

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 3043 OF 2006

Dr. Yogesh Shankarlal Gupta	]	
Age : 35 Yrs., Occ.: Professional,	]	
Residing at 23A, Nalanda, 62 Pedder	]	
Road, Mumbai – 400 026	]	... Applicant

V/s.

1) State of Maharashtra	]	
(at the instance of Worli Police	]	
Station Mumbai in C.R. No. 213/06)	]	
2) Shri. Bhimrao Narayan Wagh	]	
Retd. Joint Charity Commissioner	]	
Room No. 702, Building No. H-5,	]	
Pratiksha Nagar, Sion,	]	
Mumbai	]	... Respondents

Mr. Aabad Ponda for the Applicant.
Mr. F.R. Shaikh, APP for the Respondent No.1/State.
None for Respondent No.2.

**CORAM : B.P.DHARMADHIKARI, &
REVATI MOHITE DERE, JJ.
DATE : 31st JANUARY, 2019**

ORAL JUDGMENT (B.P.DHARMADHIKARI, J):

1. Heard learned Counsel for Applicant and learned APP for Respondent No.1. Nobody appears for Respondent No.2. Learned APP however, invited out attention to affidavit filed by Respondent No.2.
2. Applicant prays for quashing of FIR No. 213 of 2006 registered

at Worli Police Station, Mumbai under Section 353 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. This Court has on 07.09.2006 stayed proceedings. That interim order continues to operate even today.

3. Counsel for Applicant submits that as the work in office of Respondent No.2 was not being attended to and on 20.06.2006 bribe was demanded, after communicating to the staff there, that matter would be reported to Anti Corruption Bureau, applicant came out and also made a phone call to office of Anti Corruption Bureau. Thereafter, papers were collected by staff of Respondent No.2 by contacting him outside the office and he was asked not to make any complaint to Anti Corruption Bureau. On next day, Respondent No.2 filed a false complaint against the Applicant implicating him in the offence under Section 353 and under Section 3(1)(x). He has taken us through the relevant record to substantiate contention.

4. Learned APP has invited our attention to complaint lodged by Respondent No.2 and statements recorded in support of that complaint. He points out that statements of witnesses support the complaint and therefore, offence is made out. He also contends that the defence of Applicant cannot be looked into at this stage.

5. The case of Applicant is after becoming aware of availability of

proof of phone call with Anti Corruption Bureau, he sought leave to amend present application and accordingly ground F(1) came to be added on 18.09.2006, which supports the stand of Applicant that immediately after coming out of office of Charity Commissioner, he made a phone call to Anti Corruption Bureau.

6. Our attention is also invited to a document at Exhibit 'B' which shows that at 14.07.31 hours on that day in the afternoon a phone call was made by the Applicant to that office. Learned APP is seeking time to obtain instructions on investigation, if any, in relation to this phone call.

7. Applicant has placed on record as part of his amendment, a statement of Shrikrushna Mahadev Kondurkar. He was then working with Anti Corruption Bureau at Mumbai. Shrikrushna has specifically stated that Dr. Gupta complained to him on telephone that he had been visiting office of Charity Commissioner since long and his work not being attended to and bribe was demanded. Shrikrushna claims that he informed the caller that cognizance of such an oral complaint cannot be taken and he must report in his office and lodge a complaint in writing. However, on next day, Dr. Gupta did not turn up. Statement of Shrikrushna is recorded by police only and it is supported by entry in telephone records of office of Corruption

Bureau.

8. The note of grievance of Applicant that he has been falsely implicated by complaint, also appears to have been undertaken and on 10.01.2007, the Commissioner of Police, Mumbai has forwarded a letter to Commissioner of Police, Central Region, Mumbai on the subject. Therein he has pointed out the stand taken by the Applicant. This communication is replied to by the Commissioner of Police, Central Region, Mumbai and that authority has mentioned that as statement of witnesses supported the complaint of Respondent No.2, police officers were duty bound to take cognizance and there was nothing wrong with it. In this communication the records pertaining to telephone call made by the Applicant to Anti Corruption Bureau also find mention and it is expressed that this fact could have been noted by police had they questioned Applicant before his arrest. That Authority also pointed out that though caste certificate is produced by Respondent No.2, its validity is still to be certified by the office of Tahsildar at Aurangabad.

9. Though various disputed questions arise, we find that incident in question is of June 2006. Respondent No.2 was then due to retire within 10 days. Thus as of now period of more than 13 and half years has expired after his superannuation.

10. Complaint lodged by Respondent No.2 shows that matter filed by the Applicant was called out for hearing and after hearing Applicant, Respondent No.2 dictated an order to stenographer calling for certain records within 8 days. This order was not to the liking of Applicant and therefore, he got angry and made alleged statements. The statements of stenographer recorded by police also supports this contention. However, this FIR is registered on 21.06.2006 i.e. on next day and statement of stenographer is recorded on 21.06.2006 itself. Her supplementary statement is recorded on 29.06.2006.

11. When Anti Corruption Bureau was approached with a grievance and Applicant contended that papers were taken from him outside the office of Charity Commissioner in order to pacify him not to complaint to Anti Corruption Bureau, the investigating officer should have examined correctness of contention in complaint that matter was scheduled for hearing on 28.06.2006 and after hearing Applicant therein, an order was passed. The matter presented by Applicant would have been registered and had some case number and would have appeared on daily board. If order was dictated therein, order signed by Respondent No.2 would have also been available. This investigation would have falsified the defence. The material on record does not show any such investigation.

12. The employee of Anti Corruption Bureau Shrikrushna has on the basis of record supported the stand of Applicant that he had called Anti Corruption Bureau office at 14.07.31 hours. This fact is not found incorrect in the communication sent by Commissioner of Police, Central Region, Mumbai (supra).

13. In this situation, taking overall view of the matter, we find that case either under Section 353 IPC or then under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is not made out against the Applicant.

14. Accordingly, we make rule absolute in terms of prayer clause (c).

15. No costs.

(REVATI MOHITE DERE, J.)

(B.P.DHARMADHIKARI, J.)