 1986 SC 2045, while dealing with the provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under :-

“The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police

report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is no sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction..." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider

the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

(iii) A further reliance can also usefully be placed on the decision of the Supreme Court in the case of State of Maharashtra Vs. Soma Nath Thapa reported in (1996) 4 SCC 659 wherein the Supreme Court has held that, if there is ground for presuming that the accused as committed the offence, it can be said that the prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme court has further clarified in the said case that at the stage of framing of charge probative value of the statement cannot be gone into.

(iv) The Supreme Court in the case of Palvinder Singh vs. Balwinder Singh and others reported in (2008) 14 SCC 504 while dealing with the provisions of Section 227 of Cr. P.C., in

para-13 has held that, the charges can also be framed on the basis of strong suspicion. That marshalling and appreciation of evidence is not in the domain of the Court at that point of time.

Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the prima facie case as made out by the complainant.

(6) In view of the aforestated settled legal position, reverting back to facts of the present case, the first informant Dnyaneshwar A. Talkatkar in his report dated 28/11/2014 has specifically and categorically narrated the incident occurred in the present crime and the abuses given by the applicants with respect to his caste and the other threats administered by them to him. The allegations made by the first informant are corroborated by the witnesses to the said incident, namely, Shri Shamsundar M. Desai, Smt. Shweta S. Parab, Smt. Aarti Pednekar, Shri Nandkumar Y. Khokle, Shri Meghaji D.Sawant, Shri Nitin B.Kadam, Shri Vilas U. Dudule, Shri Sadanand L.

Sawant and Shri Sitaram A. Gawade. Thus, from the evidence in the form of statements, available on record, it is clear that the alleged act of the applicants has taken place at a public place and within the public view.

7) After taking into consideration the entire material available on record, it is clear that a strong prima facie case to proceed further against the applicants is made out. It also reveals from the record that the statements of witnesses under section 164 of the Code of Criminal Procedure are also recorded. The trial Court after taking into consideration the evidence available on record has rightly rejected the application under section 227 of Cr.P.C. by the impugned order dated 23/11/2015. According to me, there is sufficient material to proceed against the applicants under section 228 of Cr.P.C. I find that there are no merits in the application and the application is accordingly dismissed.

(A.S. GADKARI, J.)