

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1829 OF 2016

Anandraj Y. Ambedkar and ors.	..Petitioners
Versus	
State of Maharashtra and ors.	..Respondents

Mr. P. R. Arjunwadkar, advocate for the petitioners.
Mr. S. K. Shinde, PP along with Ms. S. D. Shinde, APP for the State.
Mr. Susheel Mahadeshwar i/b. Ms. Ranjana Todankar, advocate for the
intervenor in criminal application No. 495 of 2016.

CORAM : RANJIT MORE,
DR. SHALINI PHANSALKAR-
JOSHI, JJ.

DATE : 10th JANUARY, 2017.

P. C. :

Heard Mr. Arjunwadkar, learned counsel for the
petitioners and Mr. Shinde, learned PP for the State.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the notice dated 3rd May, 2016 issued by the Senior Police Inspector, Azad Nagar Police Station, Mumbai under Section 149 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."). By the said notice, the petitioners were cautioned not to commit cognizable offence, and in case, such offence is committed, they

will be responsible and an appropriate action would be taken against them under Section 188 of the Indian Penal Code, 1860. Mr. Arjunwadkar, learned counsel for the petitioners challenged the impugned notice on three grounds viz.

- 1) It is *mala fide*.
- 2) The same will be used as weapon thereby prohibiting petitioners - the elected office bearers from entering the premises of the People Education Society, Buddha Bhavan and Anand Bhavan.
- 3) And the action initiated against the petitioners under Section 145 of the Cr.P.C. and Section 39 of the Bombay Police Act was not ultimately upheld by the Higher Courts.

3. Mr. Shinde, learned PP, opposed the petition vehemently. He submitted that by issuing the impugned notice, the police have exercised executive powers for prevention of commission of cognizable offence. The said notice is issued on the basis of material which is referred to in the notice and, therefore, no interference is called for at the hands of this Court.

4. Having considered the rival submissions and having perused the compilation of the writ petition and the relevant provisions of the statute, we do not find any merit in the petition.

5. The first ground of challenge viz. that the impugned notice is *mala fide* is concerned, the petitioner in ground (b) at page 12 of the petition has only alleged that the impugned notice is *mala fide*. However, there are no material particulars pleaded by the petitioners in the petition. In the absence of the material particulars, it is difficult to accept the contention of the petitioners that the impugned notice is *mala fide*.

6. As far as the second ground of challenge is concerned, we find that the dispute between three groups including the petitioner's group is pending before the Charity Commissioner. The contention of the petitioners that they are legally elected office bearers is disputed by the other side, and as of today, there is no conclusive decision of the competent authority regarding the group who is legally elected as the office bearers of the said institution. The apprehension of the petitioners that the impugned notice may be used as weapon, in these circumstances, is without any substance.

7. So far as the 3rd ground of challenge is concerned, we find that the proceedings under Section 145 of the Cr.P.C., though disposed of by the learned magistrate, a revision is filed by the State Government in the Sessions Court and the same is pending. The order under Section 39 of the Bombay Police Act is to remain in operation till the expiry of the proceedings under Section 145 of the Cr.P.C. In these circumstances, we find no merit in this contention also.

8. By issuing the impugned notice, the police have exercised the executive powers. The powers are required to be exercised in order to prevent commission of cognizable offence. Even assuming for the sake of argument that the proceedings under Section 145 of the Cr.P.C. and Section 39 of the Bombay Police Act are not upheld, in that case also, we are of the opinion that the existence of orders under Section 145 of the Cr.P.C. and Section 39 of the Bombay Police Act are not *sine qua non* for exercise of powers under Section 149 of the Cr.P.C. The police are always at liberty to exercise the powers under these Sections provided there is some material and apprehension of commission of cognizable offence. Perusal of the impugned notice do show that on 20th April, 2016, three groups including the petitioners' group committed breach of peace in the subject premises. The impugned notice reflects subjective satisfaction of the police for taking

preventive action under Section 149 of the Cr.PC. In view thereof, we are not inclined to entertain this petition in exercise of the jurisdiction conferred upon this Court under Article 226 of the Constitution of India. The writ petition is, accordingly, dismissed.

9. In view of the disposal of the writ petition, criminal application No.495 of 2016 will not survive for consideration and the same is also dismissed.

(DR. SHALINI PHANSALKAR-JOSHI)

[RANJIT MORE, J.]