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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2150 OF 2015

Dhondiram s/o. Krishnarao Doifode ..Petitioner

Versus

State of Maharashtra and Ors. ..Respondents

Mr. I.S. Charlewar for the petitioner.

Mr. J.P. Yagnik, APP for the State.

CORAM : RANJIT MORE &
V. L. ACHLIYA, JJ.
DATE : 01 MARCH, 2016.

P. C. :

1. By order dated 29th January, 2016, we have issued notice to the respondent no. 3/original complainant. The office noting shows that the respondent no. 3 is served with the notice. However, none appears on his behalf. Last time also none appeared on behalf of respondent no. 3 and therefore, by way of indulgence, this petition was adjourned. Today also none appeared for respondent no. 3. Therefore, we are constrained to dispose of this petition after hearing the learned counsel for the petitioner and the learned APP for the State.

2. This writ petition is filed under Article 226 read with the provisions of section 482 of the Code of Criminal Procedure to quash

and set aside, the FIR bearing CR No. 31 of 2015 and consequential proceedings arising therefrom at the instance of respondent no. 3 for the offences punishable under sections 323, 504, 506 of Indian Penal Code, 3(1)(X) of the Scheduled Caste & Schedule Tribe (Prevention of Atrocities) Act (for short "Atrocities Act") and Section 7(1)(3) of the Protection of Civil Rights Act, 1955 (for short "Civil Rights Act").

3. The counsel for the petitioner submits that the incident in question occurred on 19.04.2015 at about 12.30 mid night. The respondent no. 3 has immediately after the incident approached Vaduj Police Station on 20/4/2015 and gave complaint which is recorded as N.C. Complaint. The counsel submits that respondent no. 3 thereafter again approached the said police station and gave report on 22.04.2015 in respect of same incident dated 19/4/2015. In this report, respondent no. 3 acting with mala fide alleged that the petitioner has committed offence under section 3(1)(X) of the Atrocities Act. The counsel further also submits that even if the said report dated 22.04.2015 is taken at its face value, in that case also no offence under the Atrocities Act is disclosed. He therefore, seeks to quash and set aside the said FIR along with the consequential proceedings.

4. Mr. Yagnik, the learned APP submits that the said FIR was investigated and thereafter charegsheet is filed in the court of Judicial Magistrate, First Class, Vaduj which is numbered as Regular Criminal

Case No. 264 of 2015. He produced for our perusal a copy of the chargesheet.

5. Having considered the rival contentions and gone through the copy of the chargesheet, we are of the opinion that the second report filed by respondent no. 3 is by way of after-thought. Even otherwise, we find that the chargesheet does not reveal the ingredients of the offence under section 3(1)(X) of the Atrocities Act. In the first report which the respondent no. 3 filed first in time in Vaduj Police station on 20.04.2014, he has alleged that the petitioner has objected as to why respondent no. 3 gone to the house of Vikram Doifode for fetching water and on that count, he assaulted him with fist and kick blows and abused and threatened to kill him. On the basis of this complaint, Vaduj police station recorded NC complaint, a copy of which is annexed at Exh. A at page 14 to the petition.

6. Respondent no. 3 thereafter on 22.04.2015 in respect of the very same incident lodged another complaint with improved version alleging that the petitioner has abused him in the name of his caste and therefore, alleged that the petitioner has committed offence under section 3(1)(X) of the Atrocities Act and also section 7(1)(3) of the Civil Rights Act. The second complaint by respondent no.3 that too after two days, with improved version clearly supports the contention of the

petitioner that the same was by way of afterthought and filed with mala fide to involve the petitioners in false case. On this count alone, the said FIR deserves to be quashed and set aside.

7. The offence under section 3(1)(X) of the Atrocities Act.

Section 3(1)(X) of the Atrocities Act reads as under :

“(3) PUNISHMENTS FOR OFFENCES OF ATROCITIES :

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

.....;

(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 ;”

Perusal of the same, makes it clear that insult or intimidation is required to be made with an intention to insult and humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. The FIR reveals that the incident occurred in the verandah of house of respondent no 3, that too in the night time at about 12.30 am. This incident alleged to have witnessed only by the complainant and his son. The chargesheet reveals that the statements of other witnesses have also been recorded but they have not witnessed the incident in question and whatever they have stated is on the basis of what was disclosed to them by respondent no. 3. In these circumstances, we find that even if the chargesheet is taken at its face value, it does not show that the incident in question was occurred in the

place within the public view. The ingredients of section 3(1)(X) of the Atrocities Act are not made out. Same is the position about the allegations of offence under section 7(1)(3) of the Protection of Civil Rights Act.

8. In the absence of any offence under section 3(1)(X) of the Atrocities Act and 7(1)(3) of the Civil Rights Act, Vaduj Police Station should not have chargesheeted the petitioner for the said offences. So far as offences under the Indian Penal Code alleged to be committed are non cognizable and therefore, police could not have registered the offences under section 323, 504 and 506 of Indian Penal Code. In the above circumstances, we quash the FIR and all consequential proceedings arising therefrom. Petition is allowed in terms of prayer clause (a).

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]