

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1257 OF 2011

Shripad Ramesh Tamhane	... Applicant
v/s	
The State of Maharashtra and another	... Respondents

Mr Sarang Kotwal with Mr Ishwar Nankani, Mr Jagdish Chaudhary and Ms Deepa Shetty i/b M/s Nankani and Associates for the Applicant.

Ms M.H. Mhatre, APP for the Respondent No.1.

Mrs Sarojini Upadhyay for the Respondent No.2.

CORAM: A.S. OKA AND A.A. SAYED JJ.

DATE : 3RD OCTOBER 2016.

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

1. On the earlier date, the submissions of the learned counsel appearing for the parties were heard. The prayer in this Criminal application under section 482 of the Code of Criminal Procedure 1973 (for short, Cr.P.C.) is for quashing the FIR bearing No.II 6 of 2011 (261 of 2011) registered with Taluka Police Station,

Nashik for an offence which is alleged to have been committed on 11th November 2011 under section 3(1)(X) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act 1989 (for short, “the said Act of 1989”), section 7(1)(d) of the Protection of Civil Rights Act and sections 504, 506 r/w 34 of the Indian Penal Code. The Respondent No.2 is the first informant. In the statement dated 18th November 2011, on the basis of which the impugned FIR was registered, it is stated that he was employed in Silver Oak High School as an Assistant Teacher for last about one and half year. He stated that a woman security guard in the School had lodged a complaint against him for the offences punishable under sections 354, 504, 506 read with section 34 of IPC and therefore, he was suspended by the management of the School. He stated that as he had not received the order of suspension, on 11th November 2011, he alongwith another Teacher Shri Adhav, who was also suspended in connection with the said case, reached the said School at about 7.15 a.m. While they were entering the School premises, the security in-charge Shri Subhash Jamdade told him that they were no more Teachers and they have been removed. The Respondent No.2

informed him that he has not received the letter of suspension and therefore, he wants to report to the duty. It is alleged that the said Shri Jamdade pushed him out of the gate of the School and he called the present applicant who was described as Manager. Accordingly, the applicant arrived at the scene and informed them that both of them have been removed. He demanded signatures of the Respondent No.2 and Shri Adhav on a document. The Respondent No.2 stated that they were not aware about the contents of the document and therefore, refused to sign the same. Thereupon the Applicant abused the Respondent No.2 by making a specific reference to his caste. He stated that he belongs to Scheduled Caste. He was insulted. It is alleged that the present Applicant and Shri Jamdade were aware of the fact that the Respondent No.2 belongs to a scheduled caste.

2. The learned counsel appearing for the applicant has taken us through the documents annexed to the Application. The first submission is based on the letter dated 11th November 2011 (a copy of which is annexed at Exh.'B') addressed by the Respondent

Nos.2 and the said Shri Adhav to the Principal of the School. He pointed out that the said letter records that the Respondent No.2 Shri Adhav came to the School on 7.10 a.m. on 11th November 2011 when Shri Jamdade and the present applicant prevented thereon from entering the School premises. It records that the Respondent No.2 had not received any order of suspension. It records that the applicant stated that as per the instructions of his superiors, the Respondent No.2 and Shri Adhav cannot be permitted to enter the premises of the School and cannot permitted to sign the muster. He pointed out that the impugned impugned FIR is based on the incident dated 11th November 2011. He pointed out that apart from the fact that FIR was registered belatedly seven days thereafter, in the letter dated 11th November 2011 which refers to the same incident in school does not make a reference to any such utterances as alleged in the FIR. It is pointed out on the basis of documents that the management had earlier removed the Respondent No.2 from service. The Respondent No.2 is reinstated on 18th December 2010. It is pointed out that on 4th October 2011, a woman Security Supervisor employed by the School made a complaint in writing to

the Principal of the School making serious allegations against the Applicant. The said complaint was followed by the registration of FIR bearing No.I-469 of 2011 dated 7th October 2011 registered with Sarkarwada Police Station, Nashik for the offences punishable under sections 354, 504, 506 r/w 34 IPC against the applicant. Thereafter, a show cause notice was served by the management to the Respondent No.2. It is pointed out that the management had decided to suspend the Respondent No.2 and Shri Adhav. The said decision was taken on 5th November 2011. It is stated that the order of suspension was dispatched on 9th November 2011 by speed-post A.D. The submission of the learned counsel appearing for the Applicant is that lodging of the FIR is clearly an abuse of process of law and that the same has been registered at the instance of the Respondent No.2 with a view to cover his own mis-deeds.

3. The learned APP opposed the Application by pointing out that the offences as alleged against the Applicant are made out on the basis of the material on record. The learned counsel appearing for Respondent No.2 invited our attention to the statement of the

Respondent No.2 on the basis of which FIR was registered. He pointed out the affidavit of Smt Ujwala Laxman Wankar, Sub-Divisional Police Officer, Sub-Division Peth, Nashik (Rural), District Nashik, which shows that the investigation is substantially completed and as the accused have not been cooperative, a charge-sheet could not be filed. She submitted that on plain reading of the statement of the Respondent No.2, the offences alleged against the Applicant have been clearly made out.

4. We have given careful consideration to the submissions. We have perused the FIR lodged against the Respondent No.2 on 7th October 2011 by a woman Security Supervisor alleging commission of an offences under sections 354, 504, 506 r/w 34 of IPC. We have carefully perused the letter dated 11th November 2011 addressed by the Respondent No.2 and Shri Adhav to the Principal of the School. The said letter specifically records that on 11th November 2011, the Respondent No.2 and Shri Adhav tried to enter the School premises at about 7.10 a.m. It is merely alleged that at that time, the present applicant and Security Officer Shri Jamdade prevented them from

entering the School premises by stating that they have been suspended. It is pertinent to note that the correctness of the said letter is not at all disputed by the Respondent No.2 in his reply to this Application. The letter dated 11th November 2011 (Exh.'B' to the Application) is written at the earliest point of time in which there is absolutely no allegation of commission of any offence. All that the letter alleges is that the Applicant and the Security In-Charge Shri Jamdade prevented him from entering the School Premises. All the serious allegations which are made in the FIR registered on the basis of statement dated 18th November 2011 do not find place in the letter dated 11th November 2011. Therefore, the Allegations made on 18th November 2011 are completely by way of an afterthought. Except for stating that the present applicant and Shri Jamdade did not allow the Respondent No.2 and Shri Adhav to enter the School premises on the ground that they were suspended, there is no allegation made in the letter dated 11th November 2011. Hence, the allegations made in the statement recorded on 18th November 2011 on the basis of which impugned FIR was registered appear to be completely an afterthought. The impugned FIR is belatedly

registered seven days after the alleged incident of 11th November 2011. In the present case, the law laid down by the Apex Court in the case of State of Haryana and others v/s Bhajanlal and others¹ is clearly applicable. Considering the background of the action taken by the management of the School against the Respondent No.2 and considering the contents of the letter dated 11th November 2011, it appears to us that the allegations made in the FIR regarding the commission of alleged offences are false. Therefore, the Application must succeed as prosecuting the Applicant any further on the basis of the impugned FIR would be nothing but an abuse of process of law.

5. Accordingly, Rule is made absolute in terms of prayer clause (b) which reads thus :-

“(b) after verifying the legality, validity and/or propriety of F.I.R. No.II 6 of 2011 (261 of 2011) dated 18th November 2011 registered with Taluka Police Station, Nashik for the alleged offence under section 3(1)(X) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act 1989, section 7(1)(D) of the Protection of Civil Rights Act and Sections 504, 506

¹ 1992 Supp.1 SCC 335

r/w 34 of Indian Penal Code, the same be declared illegal and be quashed and set aside;"

All concerned to act on the authenticated copy of this judgment and order.

(A.A. SAYED J.)

(A.S. OKA J.)