**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2737 OF 2017

Shri Girish s/o Gangaram Chitta,
Age: 55 years, Occu.: Business,
R/o : Plot No.27, Vivekanand Colony,
Savedi, Ahmednagar,
Tq. and Dist. Ahmednagar.
.. APPLICANT

VERSUS

1. The State of Maharashtra,
Through Tofkhana Police Station,
Ahmednagar, District : Ahmednagar

2. Sau. Surekha Santosh Gharwadhve,
Age : 46 Years, Occu. : Business,
R/o. : Opp. Toll Naka, Burudgaon Road,
Ashish Beer Shoppe, Ahmednagar,
Tq. and District Ahmednagar.
..RESPONDENTS

...

Mr.R.B.Raghuvanshi, Advocate holding for Mr.P.D.Bachate, Advocate for the applicant
Mr.S.B.Yawalkar, Addl.P.P. for the Respondent/State
Mr.Sudhir K. Chavan, Advocate for respondent no.2.

...

**CORAM: S.S.SHINDE &
R.G.AVACHAT,JJ.**

Reserved on : 14.01.2019
Pronounced on : 23.01.2019

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Application is filed taking exception to the FIR bearing Crime No.I-129/2017 registered on 19th April, 2017, with Tofkhana Police Station, Ahmednagar, for the offences punishable under Section 354 of the Indian Penal Code and under Section 3 (1) (11) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989, and under Section 3 (1) (r) (s) (w) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Amendment Act, 2015.

3] It is the case of the applicant that he hails from reputed family of Ahmednagar District, so also, the applicant is engaged in the wholesale business of selling various types of liquor brands. Respondent no.2 has lodged false, frivolous, concocted and imaginary complaint against the applicant.

The applicant is carrying the business of FL-1 in the name of Kalpataru Traders in Ahmednagar District. The applicant is engaged in the wholesale Distributorship of the various brands of the Beers viz. Knock Out, Foster, Howards 5000 etc. in Ahmednagar District. The applicant is supplying goods to the various Retailers. The applicant used to supply the goods in favour of the retailers on credit basis. There is no single complaint registered against the applicant by any of the traders or independent person. Apart from the Retailers, the applicant has also supplied the goods in favour of respondent no.2, who is the Proprietor of Ashish Beer Shop, Burudgaon. The Competent Authority has issued the FL-BR-II License in favour of respondent no.2, so as to sell the Beers or

Wine in sealed bottles used for off consumption.

4] It is further the case of the applicant that he has supplied the goods (Beers) to respondent no.2, between 16th April, 2016 to 17th February, 2017. In spite of supply of goods, respondent no.2 has not paid the amount towards such supply of goods to the applicant regularly. The applicant has placed the copies of the Tax Invoices on record. There was outstanding to the tune of Rs.79,462.03 against respondent no.2. Accordingly, the applicant has requested respondent no.2 to pay alleged outstanding. Upon request made by the applicant, respondent no.2 issued various cheques in the name of the Firm of the applicant. The details of the various cheques issued by respondent no.2 in favour of the applicant, are mentioned in the application. It is the case of the applicant that all cheques issued by respondent no.2 were dishonoured. In the meanwhile, license of respondent no.2 was suspended by the Excise Department of the State Government, on the count that respondent no.2 used to sell the beer for excess MRP than the MRP printed on the bottle containing beer.

5] It is further the case of the applicant that on 15th December, 2016, the Hon'ble Supreme Court was pleased to pass order, thereby prohibiting the sale of liquor within the distance of 500 meters from the National/State Highways. The shop of respondent no.2 is outside the prohibited distance from the National/State Highway. After the order passed by the Apex Court, the shop holders, whose shop has been situate more than 500 meters distance from the State / National Highways, have taken interest in their business as the most of the shops within the radius of 500 meters from the State / National Highways were closed, in view of the order passed by the Apex Court. Respondent no.2 got renewed the license even if a serious charge was noted against her in the month of April, 2017. After renewal of license, respondent no.2 requested the applicant for supply of goods on credit. The applicant had refused to supply the goods on credit, and requested respondent no.2 to pay the outstanding against her.

6] It is the case of the applicant that as respondent no.2 did not pay the outstanding amount of the applicant, the applicant has *bona fidely* posted the message on their what's-App group blacklisting the license of respondent no.2 on 18th April, 2017. The applicant has posted the said message on what's-App, so that, other wholesalers would not be deceived by respondent no.2. Respondent no.2 called the agent of the applicant to take the outstanding amount of the applicant. On 19th April, 2017, respondent no.2 paid Rs.47,000/- out of Rs.79,462/-, towards outstanding amount to the agent of the applicant, namely, Nilesh Dhapase. The agent of the applicant further requested respondent no.2 to pay the entire outstanding dues, and then only the goods will be supplied. On payment of the part of the amount, respondent no.2 requested to supply the goods (Beers). However, as the cheques issued by respondent no.2, and taking into her conduct, the applicant refused to supply the goods in favour of respondent no.2. Respondent no.2 approached to the office of applicant, requesting to supply the goods. However, the applicant refused to supply the goods on the ground of outstanding amount against respondent no.2. As such, being annoyed with the refusal on the part of the applicant in respect of non-supply of the goods, respondent no.2 directly approached to the Tofkhana Police Station and thereby lodged the complaint against applicant on 19th April, 2017. It is falsely alleged by the informant/respondent no.2 that the applicant has outraged her modesty, and told her to come at night for remaining amount. Accordingly, the false, frivolous and imaginary offence bearing Crime No.I-129/2017 is registered with Tofkhana Police Station, Ahmednagar, for the offences punishale under Section 354 of the Indian Penal Code. Later on so as to raise gravity of the imaginary and frivolous offence, Section 3 (1) (11) of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, and Section 3 (1) (r) (s) (w) of the Amended Act, 2015, were added. On 19th April, 2017, the applicant himself attended the Police Station. The applicant was produced before the Court. The applicant has applied for regular bail, and the Additional Sessions Judge, Ahmednagar, was pleased to release the applicant on bail, vide order dated 20th April, 2017.

7] Learned counsel appearing for the applicant submits that since the applicant refused to supply goods on credit for non payment of earlier outstanding amount towards supply of goods, respondent no.2 has filed false case, so as to take revenge for refusal of the applicant to supply goods on credit. There is no any witness, who has seen the alleged incident. Respondent no.2 has lodged false, concocted and imaginary complaint, so as to escape from the payment of the legal dues to the applicant. Bare reading of the contents of the FIR in its entirety, no offence is disclosed. Respondent no.2 has lodged the FIR against the applicant merely to escape from the criminal case, which would be initiated by the applicant on account of dishonour of cheques issued by the informant in the name of the company of the applicant. The applicant is engaged in the business of wholesale Distributorship of Beers, and accordingly, the applicant has supplied the goods to respondent no.2, who is the Proprietor of Ashish Beer Shop, Burudgaon. The applicant has supplied the goods (Beers) worth of Rs.81,049/- to respondent no.2. The applicant has requested respondent no.2 to pay alleged outstanding. Upon request made by the applicant, respondent no.2 issued the various cheques in the name of the Company of the applicant. However, all the cheques issued by respondent no.2 were dishonoured.

8] It is submitted that as respondent no.2 did not pay the outstanding amount of the applicant, the applicant has posted the message on their what's-app Group, thereby blacklisting the license of respondent no.2 on 18th April, 2017. Thereafter, respondent no.2 called the agent of the applicant to take the outstanding amount of the applicant. Accordingly, on 19th April, 2017, respondent no.2 paid Rs.47,000/- towards the outstanding amount to the agent of the applicant, namely, Nilesh Dhapase. The agent of the applicant further requested respondent no.2 to pay the entire outstanding dues, and then only the goods will be supplied. On payment of the part of the amount, respondent no.2 requested to supply the goods (Beers). However, as there was huge outstanding against respondent no.2, the applicant refused to supply the goods in favour of respondent no.2. It is further submitted that there are several persons attended the office of applicant, namely, Satish Peli, Ranjit Pardeshi, Akshay Tripal, Madhukar Ghagare, Shailesh Bothra and others at the time of alleged incident. No incident was taken place as alleged by the informant, but the complaint is lodged by respondent no.2 so as to harass the applicant. Respondent no.2 has converted her religion. She is converted as a Christian. She is a member of Salvation Army Church. She got married adopting the Christian Rituals. The husband and father-in-law of respondent no.2 have also converted their religion as Christian. In view of the said fact, the registration of the offence against the applicant under the provisions of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 is amounts to abuse of process of law.

9] Learned counsel appearing for the applicant invites our attention to the allegations in the FIR, and submits that there is no single averment/sentence in the impugned FIR, which would attract the provisions of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989.

10] Learned Additional Public Prosecutor appearing for the respondent-State relying upon the investigation papers submits that the alleged offences are disclosed, and needs further investigation.

11] Learned counsel appearing for respondent no.2 relying upon the affidavit in reply, and also the contents of the FIR submits that the alleged offences are disclosed, and therefore, needs investigation. He further submits that respondent no.2 is running Beer Shoppe from April, 2011, and while running the Shoppe, has business transactions with not only the applicant but also with other traders. As far as the applicant is concerned, the applicant and respondent no.2 are conversant with each other since almost starting of Beer Shoppe. Learned counsel appearing for respondent no.2 invites our attention to the various transactions between the applicant and respondent no.2. It is submitted that the allegations made in the Application against respondent no.2 are not correct. Learned counsel further invites our attention to the averments in the application, and submits that the application deserves to be dismissed.

12] We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicant, learned Additional Public Prosecutor appearing for the respondent-State, and learned counsel appearing for respondent no.2. With their able assistance, we have perused the pleadings in the Application, grounds taken therein, annexures thereto, and also reply filed by respondent no.2, and also the allegations in the FIR. Upon careful perusal of the averments in the Application, and also reply filed by respondent no.2, it is crystal clear that they had business relations.

Though it is denied by respondent no.2 that there is outstanding payment towards her. Nevertheless the contention of the applicant that there is outstanding amount towards supply of goods cannot be ignored. Even if the allegations in the FIR are read carefully, it is clear that no other witness has witnessed the incident. According to the applicant, glasses fixed in his cabin are transparent and other employees were sitting in the office and if really said incident would have happened, certainly, some employee from the office ought to have supported the contentions of respondent no.2. The contention of the applicant that the impugned FIR is a result of avoiding the outstanding payment towards supply of goods by the applicant, cannot be completely ruled out, however, the allegations in the FIR will have to be read as it is, and at this stage, the defence taken by the applicant cannot be considered. Upon reading the contents of the FIR, *prima facie* the alleged offence under Section 354 of the Indian penal Code, appears to have been disclosed. At this stage, it is not desirable to find out falsity or correctness of the allegations. However, upon careful perusal of the allegations in the FIR, there is no whisper that the applicant abused respondent no.2 on her caste in public view. We have also carefully perused the investigation papers, and we are of the *prima facie* opinion that the provisions of Section 354 of the Indian Penal Code and under Section 3 (1) (11) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989, and under Section 3 (1) (r) (s) (w) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Amendment Act, 2015, are not attracted even after reading the FIR in its entirety. It would be travesty of justice in case the applicant has to face further investigation and trial for the offences punishable under Section 3 (1) (11) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989, and under Section 3 (1) (r) (s) (w) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Amendment Act, 2015, when the said offence is not disclosed. Upon reading the allegations in the FIR, and even according to respondent no.2, such alleged offence has not been taken place in public view.

13] Taking over all view of the matter, the FIR bearing Crime No. I-129/2017 registered on 19th April, 2017, with Tofkhana Police Station, Ahmednagar, to the extent of the offence punishable under Section 3 (1) (11) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act, 1989, and under Section 3 (1) (r) (s)

(w) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Amendment Act, 2015, stands quashed and set aside, and consequently, further investigation or the charge sheet for the said offences would not arise.

14] The Investigation Officer can proceed to investigate the further investigation in relation to the alleged offence under Section 354 of the Indian Penal Code.

15] We make it clear that we have not expressed any opinion about correctness or falsity of the said allegations, and only we have rejected the prayer of the applicant to quash the FIR, which would attract the ingredients of Section 354 of the Indian Penal Code. In case the Investigating Officer decides to file charge sheet for trying the offence under Section 354 of the Indian Penal

Code, against the applicant, in that case, it may be open for the applicant to take exception to such charge sheet or file application for discharge, as the case may be, and rejection of this application shall not be construed as an impediment to file such appropriate proceedings.

16] Accordingly, the Application is partly allowed. Rule is made absolute on above terms.

17] We make it clear that the observations made herein above are *prima facie* in nature and confined to the adjudication of the present application only.

[R.G.AVACHAT]
JUDGE

[S.S.SHINDE]
JUDGE

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