

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2529 OF 2008

Pradeep Vishnusa Kabade. .. Applicant
Vs
The State of Maharashtra and Another. .. Respondents
—
Shri M.S. Mohite along with Shri Ashish Sawant for the Applicant.
Ms. M.H. Mhatre, APP for the Respondent No.1.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 22ND JULY 2016

ORAL JUDGMENT : (A.S. OKA, J)

1. Heard learned counsel appearing for the Applicant. By this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the Applicant is seeking quashing of the First Information Report (FIR) vide C.R. No.3109 of 2008 registered with Bhosari Police Station, Pune. The offence registered against the Applicant is under clause (x) of Sub-section (1) of Section 3 of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short “the said Act of 1989”) and Clause (d) of Sub-section (1) of Section 7 of the Protection or Civil Rights Act, 1955 (for short “the said Act of 1955”).

2. The case made out in the Application is that at the relevant time, the Applicant was a General Secretary of Janta Shikshan Sanstha, Pune, a Public Trust which is running 31 schools all over Pune District which has more than 500 employees.

3. According to the case of the Applicant, the second Respondent (first informant) was working as an Assistant Teacher in one of the schools run by the said Janta Shikshan Sanstha. It is pointed out in the Application that on 3rd July 2007, the Head Master of the concerned school issued a memo to the second Respondent calling upon him to submit an explanation on account of a default committed by him. The said letter is at Exhibit-A. As the second Respondent has refused to accept the said letter/memo, another memo dated 5th July 2007 (Exhibit-B) was issued to him. On 7th July 2007, the second Respondent replied to the said letters. While giving reply, he made allegations against the Principal and Vice Principal. The allegations were also made against the Applicant. On 8th September 2007, a show cause notice was issued by the Principal of the said school to the second Respondent calling upon him to show cause as to why disciplinary action should not be initiated against him. The second Respondent complained to the Education Officer of Pune Zilla Parishad. The Principal replied with respect to the said complaint by his letter dated 3rd November 2007.

4. Further case made out in the Application is that the Co-ordination Committee passed a Resolution for transferring the second Respondent from Dapoli to Chakan. On 12th June 2008, the second Respondent called up the Applicant and abused him and threatened him. Therefore, on 12th June 2008, N.C. complaint was lodged by the Applicant against the second Respondent.

5. On 13th June 2008, on the basis of the complaint made by the second Respondent, the FIR was registered. The second Respondent stated in his statement dated 13th June 2008 that on 12th June 2008 at 2.00 p.m, he received a call from the present Applicant on his cell phone informing him about his transfer. It is stated that the Applicant abused and threatened him. The second Respondent further stated that at 4.00p.m, he went to the office of Janta Shikshan Sanstha at Dapoli along with Shri Mohan Akaram Kharade and Shri Sunil Shamrao Tulse. It is alleged that at that time, the present Applicant, Shri Popat Deokar, Shri C.K. Gogal and Shri Subhash Gargote were sitting in the office. The second Respondent requested the Applicant to cancel the order of transfer. It is alleged that at that time, the Applicant was very aggressive. He abused the second Respondent by referring to his caste derogatively and that the second Respondent was insulted. It is stated that the second Respondent belongs to scheduled caste.

6. The first submission of the learned counsel appearing for the Applicant is that the action of the second Respondent of lodging the FIR is completely mala fide. He invited our attention to the complaint dated 12th June 2008 (N.C. Complaint No.1312 of 2008 lodged by him with Chaturshrungi Police Station). He pointed out that in the said complaint, it is stated that the Applicant called up the second Respondent and informed him about his transfer from Dapoli to Chakan. The Applicant stated that thereafter, three calls were made by the second Respondent to the Applicant. The second Respondent abused the Applicant and gave threats to the Applicant. He submitted that considering the earlier notice issued by the Principal to the second Respondent, he had a grudge against the Applicant especially when the order of Co-ordination Committee of transferring the second Respondent was issued by the Applicant as the General Secretary of the Trust.

7. The learned counsel appearing for the Applicant relying upon the various decisions of this Court submitted that in order to attract Clause (x) of Sub-section (1) of Section 3 of the said Act of 1989, the incident of intentionally insulting or intimidating with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe must occur in any place within public view. He submitted that as held by the

Division Bench of this Court in the case of *Pradnya Pradeed Kenkare & Another v. State of Maharashtra*¹, unless both the ingredients are set out, the provisions of Clause (x) of Sub-section (1) of Section 3 of the said Act of 1989 cannot be attracted. He submitted that as the alleged incident occurred inside the office premises of the said Trust, it cannot be said that the incident occurred in public view. He also relied upon another decision of the Division Bench in the case of *V.P Shetty v. Sr. Inspector of Police & Anr*². He relied upon a decision of the learned Single Judge in the case of *Balu s/o Bajirao Galande v. State of Maharashtra & Another*³. He submitted that the incident in the present case has not taken place in the presence of at least one independent person. He submitted that two persons who had allegedly accompanied the second Respondent cannot be said to be independent witnesses. The learned counsel appearing for the Applicant also relied upon a decision of the Apex Court in the case of *Swaran Singh and Other v. State Through Standing Counsel and Another*⁴. He also relied upon a decision of the learned Single Judge of this Court in the case of *Ranjit s/o. Rajaram Hande v. State of Maharashtra & Others*⁵.

1 2005 ALL MR (Cri) 1948

2 2005 ALL MR (Cri) 2384

3 2006 ALL MR (Cri) 3197

4 (2008) 8 SCC 435

5 2010 ALL MR (Cri) 821

8. He would, therefore, submit that on a plain reading of the statement on the basis of which FIR was registered, no case on both the counts is made out.

9. The learned APP produced the file of investigation for the benefit of the Court. The learned APP supported the registration of FIR and submitted that no interference is called for. The learned APP also produced for perusal of the Court a file which contains statement of the witnesses. A copy of the NC complaint dated 12th June 2008 filed by the Applicant in Chaturshrungi Police Station is also a part of the said file.

10. From the averments made in this application and from the annexures to the application, the Applicant was not at all a decision making authority as far as the transfer of the second Respondent is concerned. The Co-ordination Committee was the Authority to transfer employees. The Applicant being the General Secretary was under an obligation to communicate the decision of the said Committee of transfer of the employees by the Co-ordination Committee. Moreover, as reflected from the letter dated 12th June 2008 addressed by the Applicant to the Senior Police Inspector of Chaturshrungi Police Station, the Applicant had recorded threats given to him by the second Respondent. Looking to the correspondence placed on record, there is a merit in the submission of the learned counsel for the Applicant that the

second Respondent had a grudge against the Applicant as the transfer order was issued in his name as the General Secretary of the Trust which runs the school. The complaint dated 12th June 2008 shows that immediately one day before the incident, the Applicant was threatened by the second Respondent.

11. Clause (x) of Sub-section (1) of Section 3 (prior to its amendment) of the said Act of 1989 reads thus:

“intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

12. Thus, the offence is complete when a person not being a member of the scheduled caste or scheduled tribes intentionally insults or intimidates with an intention to humiliate a member of the scheduled caste or scheduled tribe in any place within public view. We have perused the panchanama tendered across the bar by the learned APP. The panchanama shows that the alleged incident had occurred in the office of the said Trust. The office is an enclosed room. On one side of the office, there is a class-room and on the other side, there is an office of the Credit Society of the employees of the Trust and on the other two sides, there are enclosed corridors. Therefore, it is impossible to come to a conclusion even taking the contents of the Panchanama, the statement of the witnesses and the second Respondent as correct, that the alleged incident happened at a place within public view.

Hence, the offence under Clause (x) of Sub-section (1) of Section 3 of the said Act of 1989 can be attracted.

13. Moreover, the action of the second Respondent in setting the criminal law in motion is nothing but an abuse of the process of law and that is a reason why the offence registered against the Applicant both under the said Act of 1989 and the said Act of 1955 is mala fide.

14. In the circumstances, the Application must succeed and we pass the following order.

ORDER :

- (a) The Rule is made absolute in terms of prayer clause (A), which reads thus:

“(A) That the FIR registered vide C.R. No.3109/2008 registered at Bhosari Police Station and further proceedings pursuant to the same against the present Applicant be quashed and set aside.”

- (b) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)