

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1165 OF 2017

Rajendra Vijayrao Nimbalkar.

..Applicant.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. A. P. Mundargi, Senior Advocate with Mr. J. J. Bardeskar for the Applicant.

Mr. K. V. Saste, APP for the Respondent-State.

Mr. Kaushik Jayant for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 19, 2018.**

P. C. :

1. Heard Mr. Mundargi, learned senior counsel for the Applicant, Mr. Saste, learned APP for the Respondent-State and Mr. Kaushik, learned counsel for Respondent No.2. By this application filed under section 482 of the Code of Criminal Procedure, 1908, [for short "the Code"] the Applicant has sought to quash (1) FIR bearing MECR No.-II-113/2017 registered with Central Police Station, Ulhasnagar for the offence punishable under sections 295(a), 504, 505-II of the Indian Penal Code, 1860 and section 3(1)(m)(r)(s)(u) and 4(1) of The Scheduled Caste and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 and (2) order dated 14th November 2017 passed by learned Judge, Special Court, Kalyan in exercise of power under section 156(3) of the Code of Criminal Procedure, 1908 in Sessions Case No. 311 of 2017.

2. It is the case of the Applicant that FIR came to be registered against him pursuant to an order passed under section 156(3) of the Code on 14th November 2017. Resultantly, the FIR registered on 16th November 2017 by the Central Police Station, Ulhasnagar for the offence punishable under sections 295A, 504, 505-II of the Indian Penal Code, 1860 and section 3(1)(m)(r)(s)(u) and 4(1) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned counsel for the Applicant has also taken us through the order passed by the Additional Sessions Judge at Kalyan. The said order reads thus :

“Read the complaint. Perused documents. Heard advocate for complainant. It prima facie seems that incident took place. This is appearing from tender of apology by one of the accused. In this case detailed investigation by competent police officer is necessary. Recording of statements of witnesses and incident, spot panchanama etc is must. This investigation cannot be carried by any one except police. Hence, this is fit case to send the complaint to Central police station under section 156(3) of Cr.P.C. for investigation and further action. Hence, I allow this. Complaint be sent to

Central Police Station, Ulhasnagar under section 156(3) of Cr.P.C. for further necessary action. Proceeding closed."

. The case of the Applicant is that in respect of an incident dated 6th July 2017, the complaint for the first time is preferred on 14th November 2017 pursuant to which the FIR has been registered. It is the case of the Applicant that Respondent No.2 occupied an unauthorized construction and the Applicant in the capacity of municipal commissioner was duty bound to initiate action against all the illegal and unauthorized constructions in Ulhasnagar and it is not the case that his action was backed by any political party. The action was not only initiated by the Applicant against Respondent No. 2 herein but also against several other persons who were occupying their offices without any authority or permission. According to him, the incident complained of is a sequel to the said action and lacks any truth of ring in it, and in fact he was only discharging his official duty. In such circumstances, the learned counsel for the Applicant submitted that the initiation of the proceedings against him is malafide.

3. In respect of incident dated 6th July 2017, Respondent No.2 initially on 7th July 2017 approached Central Police Station, Ulhasnagar by filing report under section 154(1) of the the Code of Criminal Procedure, 1908. It is alleged that the police did not entertain his grievance, therefore, he was constrained to approach the District and Sessions Court at Kalyan by way of Special Case No. 311 of 2017 invoking the powers under section 156(3) of the Code. The main allegation in the complaint is that on 6th July 2017 at about 2.00 p.m., Respondent No. 2 along with his friend Mr. Rajendra Choudhary and 3 to 4 party workers met the Applicant in his corporation office and asked him about the office issue. At that time, the Applicant told Respondent No.2 that he had sealed four offices of four corporators including that of Respondent No.2 as the offices were illegally taken by them. Respondent No.2 thereafter told the Applicant that the offices were given to them by former Commissioner Mr. Sudhakar Shinde, they had not taken it in any illegal way. It is alleged in the complaint that at that time, the Applicant suddenly got angry and said *"Mala Kay Mahanagar palike cha maharwada banvaycha ahe ka"* and started abusing the complainant in filthy and slang language.

4. Reading of the whole complaint made by Respondent No.2 before the Sessions Court makes it abundantly clear that the Applicant had formed an opinion that the possession of the office premises occupied by four corporators was illegal and he wanted to take back possession of the same in his capacity as commissioner of municipal corporation and when it was denied by these corporators the words stated hereinabove are alleged to have been uttered by the Applicant.

5. In pursuant of the aforesaid order, FIR came to be registered with Central Police Station, Ulhasnagar against the Applicant, bearing MECR No.-II-113/2017 for the offence punishable under sections 295A, 504, 505-II of the Indian Penal Code, 1860 and section 3(1)(m)(r)(s)(u) and 4(1) of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Mr. Mundargi invited our attention to the amended provisions of section 156 of the Code as applicable in the State of Maharashtra and submitted that in the absence of sanction under section 197 of the Code against the Applicant, the impugned order by

the learned Sessions Judge could not have been passed as well as the subject FIR could not have been registered.

7. Learned counsel for Respondent No.2 fairly conceded that there is no sanction under section 197 for launching prosecution against the Applicant. He, however, submitted that such sanction is not necessary before issuance of the order under section 156(3) of the Code especially when the provisions of the SC & ST Prevention of Atrocities Act are invoked. He also tried to convince us on merits.

8. Having heard learned counsel for the respective parties and learned APP for the Respondent-State. We find merit in the application. It would be advantageous to reproduce Section 156 of the Code which is thus :

"156. Police Officer's power to investigate cognizable case.- (1) Any officer in charge of a Police Station, may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter-XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

9. In the year 2016, section 156(3) of the Code was amended to insert proviso to sub-section (3) which came into effect from 30th August 2016. Reading of proviso makes it abundantly clear that no magistrate or Judge shall pass an order against the public servant in respect of the act done by such public servant while acting or purporting to act in discharge of his official duties except with previous sanction of the Government under section 197 of the Code. The facts stated herein above make it abundantly clear that the incident has occurred in the office of the Applicant who was then occupying the post of Commissioner of Ulhasnagar Municipal Corporation. The words which are alleged to have been uttered by the Applicant seem to have been uttered while taking action of sealing of the premises of four corporators including that of Respondent No.2, in his official capacity as Commissioner and in discharge of his duty. In that view of the matter, proviso to section 156(3) is clearly applicable to the facts and circumstances of the present case. As stated earlier, no sanction as contemplated under section 197 of the Code has been obtained before passing the impugned order or registering the said

FIR against the Applicant.

10. In the light of above, impugned order as well as the subject FIR cannot be sustained and the same are accordingly quashed and set aside. Application is made absolute in terms of prayer clauses (a) and (b).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]