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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.359 OF 2015

Mahendra Pratap Singh & Ors.	..Applicants.
V/s.	
State of Maharashtra & Anr.	..Respondents.

Mr.Chetan Akerkar for the applicants.

Mr.S.S.Pednekar, APP for the respondent-State.

Mr.Pritam P. Runwal for respondent No.2.

CORAM: NITIN W.SAMBRE, J.

DATE : FEBRUARY 28, 2018

PC.:-

Heard the respective parties.

2. In Sessions Case No.2/2011 for offences punishable under section 324, 323 and 504 read with 34 of the Indian Penal Code with section 3(1)(x) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Atrocities Act' for short), the applicants-accused persons made an application for

discharge which came to be rejected vide the impugned order dated June 8, 2015. As such this revision.

3. The learned counsel for the applicants would invite attention of this Court to the order dated August 9, 2012 delivered by the learned Single Judge in the Criminal Application No.1154 of 2011 which was also taken out by the present applicants for quashing of the proceedings. He submits that two points which were not considered by the said Court are, the investigation was initially carried out by the officer of the rank of Inspector of Police and as such contravenes Rule 7 Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 ('the Rules' for short), and that the investigation officer be appointed after taking into account his past experience, sense of ability and justice to perceive the implications of the case were to be considered in an application for discharge. According to him, both these points were canvassed before the lower Court while pursuing an application for discharge by pointing out the provisions of section 227 of the Code of Criminal Procedure and section 9 of the Atrocities Act rules 5 and 7 of the Rules. According to him, the

Court below while rejecting the application for discharge negated both the contentions by taking an hypothetical view and has failed to consider the same. He tried to rely upon the judgment of the Apex court in the matters of *State of Andhra Pradesh V/s. Viswanadula Chetti Babu*¹, paragraphs 3 and 4 in *State of Madhya Pradesh V/s. Chunnilal Alias Chunni Singh*² *V.P.Kuppurao V/s. The Director General of Police and Ors.*³ delivered on October 5, 2009 by the Madras High Court so as to substantiate his contentions. He would rather clarify based on the story of the prosecution that the initial investigation was carried out by an officer who was below the rank of Deputy Superintendent of Police and as such, was not qualified and competent to carry out the investigation. He would urge that even if the charge-sheet is filed by the officer of the rank of Deputy Superintendent of Police, his competency, expertise, knowledge and experience is not reflected in the charge-sheet and as such, the officer even if of the rank of Deputy Superintendent of Police had filed the charge-sheet, still he would not be competent in law to do so. According to him, if the investigation is carried out by an incompetent officer, it is an open and shut case for

1 (2010) 15 Supreme court Cases 103

2 (2009) 12 Supreme Court Cases 649

3 Cri.O.P. Nos.3580 to 3585 of 2009 & M.P. No.1/2009

discharge.

4. *Per contra*, the learned APP supports the case of the prosecution. The learned APP would urge that it can be derived from record that the investigation was carried out by the officer not below the rank of Deputy Superintendent of Police. Even if assuming without admitting that the initial investigation was carried out by the Police Inspector, however, after the offence was registered under the Atrocities Act, the investigation was transferred to the rank of Deputy Superintendent of Police. He would then urge that the law of statute viz. the Atrocities Act or the Rules thereunder, it is not necessary to reflect in black and white, when there was subjective satisfaction of the ingredients under the Atrocities Act, the competency, experience and knowledge of the investigation officer in filing the charge-sheet. He submits that there is no substance in the application and the application is liable to be rejected.

6. It is required to be noted that rule 7 of the Rules provides for an investigating officer should not below the rank of

Deputy Superintendent of Police to be appointed by the State Government / Director General of Police or Superintendent of Police after taking into account the past experience, sense ability and justice to perceive with the implications of the case and to proceed with the investigation of the case. So far as rule 7 is concerned, nothing is brought on record by the applicants so as to infer that the officer of the rank of Deputy Superintendent of Police who has investigated the matter, was not satisfying the requirement of Rule 7(1).

7. Once a charge-sheet under section 173 of the Code of Criminal Procedure was filed by the officer of the rank of Deputy Superintendent of Police, there is a presumption in law that the investigation has been carried out by the investigation officer in accordance with the provisions of the Atrocities Act and the Rules framed thereunder and burden to demonstrate that the investigating officer was not qualified pursuant to rule 7, shall be on the applicants. Except for making a baseless statement that the investigating officer was not qualified under rule 7(1) of the Rules, no material is brought on record to infer violation of rule 7(1) of

the rules.

8. In the wake of above, the claim that the qualification of the investigating officer was not in tune with the provisions and no subjective satisfaction was recorded in making out a case under the Atrocities Act is concerned, in my opinion, no case for interference in the revisional jurisdiction is made by the applicants.

9. In the wake of the fact that the applicants have failed to discharge the burden shifted on them, the support drawn on the judgments of the Apex Court and Madras High Court (supra) would be hardly of any assistance.

10. In the wake of above, on both these counts, I hardly notice any ground to exercise jurisdiction in the matter. The revision lacks merits and hence it is dismissed.

(NITIN W.SAMBRE, J.)