

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1338 OF 2016

Subhash Kashinath MahajanApplicant
V/s.
The State of MaharashtraRespondent

WITH
CRIMINAL APPLICATION NO. 711 OF 2016
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1338 OF 2016

Bhaskar Karbhari GaikwadIntervener

IN THE MATTER BETWEEN

Subhash Kashinath MahajanApplicant
V/s.
The State of MaharashtraRespondent

Mr. Viresh Purwant Advocate for Applicant.
Mr. P. D. Dalvi i/b Mr. Balasaheb Deshmukh for Intervener
Ms. Veera Shinde APP for the State.
Ms. Nita A. Padvi, BDPO, Patan, Satara.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 30, 2016.

PC :

1) Heard. Intervention application is heard, allowed and disposed of. This is an application under section 438 of the Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 164 of 2016

registered at City Police Stations 3 (1) (ix), 3 (2) (vi) and 3 (2) (vii) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for offence punishable under sections 182, 192, 193, 203 and 219 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that the first informant namely Mr. Gaikwad had lodged a report against one Dr. Satish Bhise who was a Principal of Government College of Pharmacy at Karad as well against Mr. Burade who was Assistant Lecturer in the same college. It is an admitted position that the Applicant herein was the in-charge Director of Technical Education. Offence was investigated by Dy.S.P. since the offence alleged were under the provisions of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. That the Dy.S.P. had sent the papers of investigation to the present Applicant, seeking sanction to prosecute, who happened to be the in-charge Director. Upon perusing the papers of investigation, Applicant had refused sanction to prosecute. Hence, the Investigating Officer had filed 'C' summary report before the Magistrate. The proceedings were filed on 22/03/2011.

3) The learned Magistrate had issued notice to the informant. The

informant had not responded to the said notice and had neither filed protest petition through an Advocate. Notice was re-issued to the informant by R.P.A.D. and the matter was kept on 20/04/2016. In the interregnum, a subsequent F.I.R. was lodged on 29/03/2016 on the basis of which the present crime no. 164 of 2016 is registered. It appears that the registration of the present case is an off shoot of the investigation in crime no. 3122 of 2009. In the present F.I.R. it is alleged that at the relevant time, Applicant had no powers either to grant sanction or refuse sanction and that he had no knowledge about the same. Despite that he had refused the grant of sanction.

4) In the course of hearing of the present application, the learned counsel for the Applicant has submitted that the complainant has filed several reports against the public servants and others, alleging of similar offences.

5) The learned counsel for the Applicant has also brought to the notice of this Court the order passed by the Hon'ble Division Bench of this Court (Coram : A. S. Oka & A. A. Sayed, JJ) dated 20/06/2016. The said application was filed by Dr. Satish Bhise seeking relief of quashing of F.I.R. The Hon'ble Division Bench was pleased to issue notice to second Respondent i.e. original complainant. The Hon'ble Division Bench has held

that the present offence would be a second F.I.R., as far as Dr. Satish Bhise is concerned and has therefore, directed that Respondent shall not take any further steps on the basis of F.I.R. no. 164 of 2016 dated 28/03/2016 i.e. present application. It was also further directed that pendency of the application seeking quashing of F.I.R. should not preclude the concerned court from passing final order, on the report submitted by the Investigating Officer, claiming 'C' summary.

6) The learned counsel appearing for the first informant submits that in fact, Applicant had no powers to grant sanction and therefore, he has deliberately refused to grant sanction. That he has committed an offence punishable under sections 182, 192, 193, 203 and 219 r/w 34 of the Indian Penal Code.

7) Section 188 of the Indian Penal Code is a bailable offence. In the present case, *prima facie* it appears that Applicant cannot be prosecuted under section 192, 193 of the Indian Penal Code for the simple reason that the Applicant has neither given false evidence nor he has created the circumstances in favour of the original accused Mr. Bhise & Mr. Burade.

8) Section 3 (1) (ix) of the the Scheduled Castes and The Scheduled Tribes

(Prevention of Atrocities) Act, 1989 reads as follows.

“3. Punishments for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe”

9) Section 3 (1) (vii) of the the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as follows.

“3. Punishments for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law.”

10) It *prima facie* appears that Applicant cannot be held liable for the said offences. Hence, the embargo under section 18 of the said Act cannot be considered and therefore, Applicant deserves pre-arrest bail. However, it is made clear that observations made herein above are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall co-operate with the investigating agency and report to the investigating officer, upon being issued a notice under section 160 of the Code of Criminal Procedure, 1973.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)