

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

CRIMINAL APPEAL NO. 156 OF 2020

Vikas Ravindra Bandgar
R/at Madanwadi, Tal. Indapur
Dist. Pune

.. Appellant

v/s.

1. The State of Maharashtra

2. Ramesh @ Balasaheb Arjun Sawane
R/at Madanwadi, Chowfula,
Tal. Indapur, Dist. Pune

.. Respondents

Mr. Rahul S. Kate i/b. Mr. Rupesh A. Zade for the appellant
Mrs. M.H. Mhatre, APP for respondent State
Ms. Rekha Musale i/b Mr. Nitin L. Rajguru for respondent no.2
Mr. Anil Vasant Satpute, Police Constable Baramati City Police Station
present in Court.

CORAM : PRITHVIRAJ K. CHAVAN, J.

**RESERVED ON : 3rd MARCH, 2020
PRONOUNCED ON : 2nd JUNE, 2020**

JUDGMENT : -

1. Challenge in this appeal is to an order dated 01.12.2018 passed by the Additional Sessions Judge, Baramati directing issuance of process against the appellant under Sections 447, 504, 506 of the Indian Penal Code and under Section 3(1)(r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

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Act, 1989 (for short “the Act of 1989”).

2. Shorn of unnecessary details, the facts necessary for disposal of the present appeal can be summarized thus.

3. On 27.09.2018 one Sampat Shivdas Bandgar lodged a complaint against the respondent no.2 (original complainant) alleging that the respondent no.2 had given threats of false implication of the said Sampat Bandgar on castism and blackmailing him, in future.

4. The respondent no.2 was working for Sampat Bandgar since 1993 to 2005. In 2005, respondent no.2 left the service of Sampat Bandgar and started dealing as a property agent - meaning thereby, he used to deal in sell and purchase of properties as a comission agent. Sampat Bandgar was desirous of purchasing some land at highway near village Bhivgan, which he expressed to respondent no2. The respondent no.2, in turn, informed Sampat Bandgar about a land bearing Gat No. 94, area 4 H 59 R situate at Bhadalwadi of which the owner was one Mr. Haribhau Shankar Shinde. It is the

contention of the respondent no.2 that the price of the said land was settled at the rate of Rs.2,05,000/- per acre. It was agreed / promised between respondent no.2 and Sampat Bandgar that after the sale deed, Sampat Bandgar would allot 5 R of land i.e. 50 x 100 feet from the said Gat No. to respondent no.2 in lieu of his commission which would be helpful for the education and future of respondent no.2's son.

5. Subsequently, despite the deal having been finalized, Sampat Bandgar refused to keep his promise and thereby cheated the respondent no.2. It is the contention of the respondent no.2 that rather he was threatened by Sampat Bandgar and, therefore, respondent no.2 approached the police on 06.08.2018 and lodged a written complaint against Sampat Bandgar. It is alleged that the police did not take any action against Sampat Bandgar.

6. On 14.08.2018, Sampat Bandgar had sent the appellant to the house of respondent no.2. The appellant threatened the respondent no.2 to withdraw the complaint lodged against Sampat Bandgar, else, he would eliminate the respondent no.2 and his family. It is alleged

that the appellant was armed with a revolver. He uttered following words naming the caste of the respondent no.2 by saying “*tumha Mharana jasta masti aliya, tumchi masti jirvayla vel lagnar naahi*”. The wife of respondent no.2 and his son witnessed the incident.

7. The learned Additional Sessions Judge by the impugned order dismissed the complaint against Sampat Bandgar, who was arraigned as accused no.1 and Dhairyasheel Ravindra Bandgar as accused no.3, however, issued process against the appellant as above. It is observed by the learned Additional Sessions Judge that on 14.08.2018, an eye-witness namely, Ajay has specifically alleged that the appellant arrived at their house in the front shed and humiliated the complainant by referring to his caste after brandishing the revolver and intimidated the respondent no.2 to withdraw the complaint filed against Sampat Bandgar. Thus, it is observed that *prima facie* a case has been made out against the appellant and, therefore, process was issued.

8. I have heard Mr. Rahul Kate, learned Counsel for the appellant. I have also heard Mrs. Mhatre learned APP for the State and Ms.

Rekha Musale appearing for the respondent no.2 / the original complainant.

9. Shri. Kate, learned Counsel for the appellant took me through the impugned order by stressing that the allegation of alleged abuses on caste were not within public view and, therefore, there is no question of attracting the provisions of the Act of 1989. The second limb of his argument was that the alleged abuses on caste were heard on 14.08.2018 however, the complaint came to be filed on 04.10.2018 i.e. after a considerable delay, which also goes to the root of the case. He drew my attention to the statement of the complainant recorded by the Deputy Superintendent of Police qua the respondent no.2 dated 04.10.2018 wherein it has not been stated by the respondent no.2 that he was insulted and abused in the name of his caste by the appellant. There are no allegation of even threat. There is no whisper in the complaint that the complainant belongs to Scheduled Caste or Scheduled Tribe. It is just to pressurize the appellant to handover the piece of land though the respondent no.2 had already been paid the commission of the deal qua the land Gat No. 94 situate at Bhadalwadi.

10. Ms. Musale, learned Counsel for the respondent no.2 however drew my attention to the fact that when the respondent no.2 approached the police they did not record his complaint and, therefore, he was constrained to approach the Special Court at Baramati by filing a private complaint against the appellant and others under Sections 420, 452, 323, 504, 506 of the Indian Penal Code and under Section 3(1) of the 1989 Act. My attention is drawn by the learned Counsel for respondent no.2 to the fact that the policeman of a rank of Head Constable namely Mr. Satpute had been asked to conduct an inquiry in complete violation of the provisions of the S.C./S.T. (Prevention of Atrocities) Act, 1989 wherein such complaints are to be investigated and inquired into by an Officer of Dy.S.P Rank. However, the complaint filed by the appellant against the respondent no.2 was investigated by the Dy. S.P which is quite strange. It demonstrates utter discrimination against respondent no.2 and disrespect law by the concerned officer. The learned Counsel drew my attention to the statement of Sampat Bandgar dated 04.10.2018 recorded by Dy.S.P. It has been stated that the respondent no.2 works as a property agent and he had helped the

said Sampat Bandgar in purchasing the land bearing Gat No. 94 at Mouje Bhadalwadi. The statement reveals that Sampat Bandgar paid the due commission to the respondent no.2, however, the respondent no.2 was insisting upon allotment of 5 R of land in his name as alleged to have been promised by Sampat Bandgar before the deal was finalized. Thus, it is the contention of the learned Counsel for the respondent no.2 that the Dy.S.P. is biased as he did not himself conduct investigation but asked a Police Officer of the rank of Head Constable to investigate offences under the 1989 Act.

11. The learned Counsel, therefore, placed reliance on a judgment of the Hon'ble Supreme Court in Review Petition (Cri.) No. 228 of 2018 in Criminal Appeal No. 416 of 2018 (*Union of India Vs. State of Maharashtra & Ors.*) with Review Petition No. 275 of 2018 in Criminal Appeal No. 416 of 2018. The learned Counsel for the respondent no.2 has therefore prayed for dismissal of the appeal.

12. At the outset, it is quite apparent from the record that the respondent no.2 had to approach the Special Court at Baramati by filing a Special Case bearing No.153 of 2018 against the appellant and others. It is not a disputed fact that the respondent no.2 who is

the original complainant before the Sessions Court, Baramati belongs to Scheduled Caste, whereas the appellant does not belong to Scheduled Caste or Scheduled Tribe. It is also not a disputed fact that respondent no.2 had worked with the appellant and his uncle for a considerable long period and thereafter he started his own profession as a property agent. No doubt, it seems that there is a delay in reporting the matter to the police on the part of respondent no.2. Yet, it was quite improper on the part of an Officer of the rank of Dy.S.P. to get the matter investigated through Head Constable Mr. Satpute. It reveals from the record that on 28.08.2018 Sampat Satpute had lodged a report with the S.D.P.O., Baramati against respondent no.2 alleging that the respondent no.2 has been insisting upon the part of the land from Gat No.94 from the said Sampat Bandgar and he had threatened that if the land is not transferred, he would implicate Sampat Bandgar and others in a false case under the Atrocities Act and would blackmail them. There is no doubt that the Dy.S.P. had recorded the statement of Sampat Bandgar as well as respondent the no.2 on 04.10.2018. However, it seems that the statement of respondent no.2 was recorded by the Head Constable on 13.10.2018.

13. The Sub-Divisional Police Officer Shri. Narayan Shirgaonkar has sworn an affidavit before this Court on 25.02.2020. At the outset, the Police Officer candidly admitted the illegality and tendered his unconditional apology before this Court for directing the police incharge of the Baramati Police Station Rural namely Mr. Satpute, Head Constable, to issue summons to the complainant and the proposed accused for inquiry. It was indeed an illegality on his part which according to him is neither intentional nor deliberate. He clearly admits that as per his directions an inquiry has been conducted by the Head Constable instead of a competent Officer for which there can hardly be any excuse. It is pertinent to note that this officer on the basis of the complaint dated 27.08.2018 and 28.08.2018 filed by Sampat Bandgar, summoned respondent no.2 as well as Sampat Bandgar. It seems that the investigation is now being conducted by this police officer. Though, it appears to be a civil dispute between the appellant and respondent no.2, yet it cannot be lost sight of the fact that the respondent no.2 has alleged specific caste abuses hurled upon him by the appellant in the courtyard of the house by brandishing his revolver. There seems to

be no investigation by the Dy.S.P. as to whether the appellant possesses a revolver and if so whether it is a licensed one and whether he had in fact abused on the caste of the respondent no.2 within public view. Delay on the part of respondent no.2 may be due to the fear of death as appellant is alleged to have brandished a revolver. Investigation to that angle is also essential to unearth the truth. It is significant to note that respondent no.2 was servant of appellant's uncle. It is quite obvious that he would require more courage to fight against such a mighty, wealthy and upper strata ex-employer.

14. The Hon'ble Supreme Court in the Review Petition (supra) made categorical observations while reviewing its judgment and the directions issued by the earlier judgment and recalled the direction Nos. III, IV as well as V. The relevant paragraphs of the said judgment read thus :-

“44. The enjoyment of quality life by the people is the essence of guaranteed right under Article 21 of the Constitution, as observed in Hinch Lal Tiwari v. Kamla Devi, (2001) 6 SCC 496. Right to live with human dignity is included in the right to life as observed in Francis Coralie Mullin v. Union Territory Delhi, Administrator, AIR 1981 SC 746, Olga Tellis v. Bombay Corporation, AIR 1986 SC 180. Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of

Dalits are instances of human rights violations as observed by this Court in People's Union for Civil Liberties v. Union of India, (2005) 2 SCC 436:

"34. The question can also be examined from another angle. The knowledge or experience of a police officer of human rights violation represents only one facet of human rights violation and its protection, namely, arising out of crime. Human rights violations are of various forms which besides police brutality are — gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits, etc. A police officer can claim to have experience of only one facet. That is not the requirement of the section." (emphasis supplied)

45. There is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the Act of 1989. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in Umesh Kumar v. State of Andhra Pradesh, (2013) 10 SCC 591, Kishore Samrite v. State of Uttar Pradesh, (2013) 2 SCC 398 and Subramanian Swamy v. Union of India, (2016) 7 SCC 221. The provisions of the Act of 1989 are, in essence, concomitants covering various facets of Article 21 of the Constitution of India.

49. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and

Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.

50. *The data of National Crime Records Bureau, Ministry of Home Affairs, has been pointed out on behalf of Union of India which indicates that more than 47,000 cases were registered in the year 2016 under the Act of 1989. The number is alarming, and it cannot be said that it is due to the outcome of the misuse of the provisions of the Act.*

51. *As a matter of fact, members of the Scheduled Castes and Scheduled Tribes have suffered for long, hence, if we cannot provide them protective discrimination beneficial to them, we cannot place them at all at a disadvantageous position that may be causing injury to them by widening inequality and against the very spirit of our Constitution. It would be against the basic human dignity to treat all of them as a liar or as a crook person and cannot look at every complaint by such complainant with a doubt. Eyewitnesses do not come up to speak in their favour. They hardly muster the courage to speak against upper caste, that is why provisions have been made by way of amendment for the protection of witnesses and rehabilitation of victims. All humans are equal including in their frailings. To treat SCs. and STs. as persons who are prone to lodge false reports under the provisions of the Scheduled Castes and Scheduled Tribes Act for taking revenge or otherwise as monetary benefits made available to them in the case of their being subjected to such offence, would be against fundamental human equality. It cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean*

adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc. In such cases, FIR is required to be registered promptly.

52. It is an unfortunate state of affairs that the caste system still prevails in the country and people remain in slums, more particularly, under skyscrapers, and they serve the inhabitants of such buildings.

53. To treat such incumbents with a rider that a report lodged by an SCs/STs category, would be registered only after a preliminary investigation by Dy. S.P, whereas under Cr.PC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by uppercaste has to be registered immediately and arrest can be made forthwith, whereas, in case of an offence under the Act of 1989, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat supportive action as per the mandate of Constitution is required to make them equals. It does not prima facie appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under the Cr.PC and contrary to the law laid down by this Court in Lalita Kumari (supra).

57. In case any person apprehends that he may be arrested, harassed and implicated falsely, he can approach the High Court for quashing the FIR under Section 482 as observed in State of Orissa V. Debendra Nath Padhi, (2005) 1 SCC 568.

63. Inter alia for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines

can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the Act of 1989.

66. The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the framers of the Constitution, when we do not require any such legislation like Act of 1989, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per Constitutional goal.”

15. Thus, the law is no more *res integra* that a police officer of the rank of Dy.S.P. should conduct the inquiry and investigate into the matters where there are allegations of caste abuses etc. under the Atrocities Act. The Dy.S.P. has no authority under the law to first inquire and then to register FIR. It is his duty to first record the FIR and then proceed to investigate the matter. There is no question of the Dy.S.P. exercising his discretion in such matters as is clearly observed in the judgment of the Supreme Court (Supra). The manner in which the Dy.S.P. conducted himself in the case at hand is quite condemnable. It is an exemple as to how some of the high

ranking police officers sometimes act in a biased manner. The learned Additional Sessions Judge, Baramati has, therefore, rightly concluded that the process is to be issued against the appellant under the relevant sections of the Indian Penal Code and the 1989 Act. The impugned order warrants no interference in appeal at this stage.

16. Before parting with the judgment, the Superintendent of Police, Rural, Pune is directed to take appropriate action against the Dy.S.P for breach of his duty.

17. With this directions, the appeal stands dismissed.

(PRITHVIRAJ K. CHAVAN, J.)