

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO. 426 OF 2014

- 1] Vijay Madhaorao Pranjale,
Aged 54 yrs., Occ. Service,
R/o. Tembli, Th.- Dharni,
Distt.- Amravati.
- 2] Devanand Pandurang Bhakte,
Aged 34 yrs., Occ. Service,
R/o. Chikhaldara (Adnadi),
Th. Chikhaldara, Distt.- Amravati.
- 3] Balaji Sambhaji Katkade,,
Aged 38 yrs., Occ. Service,
R/o. Tembli, Th.- Dharni,
Distt.- Amravati.

... **APPLICANTS**

...V E R S U S...

- 1] State of Maharashtra,
through its P.S.O.,
Police Station, Dharni,
Distt.- Amravati.
- 2] Ramprasad Dadi Mawaskar,
Aged 42 yrs., Occ. Service,
R/o. Tembli, Th.-Dharni,
Distt.- Amravati.

... **NON-APPLICANTS**

 Shri N. R. Saboo, Advocate for Applicants.

Ms. K. S. Joshi, Addl.P.P. for Non-applicant No.1/State.

Shri. J. B. Kasat, Advocate for Non-applicant No.2.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 02.12.2020

ORAL JUDGMENT (PER: AMIT B. BORKAR, J.) :-

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 25.06.2014 passed by the Judicial Magistrate First Class, Dharni in Misc. Criminal Application No.24/2012 and First Information Report bearing No.174/2014 registered by the Non-applicant No.1 – Police Station for offence punishable under Section 3(i)(ii)(iii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Sections 341, 324, 352 read with Section 34 of the Indian Penal Code.

2. The First Information Report bearing No.174/2014 came to be registered on 20.07.2014 with the allegations that the applicants abused the non-applicant No.2 in the name of caste. It is also alleged in the F.I.R. that four persons were present when the applicants allegedly abused the non-applicant No.2.

3. On 22.10.2011 there was F.I.R. lodged by the applicant No.1 against the non-applicant No.1. In the said report, it was stated that the non-applicant No.2 has assaulted applicant No.1 in the school premises.

4. On 14.05.2012, there was complaint filed by the applicant No.1 with the concerned Police Station stating that the non-applicant No.2 has threatened applicant No.1 that he will file false atrocity case against him.

5. The non-applicant No.2 on 09.07.2012 filed Misc. Criminal Application No.24/2012 in the Court of the learned Judicial Magistrate First Class, Dharni. It is alleged in the said complaint that on 14.05.2012 at about 8.30 a.m., the applicants abused the non-applicant No.2 in the name of caste. It is also stated in the complaint that the incident was witnessed by four witnesses named in the complaint. The non-applicant No.1 submitted the report in the Court of the learned Judicial Magistrate First Class, Dharni stating that on an enquiry, it was revealed that the persons named in the complaint have not witnessed the incident alleged in the complaint. The report concludes that no incident occurred as alleged by the non-applicant No.2.

6. Though the non-applicant No.1– Police Station submitted a report supporting the applicants, the learned Judicial Magistrate First Class, Dharni by order dated 25.06.2014 directed the non-applicant No.1 to register F.I.R. against the applicant Nos. 1 to 3 and investigate the matter under Section 156(3) of the Code of Criminal Procedure.

7. In pursuance of the order dated 25.06.2014, impugned F.I.R. came to be registered against the applicants on 20.07.2014. In the F.I.R., it is alleged that the applicants abused the non-applicant No.2 in the name of his caste and the said incident has been witnessed by four persons named in the F.I.R. It is also alleged in the F.I.R. that there was physical assault on non-applicant No.2 on 14.05.2012 and therefore, it is alleged that the applicants have committed offence under Sections 341, 324, 352 read with Section 34 of the Indian Penal Code.

8. The applicants have therefore, challenged the order dated 25.06.2014 passed by the learned Judicial Magistrate First Class, Dharni in Misc. Criminal application No.24/2012 and also the F.I.R. No.174 of 2014 by way filing present application. This Court on 29.09.2014 issued Rule and confirmed interim relief granted already. During pendency of the present application, the non applicant No.1 filed a reply and it is stated in the reply that during the investigation, the Investigating Officer has recorded the statement of eye witnesses referred in the complaint and they do not support the contentions of the applicants. It is also stated in the reply that the said witnesses have specifically stated that no such incident has taken place before them and they are not aware about such incident.

9. The non-applicant No.2 also filed his reply and stated that the incident as alleged had in fact taken place and the applicants have committed serious offences and therefore, prayed for dismissal of application.

10. We have heard Shri Saboo, the learned Advocate for the applicants, Ms. Joshi, learned Addl.P.P. for the non-applicant No.1 and Shri Kasat, learned Advocate for the non-applicant No.2.

11. Having gone through the material on record and the complaint, we find that there is material inconsistency in the complaint filed by the applicant No.1 on 14.05.2012 with the non-applicant No.1–Police Station and the complaint bearing Misc. Criminal Application No.24/2012. The inconsistency is to the extent that in the complaint filed on 14.05.2012 with non-applicant No.1–Police Station, the names of witnesses are not mentioned, nor it is mentioned that the incident was seen by any person. But in the Misc. Criminal Application filed before the learned Judicial Magistrate First Class, Dharni, the non-applicant No.2 has mentioned that the incident has been witnessed by four persons named in the complaint. The said inconsistency in our opinion is nothing but an attempt to improve the case of non-applicant No.2.

12. One more fact which supports the applicants is the reply filed by the non-applicant No.1 stating that the Investigating Officer has recorded the statements of four witnesses who have categorically stated that they have not witnessed such incident, which has been mentioned in the F.I.R. and have further stated that such incident has not taken place. The reply specifically mentions that the witnesses as alleged by the non-applicant No.2 have not seen any incident, was placed before the learned Judicial Magistrate First Class, Dharni but inspite of the said fact, the learned Judicial Magistrate First Class, Dharni has directed registration of F.I.R. against the applicants and therefore, the F.I.R. which is impugned in the present application came to be registered. In our opinion, taking into consideration the report submitted by non-applicant No.1, the learned Judicial Magistrate First Class, Dharni was not justified in directing registration of FIR under Section 156(3) of the Code of Criminal Procedure.

13. Having considered the overall material on record and in particular the reply filed by the non-applicant No.1-Police Station and the material inconsistency in the first complaint of non-applicant No.2, we are of the opinion that registration of F.I.R. against the applicants is an abuse of process of law and therefore, the F.I.R. deserves to be quashed and set aside.

14. We therefore, pass the following order.

The impugned order passed by the learned Judicial Magistrate First Class, Dharni in Misc. Criminal Application No.24/2012 dated 25.06.2014 and First Information Report No. 174/2014 registered with non-applicant No.1- Police Station for offences under Section 3(i)(ii)(iii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 341, 324, 352 read with Section 34 of the Indian Penal Code, is hereby quashed and set aside.

The Criminal Application is allowed in the above terms.

JUDGE

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