

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 239 OF 2016

1. Komal D/o Tukaram Shinde,
Age : 30 years, Occu. : Service,
R/o Police Station, Hingoli (City)
Hingoli, Tq. & Dist. Hingoli,
Now R/o : Shivaji Nagar, Aurangabad,
Tq. & Dist. Aurangabad.
2. Vivek Deelip Sonwane,
Age : 38 years, Occu. : Service,
R/o Police Station, Hingoli (city),
Tq. & Dist. Hingoli.

...Petitioners

Versus

- 1] The State of Maharashtra,
Through P S I Aundha Nagnath
Police Sation, Taluka Aundha,
District Hingoli.
- 2] Sachin Vasanta Dipke,
Age : 25 years, Occu. : Education,
R/o Dudhala, Tq. Aundha,
-Nagnath, District Hingoli.

...Respondents

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Mr. P. S. Agrawal, Advocate for Petitioners.
Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1 / State.
Mr. D. M. Shinde, Advocate for Respondent No. 2.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 20-08-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J)

01. Present petition has been filed invoking the powers of this Court under Article 226 of Constitution of India and inherent powers of this Court under Section 482 of Cr. P. C. in order to quash and set aside the F. I. R. lodged by respondent No. 2.

02. Respondent No. 2 is the informant, who had lodged private complaint before J. M. F. C., Aundha. It was contended by him that he is resident of village Dudhala. He is member of scheduled caste and the respondents are not the members of scheduled caste or scheduled tribe. He got married on 2.12.2013 and the note of his marriage has been taken in the requisite register of Grampanchayat, Dudhala, Tq. Aundhanagnath, Dist. Hingoli. However, his wife had filed F. I. R. vide C. R. No. 83/2015 on 28.4.2015 stating that the present informant has committed offences punishable under Sections 354-A, 354-D, 108, 506 of I. P. C. The said crime was for investigation with the present petitioner No. 2. Petitioner No. 1 was not concerned with the investigation. Informant had gone to the Police Station on 28.4.2015 in order to clarify his side when his wife was lodging the complaints against him, at that time he was made to sit in the Police Station till 4 PM. Around 4 PM the petitioner

No. 1 came and told him that he has been called by Police Superintendent, Hingoli. He was made to sit in the Police vehicle and he was taken to the office of Superintendent of Police at Hingoli. In fact, there was no offence registered against him at Hingoli. The present petitioner No. 1 asked him as to whether he is having evidence about his marriage with the wife and thereupon she collected a copy in respect of application for grant in view of inter-caste marriage. After getting that document, he was told that the Superintendent of Police will not meet him. But, DYSP will meet and therefore, he was taken to the office of DYSP Lanjewar. He was made to wait till 10 minutes and thereafter, he was taken to City Police Station, Hingoli. He was taken before DYSP Lanjewar there. Informant's wife was present. Informant's wife told to DYSP that informant is harassing him. At that time, the informant tried to explain that she is his wife. But, DYSP Lanjewar did not listen to him and he was put in lock up. Around 12 AM of 28.4.2015 he was told that his wife has lodged a report against him. He was produced before Hingoli Court at about 3 PM on 29.4.2015. He was remanded to Police custody and while in Police custody he was assaulted by belt by present petitioner No. 1 and some unknown Police Constable. He was assaulted for about half an hour. He

was taken by petitioners and other 4 to 5 Police Officers to his house around 7.30 PM on 29.4.2015 and he was assaulted. The petitioners asked him to hand over the photographs of his marriage when informant's mother was ready to give photographs, yet, petitioner No. 2 had assaulted the parents and sister of informant. Petitioner No. 2 told informant's sister : “जर तुझ्यावर माझ्यासारख्या पुरुषाने बलात्कार केल्यावर तुला चालेल का ?” Further she uttered that : “तुमच्या सारख्या निच महार माणसांनी मारवाडी समाजाच्या सोबत सोयरपण करतात का ?”

Thereby the petitioners had insulted the informant and his family members in the name of caste. After giving threats to the parents of the informant it was told that the marriage should be canceled, otherwise, the informant would be killed. Informant was brought back to Police Station, Hingoli around 11 PM. He was again assaulted and was not given anything to eat. Thereafter, on 30.4.2015 the informant was insulted in the presence of villagers. He was produced before the Court. He was thereafter released on bail around 3 PM. However, he was not released immediately. He was again brought to Police Station. Again he was asked for pardon from the wife and then petitioner No. 2 had given belt in the hand of the

wife of the informant and she was asked to assault the informant. Thereupon she had given blow. Again the petitioner No. 2 had threatened the informant and he was left. By the said private complaint it was prayed by the informant that investigation be carried out under Section 156(3) of Cr. P. C. By order dated 8.9.2015, the learned J. M. F. C. Aundha rejected the application and disposed of the petition.

03. Thereafter, the respondent No. 2 again filed similar application bearing No. Cri. M. A. No. 126/2015. In the second application, he had made the compliance and had given a complaint to the Police Station. Cognizance was not taken by the Police and therefore, he had approached the Superintendent of Police. However, when no action was taken, he had filed the second complaint. Taking into consideration the formalities those were completed. The learned J. M. F. C. allowed the application on 29.1.2016. This order is under challenge in this application.

04. The applicants have contended that the impugned order is illegal. Applicant No. 1 was investigating the complaint which was filed by the lady bearing C. R. No. 83/2015 for the offences punishable under Sections 354-A,

354-D, 108, 506 of I. P. C. In connection with the said investigation and in order to hamper the investigation, in that complaint, the respondent No. 2 has filed complaint against them. It is stated that the petitioner No. 1 is a member of scheduled caste and she has produced her caste certificate on record and therefore, the provisions of Atrocities Act are not applicable. It is also stated that the petitioner No. 2 belongs to other backward class. He was not at all concerned with the investigation. When in connection with the investigation in C. R. No. 83/2015, the respondent No. 2 was produced before learned J. M. F. C., Hingoli on 29.4.2015 as well as 30.4.2015. A specific enquiry was made regarding the ill-treatment. However, at that time he did not make any kind of complaint. Respondent No. 2 has mis-used the protection guaranteed under the Atrocities Act for his benefit and has made allegations against them with mala fide intention and therefore, the said F. I. R. deserves to be quashed and set aside.

05. Respondent No. 2 has filed his affidavit in reply and almost reiterated all the facts which were stated by him in his complaint. He says that he was not aware that petitioner No. 1 is a member of scheduled caste. He has given the proceedings which he has filed

against his wife which are civil in nature. He has also stated that the petitioners had approached Additional Sessions Court Vasmatnagar by filing revision under Section 397 of Cr. P. C. He prayed for the rejection of the petition.

06. Heard Mr. P. S. Agrawal, Advocate for Petitioners, Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1 / State and Mr. D. M. Shinde, Advocate for Respondent No. 2. It was submitted on behalf of the petitioners that petitioner No. 1 was assigned with the investigation of C. R. No. 83/2015 and she had arrested the respondent No. 2. Petitioner No. 2 was not at all in picture. If at all the respondent No. 2 was tortured by the petitioners he ought to have clarified the same to the Magistrate before whom he was produced. The orders on the remand report specifically say that he had not made any complaint of ill-treatment. It has been submitted on behalf of the respondent No. 2 that immediately after the respondent No. 2 was released on bail, he was not released from the Court. But, he was taken back to the Police Station. But, he was threatened, yet, he had made the complaint at the early as possible. His first application was rejected because he had not followed the procedure. After the procedure was followed, he had filed the

complaint and therefore, the second complaint can not be said to be barred. The learned Magistrate had considered that the complaint has made out a cognizable offence and no cognizance was taken by Police. Therefore, the matter was sent for investigation under Section 156(3) of Cr. P. C. No fault can be found in the said order.

07. The learned A. P. P. submitted that after the case was handed over for investigation under Section 156(3) of Cr. P. C., no fault can be found in the said order.

08. The learned A. P. P. submitted that after the case was handed over for investigation under Section 156(3) of Cr. P. C., investigation was conducted and statements of witnesses were recorded. The Investigating Officer has come to the conclusion that there is no evidence supporting the contentions of respondent No. 2 and therefore, the Police had filed "A" summary.

09. At the outset, it is to be noted that the informant / respondent No. 2 was facing prosecution in C. R. No. 83/2015. He was arrested in connection with the said offence and was produced before the J. M. F. C. Hingoli. The remand report dated 29.4.2014 and 30.4.2014 would clearly show that the respondent No. 2 had not made

any kind of complaint of ill-treatment at the hands of Police. In both the complaints, respondent No. 2 has not given any explanation as to why he had not made such kind of complaint. That was the immediate opportunity for him to make complaint regarding alleged torture. Definitely, it appears that such allegations are made with a view to screen himself or for his own advantage. Another fact that is now required to be taken into consideration is that the investigation has been made, statements of Police on duty, persons from Dudhala where the respondent No. 2 resides except the family members of the complainant nobody is supporting. Allegation was made by the respondent No. 2 that he was taken in procession ("ਧਿੱਤ"). But, nobody is supporting this fact. It appears that some discovery was made by the respondent No. 2 in connection with C. R. No. 83/2015. Definitely, that discovery would have been at the instance of the accused and he would be the person leading the investigation team. If he would have been taken by walk till his house, then, it can not amount to procession or "ਧਿੱਤ". The statement of panchas to the memorandum Panchnama has been taken. Under such circumstance, when it appears that the complaint was filed with mala fide intention against the Investigating Officer, so also, against the petitioner No. 2, who has no

connection with the offence and would not have any motive to act in alleged manner with the respondent No. 2, taking into consideration the parameters laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]**, the inherent powers of this Court under Section 482 of Cr. P. C. are required to be invoked.

10. Hence, following order;

ORDER

(i)The Writ Petition is allowed.

(ii)Relief is granted in terms of prayer clause
"C".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-.