

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 293 OF 2003

Shri Prafulchandra Govind Oak)
aged : about 62 years, Occupation: Retired)
Principal and residing at Flat No.B-3,)
Suhali Manor, 3rd floor, Lady Jamshedji)
Cross Road No.1, Mahim, Mumbai 400 016.).. Petitioner
Vs. (Orig. Accused No.1)

1. The State of Maharashtra ...)
2. Shri Anant Bhagwan Kambli)
Aged: Adult, residing at B-201)
Kamgar Nagar Camp Hsg. Soc. Four)
Bungalows, J.P. Road, Andheri West,)
Mumbai 400 053.)..Respondents

Mr. N.N.Bhosle i/b. Mr. S.G.Deshmukh, Advocate for the petitioner.
None for the respondent.
Mr.S.R.Agarkar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 6th April, 2017.

ORAL JUDGMENT :

Heard Mr. N.N.Bhosle, Advocate holding for Mr.
S.G.Deshmukh for the petitioner. None appears for the respondent No.2.

2. Since the Writ Petition is of the year 2003, wherein by an order
dated 8.9.2003, this Court had issued Rule and granted interim relief in

favour of the petitioner.

“6. Rule is made returnable on 6.10.2003. Interim stay in terms of prayer clause (d). Looking to the facts and circumstances of this case, I am also inclined to release the petitioner on anticipatory bail.

7. In the event of arrest, the petitioner Prafulchandra Govind Oak to be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount.”

The complaint is of the year 2001. It is in these circumstances that the Court had proceeded to hear the matter on merits. It appears from the record that none appeared for the respondent/complainant on 27.1.2017, 3.2.2017 and 27.2.2017. The respondent No.2 herein was working as a Junior Clerk in M.L. Dhanukar College of Commerce, whereas the petitioner was working as the Principal of the said College.

3. It appears from the records that the respondent No.2 had remained absent from duty without intimation and permission. Hence, the petitioner was constrained to issue a memo to the petitioner. The said memo was received by respondent No.2 on 27.9.2001.

4. Respondent No.2 had called upon the petitioner on the intercom and threatened him of dire consequences if he had chosen to take any action against him. The petitioner holding a responsible post reported the matter

to the police and on the basis of his report, a non-cognizable case bearing No.767 of 2001 was registered against the respondent No.1 at Vile Parle Police Station at about 5.30 p.m.

5. The officers of Vile Parle Police Station had called upon the respondent No.2 and had apprised him of the report lodged by the petitioner and had further advised him to maintain peace in the office and not to indulge into such activities. On the next day i.e. on 28.9.2001, the petitioner had also apprised the Superintendent of Police, Protection of Civil Rights and other authorities complaining therein about the conduct of the respondent No.2 while discharging his duties. The authorities were also informed that respondent No.2 had extended threats to the petitioner as well as the other staff members of the said College on the ground that since he belongs to Scheduled Caste, he would prosecute them under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as the Protection of Civil Rights Act, 1955. The petitioner had also expressed his apprehension that in all probabilities the respondent is likely to file such a report before the Superintendent of Police.

6. It appears from the records that respondent No.2 was apprised of the representation made by the petitioner on behalf of himself and his

staff members and on 8.10.2001, respondent No.2 had filed a written complaint to the Vice Chancellor of Mumbai University alleging therein that the petitioner herein had called upon respondent No.2 on the intercom. It was alleged that the petitioner had insulted and humiliated him by referring to his caste and that he felt humiliated about the same. It appears from the records that the Superintendent of Police as well as the police of Vile Parle Police Station had enquired into the genuineness and truthfulness of the allegations and had arrived at a conclusion that there was no element of truth in the said complaint and therefore no action was taken against the petitioner. Pursuant to the memo issued to the respondent No.2, a departmental enquiry was initiated against the respondent No.2 and as a consequence, he was suspended from service by an order dated 9.10.2001. On 24.10.2001, the said vacancy was filled up by the College by appointing Mr. V.N.Malya.

7. On 30.1.2003, the police from the Vile Parle Police Station along with respondent No.1 had approached the house of the petitioner. The petitioner was not at home and when he returned home, he was informed by his neighbours that the petitioner is to be arrested pursuant to the order passed by the Metropolitan Magistrate, 22nd Court, Andhri, as non-bailable warrant was issued against the petitioner. By an order dated

17.10.2002, the respondent No.2 had levelled allegations against 11 accused persons. The learned Magistrate was pleased to take cognizance of the said complaint against the petitioner, the Deputy Commissioner of Police and Senior Inspector of Police, Vile Parle Police Station.

8. Perused the complaint and the order passed by the learned Magistrate under Section 204 of Cr.P.C. According to the learned magistrate, the petitioner had deliberately filed the report to the Vile Parle Police Station and to the Deputy Commissioner of Police. The learned Magistrate was pleased to issue process against the petitioner under Sections 3 and 4 of the said Act and had also issued arrest warrant against the accused by an order dated 24.12.2002.

9. The complainant had stated in the complaint that he was being harassed and humiliated on the ground that he belonged to the Scheduled Caste. No specific instances have been stated in the complaint. The allegations in the complaint clearly indicate that the complainant was aggrieved by the departmental enquiry and the suspension order. The Metropolitan Magistrate has issued process under Sections 3 and 4 of the said Act. Section 3 of the said Act reads as follows :-

“3. Punishments for offences of atrocities-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

- (i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;*
- (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;*
- (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;*
- (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;*
- (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;*
- (vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labor other than any compulsory service for public purposes imposed by Government;*
- (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;*
- (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against 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;*
- (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*
- (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty;*
- (xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;*
- (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;*
- (xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;*
- (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with*

imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

10. There are 15 instances in which the person not belonging to a Scheduled Caste or Scheduled Tribe can be punishable with imprisonment for a term which would not be less than six months but which may extend to five years and with fine. The learned Magistrate has not applied mind and has lost sight of the classification below Section 3(i). “intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

As far as the present case is concerned, the allegation is that the petitioner had insulted him on the intercom on 27.9.2001. By no stretch of imagination it can be said that the said humiliation was done within public view. According to the complainant, a false report was lodged on the basis of which the non-cognizable Case No.767 of 2001 was registered. It is alleged in the complaint that the complaints filed by the administration were false and that the petitioner had obtained false complaints from the students. Hence, the offence would not fall under any of the category of Section 3. Section 3(1)(viii) reads as follows :-

“institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled

Caste or a Scheduled Tribe;”

In fact, in the present case, there was no foundation to hold that the proceedings initiated against the respondent No.2 were false or vexatious and were initiated only because he belonged to the said caste. Hence, no case under Section 3(1)(viii) can be made out. It is pertinent to note that the said complaint was filed only after the respondent No.2 was suspended from service. Moreover, the learned Magistrate can only issue process against the accused and not a non-bailable warrant at the threshold. No notice was issued to the petitioner and the police had directly approached his house to arrest him pursuant to the non-bailable warrant. No opportunity was given to the petitioner to challenge the order of issuance of process.

11. At the time of admission of this matter, the Hon'ble Single Bench had observed that prima facie on perusal of the entire material, it cannot be said that the said complaint filed by the petitioner on 27.9.2001 registered as N.C. No.767 of 2001 had been falsely, maliciously or vexatiously filed against the complainant.

12. In view of the above observations made hereinabove, the Petition deserves to be allowed. The Petition is allowed in terms of prayer

clause The order dated 24.12.2002 is hereby quashed and set aside. Rule
is made absolute in the above terms.

(SMT. SADHANA S.JADHAV, J.)