

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 1439 OF 2014**

Vikrant Bhimsen Chavan

.. Petitioner

Vs.

1) The State of Maharashtra  
(Through Vartak Nagar Police Station)

2) Shri. Nandkumar Arjun Bhoir  
Age: 36 years, Occ.: Business,  
R/at. Shrivinayak Co-operative housing  
Society, Baithi Chaw No.8, Room No. 59,  
Vartak Nagar, Thane (W) 400 606.

.. Respondents

Mr. Saurabh Butala for the Petitioner.  
Mr. Kanishk Jayant for Respondent No. 2.  
Mr. Y.M. Nakhwa, APP, for State.

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 26<sup>th</sup> July, 2018.**

**JUDGMENT :-**

1. Heard both sides for final disposal. The petitioner has preferred this petition by invoking Article 227 of the Constitution of India as well as inherent powers of this Court under Section 482 of Code of Criminal Procedure. The petitioner has challenged the order dated 21<sup>st</sup> January, 2014 passed by Sessions Judge, Thane rejecting the application for discharge.

2. The prosecution case is as follows :-

On 9<sup>th</sup> February 2013, the birthday of MLA and District in-charge Shiv Sena Shri. Eknath Shinde was being celebrated and as a part of celebration cricket match was arranged. To offer birthday wishes, the party had displayed a banner on 1<sup>st</sup> February, 2013 at Vartak Nagar Naka near office of Congress Party. The accused is the Corporator of Congress Party. The complainant was informed by his brother on phone that the banner which was displayed at the aforesaid place has been removed by some persons, and on receiving the said information the complainant visited the said place. He was accompanied by his friend Jagdish Parmar. The complainant asked the persons accompanying him to display the banner again on the hoarding stand. At that time the accused and his associates came out of the office of party. The accused questioned the complainant as to how he can display the banner. At that time, the complainant informed him that the hoarding belongs to vision publicity and he cannot object for displaying the said banner. The accused abused the complainant on the basis of his caste. The accused also assaulted the complainant by fist blows. Thereafter, the brother of the complainant and other supporters of party reached at the place of incident. The police also reached at the spot. On the basis of the First Information Report registered on 24<sup>th</sup> February, 2013, the offences were

registered vide C.R. No. I-71 of 2013 with Vartak Naga Police Station under Section 323, 504, 506 readwith 34 of Indian Penal Code and Section 3 (1) (10) of Prevention of Atrocities against Scheduled Caste and Scheduled Tribes Act. The investigation was conducted by the police. Statements of several witnesses were recorded and thereafter charge sheet was filed before the Court.

3. The petitioner preferred an application for discharge before the trial Court. The said application was rejected by the Sessions Court by order dated 21<sup>st</sup> January, 2014 while rejecting the said application it was observed that the contents of FIR, statement of witnesses and the evidence on record is sufficient to proceed against the petitioner/accused. It was also observed that, the petitioner/accused will have an opportunity to set up his defence during the course of the trial.

4. In support of prayer for discharge the learned Advocate for the petitioner made following submissions :-

i) The petitioner has been falsely implicated in this case on account of political enmity. The mother of the complainant is the Corporator from Ward No. 17 and she belongs to Shiv Sena Party,

whereas the petitioner belongs to Indian National Congress party.

ii) On 5<sup>th</sup> February, 2013 at about 4 p.m. the complainant and his associates had been to the office of the Indian National Congress Party at Vartak Nagar and tried to install hoarding of their party atop the office of the petitioner. The petitioner objected the said act as it was absolutely illegal and without the permission of local authority. In the circumstances, there was a quarrel between two groups. The petitioner intimated the said fact to Vartak Nagar Police Station as well as the Police Control Room. Thereupon, Police immediately arrived at the spot and intervened in the said quarrel.

ii) The petitioner has lodged his complaint in respect to the incident with Vartak Nagar Police Station whereupon the First Information Report was registered on his complaint vide C.R. No. I-52 of 2013 for the offence under Sections 447, 504, 506 of IPC and Sections 37 (3), 135 of Bombay Police Act against the respondent No. 2.

iv) As a counter blast to the complaint filed by the petitioner and with malafide intentions to harass the petitioner, the complaint was lodged belatedly by respondent No. 2. The FIR in respect to the

complaint lodged by the respondent No. 2 was registered on 24<sup>th</sup> February, 2013 whereas the FIR lodged by the petitioner was registered on 6<sup>th</sup> February, 2013.

v) The allegations in the complaint with regards to the abuses on the caste of the complainant are false and fabricated. The allegations are made in the complaint with a view to invoke the stringent provisions of the Prevention of Atrocities Act. The petitioner had preferred an application for Anticipatory Bail in pursuant to the registration of the said FIR which was allowed by the Sessions Court. There is no independent evidence to substantiate the allegation with regards to the abuses on the basis of caste.

vi) During the proceedings the Police authority had produced on record the details of the CCTV footage. The evidence on record clearly shows that, the petitioner has been falsely implicated in the present case due to political rivalry the CCTV footage however doesn't form the part of charge sheet.

vii) During the course of investigation, the statements of Police constables who were present at the spot were recorded by the investigating officer. However, the statements does not mention

about abuses of caste being made by the petitioner/accused. The statement of police constable Hanmant Kolekar dated 18<sup>th</sup> March, 2013 and Police Naik Vitthal Pable also recorded on the same day state that they did not hear any abuses on the basis of caste. These were the independent witnesses who has not corroborated the allegations with regard to abuses hurled by accused against the respondent No. 2. It is thus clear that, the petitioner has been falsely implicated on the basis of concocted allegations with regard to the alleged abuses.

VIII) The CCTV footage has been deliberately kept away by the Police since the recording shows that the complainant and his associates were the aggressors and that neither the petitioner nor any other persons had abused the complainant or anybody else on their caste.

IX) The eye witness whose statements are recorded which forms the part of the charge sheet in the present case were named as accused in the complaint filed by the petitioner.

X) The Sessions Court has committed an error in rejecting the application for discharge. There was no evidence to proceed against the petitioner/accused.

5. The respondent No. 2 complainant has opposed the relief sought in this petition by filing affidavit-in-reply. Learned APP strongly opposed the prayers for discharge. It is submitted that there is sufficient evidence in the form of the statement of the witnesses to support the prosecution case. The complainant and the other witnesses has categorically referred to the abuses on the caste of the petitioner which makes out prima facie case under the provisions of the Atrocities Act. It is further submitted that, the complainant and other witnesses have also referred to the assault by the petitioner/accused and thereby, there is evidence in respect to the other offences. It is submitted that, after completing the investigation the charge sheet has been filed before the Court. The statements of the witnesses are required to be tested in evidence and at this stage the petitioner cannot be discharged. The prosecution has made out a prima facie case against the accused for framing of charge. The submissions of the petitioner can be considered only at the stage of trial the defence of false implication cannot be appreciated at this stage. Thus, it is prayed that the application be rejected.

6. After hearing the parties and having gone through the documents on record, it is apparent that, the First Information Report

was registered in the present case on 24<sup>th</sup> February, 2013 at the instance of respondent No. 2. On perusal of his statement it is clear that specific overt Act has been attributed to the petitioner. The complainant has also stated that, he belongs to the Scheduled Caste and during the incident the petitioner has abused him on the basis of caste. The contention of the petitioner is that, the FIR was lodged as a counter blast to his complaint which was registered on 6<sup>th</sup> February, 2013 and on account of political rivalry. It is also contended that, there has been enormous delay in lodging the First Information Report in the present case. In the affidavit-in-reply filed by respondent No. 2 he has placed on record the complaint forwarded by him on 8<sup>th</sup> February, 2013 to the Police as well as to State Human Rights Commission stating that the complainant has been abused on the basis of caste and he is also being threatened by accused. In the said complaint, it was stated that in respect to the incident referred to in the present proceeding, action be initiated against the petitioner and the other accused. The respondent No. 2 has also annexed letter dated 15<sup>th</sup> February, 2013 forwarded to various authorities including the Police alleging that the Police attached to Vartak Nagar Police Station are delaying action against the petitioner. It is also relevant to note that, the version of the respondent No. 2 is corroborated by the statement of witness Jagdish Parmar, Anil Bhoir, Arvind Upadhyay,

Prafull Bhoir and other witnesses. The said witnesses has referred to the incident which is referred to by the respondent No. 2 in the First Information Report. The statement of Police constable and Police Naik which is referred to hereinabove has referred to the quarrel between the two groups as they have stated they did not hear any abuses on the basis of caste. However, considering the fact that there are other statements which form the part of the charge sheet, at this stage no benefit can be given to the petitioner/accused. The statements of the witnesses will have to be tested in evidence at the time of trial. Thus, there is no substance in the submissions advanced by the Counsel for the petitioner. The various other grounds which are agitated by the petitioner are the probable defences of the petitioner which can be looked into only and during the course of trial. There is prima facie evidence against the petitioner to proceed with framing of charge and the trial. The Sessions Court has rightly rejected the application for discharge by assigning several reasons which do not call for any interference.

7. The incident had occurred allegedly in the public place the version of the complainant and the other witnesses cannot be brushed aside at this stage. On completing the investigation the charge sheet was filed. Learned Advocate for the petitioner relied upon the decision

in the case of ***Sajjan Kumar Vs. Central Bureau of Investigation***<sup>1</sup> and submitted that the Supreme Court in the said decision has observed that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. It is thus submitted that on the basis of the said principle the petitioner/accused be discharged from the said proceedings. The Supreme Court in the said decision has referred to several factors to be considered by the Court at the stage of discharge apart from the factor which is pointed out by the learned Counsel for the petitioner. It is observed that the Court is required to sift and weigh the evidence for the limited purpose of finding out whether prima facie case is made out against the accused. The test to determine prima facie case would depend upon the facts of each case. It is also observed that at the time of framing of charge the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at

1 (2010) 9 SCC 368

their face value disclosed the existence of all the ingredients constituting the alleged offence. In the light of the principles, enunciated in the said decision and applying them to the present case it can be said that prima facie case is made out against the petitioner to proceed against him to frame the charge and proceed with the trial. In the circumstances, no case is made out for granting the relief of discharge and the petition is required to be dismissed.

**ORDER**

- i) Criminal Writ Petition No. 1439 of 2014 stands dismissed.
- ii) It is clarified that, the observations made in this order are for adjudicating the prayer for discharge and the trial Court shall not be influenced by these observations at the time of trial.
- iii) At the request of the learned Advocate the interim relief is extended for three weeks as the applicant intends to challenge this order before Supreme Court.

**( PRAKASH D. NAIK, J.)**