

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 253 OF 2014

Sabhakar Rao s/O. Dattarao Deshmukh,
Age : 53 years, Profession: Advocate,
(MAH/1470/1986), R/o. Samarth Nagar,
Risod, Tahsil : Risod, District : Washim.

.... **APPLICANT.**

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1. **State of Maharashtra,**
through Police Station Officer,
Police Station, Risod, Tahsil :
Risod, District : Washim.
2. **Sushila W/o. Dayanand Paraskar,**
Aged about 29 years, Occupation:
Agriculturist, R/o. Jijau Nagar, Risod,
Tahsil : Risod, District : Washim
(Original Complainant)

.... **NON-APPLICANTS.**

Shri V. B. Gawali, Advocate for Applicant.
Shri S.J. Kadu, A.P.P. for Non-applicant No.1/State.
Shri A.B. Mirza, Advocate for Non-applicant No.2.

CORAM : Z.A. HAQ AND AMIT B. BORKAR, JJ.
DATED : NOVEMBER 02, 2020.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. This is an application under Section 482 of the Code of Criminal Procedure challenging First Information Report No.208 of 2013, dated 8th October 2013 which was filed by the non-applicant No.2 with the non-applicant No.1 for the offences punishable under Sections 143, 323, 354, 354(A)(1) of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. It is the case of the applicant that the applicant had filed Regular Civil Suit No. 81 of 2008 for and on behalf of Shri Bhimrao Sable against the non-applicant No.2 seeking relief of declaration and permanent injunction wherein an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for grant of temporary injunction was filed. On the said application the trial Court granted *exparte* temporary injunction which was confirmed after hearing both the sides. Since in-spite of the order of injunction the non-applicant No.2 and her relatives committed breach of the order, the applicant for and on behalf of the plaintiff in the said suit filed an application under Order XXXIX Rule 2-A of the Code of Civil Procedure bearing M.J.C. No. 05 of 2009.

4. Since the said suit was dismissed on technical ground, the plaintiff being aggrieved by the said judgment, filed Regular Civil Appeal No. 25 of 2012 before District Judge, Washim through the applicant as an Advocate. In the said appeal, the plaintiff in the said suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, wherein the learned District Judge was pleased to direct both the parties to maintain status-quo as regards possession of the suit property. Since there was breach of the said order of status-quo, the applicant as an Advocate of the plaintiff in the said suit filed application before the District Judge, Washim for grant of police aid for implementation of the order of status-quo which was allowed on 8th July 2013 and the order of grant of police aid was passed subject to payment of necessary charges which were deposited by the client of the applicant.

5. On 8th July 2013 F.I.R. came to be registered with non-applicant No.1-Police Station by the non-applicant No.2. The said F.I.R. was against the plaintiff in the said suit i.e. client of the present applicant.

6. On 8th October 2013 an F.I.R. bearing Crime No.208 of 2013, which is impugned in the present application, has been filed against the applicant and other six persons alleging offences punishable under Sections 143, 323, 354, 354(A)(1) of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,

1989. It is alleged in the said F.I.R. that there are utterances by the applicant abusing caste of the non-applicant No.2. The applicant has challenged said F.I.R. by filing the present application.

7. This Court on 22nd August 2014 admitted the present application and granted interim relief permitting investigation to proceed, but charge-sheet shall not be filed until further orders of this Court.

8. Shri V.B.Gawali, learned Advocate for the applicant submitted that filing of the F.I.R. is nothing but abuse of process of law. It is submitted that only because there were adverse orders passed in the civil suit and there was order of status-quo granted by the District Court which was sought to be enforced by the police aid, F.I.R. came to be registered against the applicant who is practicing advocate and was appearing for his client who was plaintiff in the said suit. It is therefore, submitted that the F.I.R. deserves to be quashed as the same is filed to unleash the personal vendetta against the applicant.

9. Shri A.B.Mirza, learned Advocate for the non-applicant No.2 submitted that the offence in the F.I.R. makes and fulfills ingredients of second offences alleged against the applicant. It is submitted that from the statements which are recorded by the prosecution, *prima-facie* case is made out to proceed against the applicant and other accused against whom the

F.I.R. has been filed. Therefore, it is prayed that the application deserves to be dismissed.

10. Shri S.S.Doifode, learned A.PP. for the non-applicant No.1 submitted that the investigation is carried out and charge-sheet is filed. From the material which is there on record, prima-facie case against the applicant herein has been made out and therefore, the application deserves to be dismissed.

11. We have heard the learned Advocates for both the sides and scrutinized the F.I.R. and all other material placed on record by the applicant along with charge-sheet. Having gone through the material produced by the applicant, it appears that the Civil Court had granted order of protection of possession of the client of the applicant. The applicant was appearing in the suit which was filed by the client of the applicant against the non-applicant No.2, as an Advocate. It appears that on 8th September 2013 the learned District Judge, Washim had passed an order of granting police-aid in favour of Bhimrao Sable who is client of the applicant. Since the applicant was acting in his capacity as an Advocate, from the contents of the F.I.R., it appears that the name of the applicant has been inserted in the F.I.R. only to harass the applicant as he was appearing as an Advocate for his client Bhimrao Sable. The statements, which are part of the charge-sheet, starting from page No.112 to page No.130 of the present application, the wording of

the said statements is exactly similar to the wording which has been stated by the non-applicant No.2. It appears on reading of all the statements that the statements insofar as it makes allegation against the present applicant are concerned, the allegations are exactly similar.

12. Having considered the facts and circumstances of the present case, insofar as the present applicant is concerned, we are satisfied that continuation of the prosecution against the present applicant amounts to abuse of process of law and therefore, the F.I.R. along with charge-sheet No.81 of 2014 deserve to be quashed.

13. We, therefore, pass the following order:

- i) Criminal Application No. 253 of 2014 is **allowed**.
- ii) First Information Report No.208 of 2013, registered on the basis of the report submitted by non-applicant No.2 with the non-applicant No.1-Police Station for the offences punishable under Sections 143, 323, 354, 354(A)(1) of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Charge-sheet bearing No. 81 of 2014, dated 12th July 2014 only as against the present applicant-Sabhakarrao S/o. Dattarao Deshmukh is quashed.

iii) It is made clear that the observations made in this order will not influence the trial of other accused and the same shall be decided on its own merits.

Rule is made absolute in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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