

Vat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION******CRIMINAL WRIT PETITION No.3846 OF 2016******Rupesh Baburao Khatke******...Petitioner******Vs.******State of Maharashtra and Anr.******...Respondents***

Mr. Satyavrat Joshi for Petitioner

Mrs. S.V. Sonawane -APP for the State

CORAM : V. M. KANADE &***Ms. NUTAN D. SARDESSAI, JJ.******DATE : NOVEMBER 23, 2016******P.C. :***

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned APP for the State.

2. By this petition, which is filed under Article 226 of the Constitution of India and under section 482 of the Cr.P.C., the Petitioner is seeking an appropriate writ, order and direction for quashing the complaint filed against him vide C.R. No. 409 of 2016 which is registered with Sadarbazar Police Station, Solapur.

3. The learned counsel for the Petitioner submits that if the complaint reads entirely, it reveals that the Petitioner has only verbally abused the police officer – Original Complainant and merely verbally abuse is not an offence punishable under section 353 of the Indian Penal Code. Secondly, so far as the section 417 of the Indian Penal Code is concerned, it is a non-cognizable offence. Reliance is placed on a judgment of the Supreme Court in the case of **Manik Taneja and Anr. Vs. State of Karnataka and Anr. in Criminal Appeal No. 141 of 2015 [arising out of S.L.P. (Cri.) No. 6449 of 2014] decided on January 20, 2015**. Our attention is invited to the paragraphs 11 to 13 of the said judgment. It is submitted that, therefore, this is a fit case where a complaint is liable to be quashed.

4. We have perused the complaint. Several allegations have been made against the Petitioner and verbally abusing the complainant is one of the allegations. At the stage where the investigation is going on, this Court is not expected to appreciate the material on record and then come to the conclusion. The material mentioned in the FIR does not constitute the particular offence.

5. So far as the judgment on which reliance is place by the Petitioner is concerned, the Apex court in paragraph 11 has observed that merely posting a comment on the Facebook of the traffic police, would not be sufficient for the purpose of convicting an accused under section 353 of the IPC.

6. In the present case, the facts are different and therefore, the ratio of the said judgment, in our view, will not apply to the facts of the present case.

7. The Apex Court, in fact, in the said judgment, more particularly, in paragraph 16 has observed that the High Court while exercising its jurisdiction under Section 482 of Cr.P.C. should be extremely cautious with the investigation or the trial of a criminal case and should not stall the investigation. The ratio of the said judgment, in fact, does not support or assist the present case. In the FIR, it is alleged that the Petitioner owned several vehicles and one of the vehicles which was driven by his driver, who was found in drunken condition (consumed alcohol) and was carrying 9 passengers, but the actual capacity of the said vehicle was to carry 4 passengers. In the medical examination, it

was found that the driver was consumed alcohol. Later on it was transpired that the Petitioner, under a different name, had filed a complaint against the police officer alleging that he was assaulted by the police officer. Several other instances have been mentioned in the FIR.

8. Taking over all view of the matter, we are of the view that this is not a fit case where the FIR is quashed at this stage. Reserving the right of the Petitioner to file an application for discharge after the charge-sheet is filed, the writ petition is disposed of.

Ms. NUTAN D. SARDESSAI, J.

V.M. KANADE, J.