

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2061 OF 2012

Dr.Sunil Madhukarrao Kale.

...Petitioner.

vs.

State of Maharashtra and ors.

...Respondents.

Mr.V.V.Purwant for the Petitioner.

Mrs. Anamika Malhotra, APP. for the State.

**CORAM : A.S.GADKARI, J.**

**DATE : 26<sup>th</sup> April,2016.**

P.C.

By the present petition under Article 227 of the Constitution of the India the petitioner has challenged the Judgment and order dated 21.8.2010 passed by the learned District Judge-I, Palghar in Criminal Revision No.8 of 2010 rejecting the said revision and confirming the order passed below Exhibit- 15 dated 22.3.2010 by the learned Judicial Magistrate First Class, Dahanu in SCC No.113/2009 rejecting the application for discharge of the petitioner.

2) The respondent No.2 has lodged the first information report bearing CR No. I-77/2008 under Section 354, 506, 509 read with 34 of the Indian Penal Code and under Section 3(1)(xi) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and under Section 7(1)(d) of the Protection of Civil Rights Act. After completion of investigation the police have filed charge sheet in

the Court of competent jurisdiction. The record further discloses that the petitioner herein had preferred Criminal Application No.3098 of 2008 in this Court, seeking quashment of FIR relating to the afore stated CR No.I-77/2008. This Court by its order dated 1.12.2008 has quashed the provisions of Section 3(1)(xi) of the Schedule Casts and Scheduled Tribes (Prevention of Atrocities Act)1989 and Section 7(1)(d) of the Protection of Civil Rights Act, 1955 only, from the said crime and retained Sections 354, 506 and 509 of the Indian Penal Code. The petitioner was granted liberty to file appropriate proceeding in respect of the same before the appropriate forum.

The record further discloses that in pursuance of the said liberty granted to the petitioner, he preferred application below Exh.15 in SCC No.113 of 2009 before the learned Judicial Magistrate First Class for discharge, which came to be rejected by an order dated 22.3.2010. The Criminal Revision Application No.8 of 2010 preferred by the petitioner in the Court of Additional Sessions Judge at Palghar, District Thane, has been rejected by its Judgment and order dated 21.8.2010.

3) Heard the learned counsel for the petitioner at length and the learned APP. and also perused the entire record annexed to the petition.

The learned counsel appearing for the petitioner submitted that the petitioner has been falsely implicated in the present crime as respondent No.2 was having grudge against him. He submitted that the respondent No.2 was a Class IV employee, working on the

establishment of the Zilla Parishad, Thane, District-Thane. The respondent No.2 used to remain absent from duty for major period of the month and therefore, the petitioner had initiated action against her. Feeling aggrieved by the said action and as a counter blast, the present crime is registered against the petitioner. He further submitted that except the statement of the complainant there is no other material on record to implicate the petitioner in the crime. He further submitted that there are no witnesses to the crime and the statements of other witnesses do not indicate any evidence to implead the petitioner in the crime. The learned counsel appearing for the petitioner with a view to justify his stand pertaining to the order dated 10.9.2015 passed by this Court, before the Trial Court, made a submission that the learned Trial Judge is right in not proceeding with the matter and adjourning it from time to time, as there was no specific directions issued by this Court in that behalf. He lastly prayed that after taking into consideration the material available on record the petitioner may be discharged from the offence by allowing the present petition.

4) As per the record the respondent No.2-complainant has lodged the first information report dated 28.8.2008 with Dahanu Police Station. In her report she has narrated about the incidents which are caused by the petitioner against her. She has stated that the petitioner used to threaten her and call her at odd hours of the night. The reproduction of the exact version given by the complainant is not necessary at this stage in the present order. Suffice it to say

that the incidents narrated by the complainant in her first information report prima facie makes out an offence as contemplated under Section 354 of the Indian Penal Code. Even if the statements attracting the provisions of Section 3(1)(xi) of the S.C. & S.T. (Prevention of Atrocities) Act and under Section 7(1)(d) of Protection of Civil Rights Act are dropped from the first information report, in my considered opinion, a strong prima facie case as contemplated under Section 354 of the Indian Penal Code read with Section 506 and 509 of the I.P.C. is made out.

5) A useful reference at this stage can be made to the decision of the Supreme Court in the case of Union of India vs. Profulla Kumar Samal reported in AIR 1979 SC 366 and in particular 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.”

6) The Supreme Court in the case of State of Maharashtra Vs. Som Nath Thapa reported in (1996) 4 SCC 659 has further held that if there is ground for presuming that the accused/petitioner has committed the offence, it can be said that a 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 the offence, it can frame the charges. The Supreme Court has clarified that at the stage of framing of charge, probative value of the material on record cannot be gone into.

7) In this background, I find that the statement of the victim lady inspires full confidence in the mind of this Court and as stated earlier a strong prima facie case to frame charge is made out. As far as the contention of the learned counsel for the petitioner that except the statement of the complainant there is no material on record to

implead the petitioner in the crime and that there are no witnesses to the crime which would implead the petitioner in the crime is concerned, it is to be noted here that, it is not the prosecution case that the alleged instances constituting an offence under Section 354 of the Cr.P.C was witnessed by any or some other persons. In view of the same, I do not find any substance in the said contention.

8) In view of the above, I find that both the Courts below have not committed any error, either on facts or in law while rejecting the application of the petitioner for discharge. The petition being devoid of any merits, is accordingly dismissed.

9) This leads me to deal with, the another aspect involved in the present matter. The Criminal Revision No.8 of 2010 preferred by the petitioner was rejected by the Revisional Court by its Judgment and order dated 21.8.2010. The present petition is filed on 8.6.2012. The farad sheet maintained by the registry of this Court discloses that there was no interim relief granted in favour of the petitioner, inter alia means that there was no stay to the proceedings pending before the Trial Court. By an order dated 10.9.2015 this Court had made it absolutely clear that "Pendency of this Petition shall not be construed as a stay to the proceedings pending before the lower court. Office to communicate the order to the concerned court." The present petition thereafter came up for hearing on 7.4.2016 and as it was noticed that earlier order passed by this Court dated 10.9.2015 was either not communicated to or the Advocates did not brought the same to the notice of the Trial Court and therefore this Court

called for the report pertaining to the same of the concerned Judicial Officer through the Registrar General. This Court through the Registrar (Inspection-I) received the report dated 16.4.2016 submitted by the Civil Judge, J.D. and J.M.F.C. Dahanu pertaining to SSC No.113/2009. It is stated in the said report that he could not proceed in the matter as submission was made by the accused persons that present petition is pending before the High Court. That the Advocate for the accused also sought adjournment and did not co-operate. The concerned Judicial Officer has stated that on the basis of the said submission that as the matter was put up before the Hon'ble High Court it has to stay the hands to proceed further. It has been further stated that the accused herein are continuously absent and adjournments were sought from the said Court. It appears from record that the accused persons under the guise of pendency of the present petition before this Court are successful in protracting the trial. It is unfortunate to note that despite the specific and clear directions of this Court by its order dated 10.9.2015 the Trial Court was helpless in proceeding with the trial due to the obstinate attitude of the petitioner. It further appears from the report dated 16.4.2016 of the learned Judicial Magistrate First Class, Dahanu that the order dated 10.9.2015 passed by this Court was received by it on 19.10.2015. Though the said order passed by this Court was self eloquent, the learned Magistrate either did not follow the same or got swayed away by the submissions made by the accused persons thereby causing unnecessary delay in conducting

the trial. In the circumstances, the Registrar General is hereby directed to place this order before the Administrative Committee to take the issue at its logical end.

9) Since the trial is pending from the year 2008, the learned JMFC Dahanu is hereby directed to conclude the trial bearing SCC No.113/2009 in any case on or before 31.12.2016, without any excuse.

10) Petition is dismissed in the aforesaid terms.

(A.S. GADKARI, J.)