

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2490 OF 2017

SUJIT S/O KASHINATH PANSARE
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CRIMINAL WRIT PETITION NO. 1021 OF 2017

MAHESH APPASAHEB CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

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Advocate for Applicant in Appl No.2490/2017 :
Mr.N.B. Narwade

Advocate for petitioner in WP No. 1021/2017 :
Mr.S.P. Salgare holding for Mr. N.V. Gaware
APP for Respondent/State : Mr. A.R. Borulkar
Advocates for respondent no.2 : Mr. D.R. Markad &
Mr. B.B. Shelke

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CORAM : S.S. SHINDE & A.M. DHAVAL, JJ.

Dated: September 19, 2017

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PER COURT :-

Heard the learned counsel appearing
for the applicant/petitioner and learned
A.P.P. appearing for the respondent/State.

2. Since Criminal Application and Writ
Petition are arising out of the same F.I.R.
bearing Crime No.I-122/2017 registered with
Rahuri Police Station, Tq. Rahuri, Dist.

Ahmednagar dated 9th April, 2017 for the offence punishable under Sections 323, 143, 147, 148, 149 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, the application and Petition are heard together and being disposed of by this common order.

3. Learned counsel appearing for the applicant/petitioner submits that, so as to attract the provisions of Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, there should be a specific mention in the first information report that, particular accused has abused on caste to the informant. It is submitted that, so as to entertain the allegations which would attract the provisions of said Act, it is necessary to mention the caste of the informant and also accused in the first information report. In support of the aforesaid contentions, learned counsel appearing for the applicant/petitioner placed reliance on the reported judgments in the cases of **Pradnya Pradeep Kenkare and another V/s State of**

Maharashtra¹ and Gorige Pentaiah V/s State of A.P. & Ors.² so also unreported judgment in the case of **Swapnil @ Abhijit S/o Vishnu Deshmukh and anr. V/s The State of Maharashtra and anr. in Criminal Application No.4153 of 2016 (decided on 24th October, 2016).**

4. It is submitted that, even if the allegations in the first information report are taken at its face value and read in its entirety, an alleged offences are not disclosed. Therefore, the learned counsel appearing for the applicant/petitioner submits that, the first information report deserves to be quashed.

5. On the other hand, learned A.P.P. appearing for respondent/State, relying upon the investigation papers submits that, whether there were abuses given on the caste/tribe or otherwise, is a matter of appreciation of evidence, so also whether such utterances were in public view is an also a matter of appreciation of evidence, and therefore, at the threshold, when there

1 2005(3) Mh.L.J.368

2 2008 (12) SCC 531

is a prayer for quashing of first information report, such contentions cannot be appreciated and accepted. It is submitted that, an informant has sustained injuries in an incident and to that effect the Investigation Officer has collected injury certificate. There are specific allegations in first information report of formation of unlawful assembly by the accused in furtherance of their common object. The sum and substance of the contentions of learned A.P.P. is that, upon perusal of the allegations in the first information report, an ingredients of the alleged offences have been disclosed and therefore, F.I.R. needs further investigation. Therefore, learned A.P.P. appearing for respondent-State submits that, the application and Petition being devoid of merits may be rejected.

6. Upon hearing learned counsel appearing for the applicant/petitioner and learned A.P.P. appearing for respondent-State and learned counsel appearing for respondent no.2, and upon careful perusal of the allegations in the first information report and also the investigation papers, we are of the prima facie opinion that, the ingredients

of the alleged offences have been attracted and as a sequel alleged offences are disclosed. The contention of the learned counsel appearing for the applicant/petitioner that, no specific name of the accused who abused the informant on tribe is mentioned, and therefore, first information report deserves to be quashed, cannot be accepted for simple reason that, the first information report is not like an encyclopedia. It is not necessary to mention caste of the accused in the first information report as contended by learned counsel for the petitioner/applicant. The Hon'ble Supreme Court in the case of **Ashabai Machindra Adhagale V/s State of Maharashtra and others**³ held thus :-

"During investigation or at the time of framing of charge or at the time of trial it is open to the respondent - accused to show that he either belongs to SC or ST so that applicability of S. 3(1)(xi) of the Act is ruled out. It needs no reiteration that the FIR is not expected to be an encyclopedia. After ascertaining the facts during the

3 (2009) 3 SCC 789

course of investigation, it is open to the IO to record that the accused either belongs to or does not belong to SC or ST. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial, materials can be placed to show that the accused either belongs or does not belong to SC or ST."

7. We are of the prima facie opinion that, there are allegations against the applicant/ petitioner in the first information report, which would attract an ingredients of the alleged offences. Therefore, no case is made out for quashing the F.I.R. Hence application and also Writ Petition stand rejected.

An observations made hereinbefore

are prima facie in nature, and rejection of application and Petition shall not be construed as an impediment to the applicant/petitioner for availing of an appropriate remedy in the event of filing charge-sheet by the Investigating Officer.

(A.M. DHAVALÉ, J.)

(S.S. SHINDE, J.)

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