

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 18 OF 2020

STATE OF GOA, THR. ...Applicant
OFFICER IN CHARGE, OLD
GOA POLICE STATION, OLD
GOA.

Versus

AJIT BAKAL ...Respondent

Mr. Sagar Dhargalkar, *Additional Public Prosecutor for the applicant.*

Mr. C. A. Ferreira and Mr. Sujay Kamulkar, *Advocates for the respondent.*

CORAM: MANISH PITALE, J.

DATED: 23rd September, 2021.

P.C.:

1. By this Revision Application, the applicant – State of Goa has challenged order dated 31/10/2019 passed by the Court of Special Judge, Panaji, whereby the respondent (original accused) has been discharged of offences registered against him under the Indian Penal Code and the provisions of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act of 1989").

2. Mr. Dhargalkar, learned Additional Public Prosecutor appeared on behalf of the applicant – State and submitted that the material on record, including the FIR, statements and supplementary statements of the victim as well as the witnesses

and other material placed on record with the charge-sheet was sufficient to demonstrate that charges were required to be framed against the respondent for offences under Sections 323, 504, 427, 506 (ii) of the IPC and Sections 3(1)(r) and 3(1)(s) of the Act of 1989. It was submitted that the ingredients of the said offences were clearly made out on the basis of the material on record. The Court of the Special Judge erred in conducting a virtual mini trial at the stage of framing charges and erroneously gave a clean chit to the respondent herein. The learned Additional Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Asim Sheriff v/s National Investigation Agency** [(2019) 7 SCC 148] to contend that the principles laid down therein were not applied in the correct perspective in the facts and circumstances of the present case and therefore, the impugned order deserves interference.

3. On the other hand, Mr. C.A. Ferreira, learned Counsel appearing for the respondent submitted that perusal of the initial statement of the victim and the statements of the two alleged eyewitnesses would show that there was no whisper of any caste based abuses hurled by the respondent on the victim. It was only an afterthought on the part of the victim to have lodged a detailed additional complaint two days after the incident to rake up the issues pertaining to the Act of 1989. The alleged eyewitnesses also gave similar statements more than a month after

the date of the incident regarding alleged caste based abuses used by the respondent to claim that he committed offences under the Act of 1989. It was submitted that an independent witness i.e. a journalist in his statement completely falsified the description of the incident as given by the victim and the alleged eyewitnesses in their supplementary statements. The learned Counsel also emphasized upon the aspect of absence of ingredients of the offences under the Act of 1989.

4. It was brought to the notice of this Court that except Section 506(ii) of the IPC, which is a cognizable offence in the State of Goa, all the other alleged offences were non-cognizable. Even with regard to the offence under Section 506(ii) of the IPC, it was contended that a bare perusal of the initial statements of the victim and the eyewitnesses would show that there was no reference to any act on the part of the respondent which would show the ingredients of the said offence. Reliance was placed on the judgments of the Hon'ble Supreme Court in the case of **Swaran Singh and others v/s. State through Standing Counsel and Another** [(2008) 8 SCC 435] and **Madhavarao Gajanan Deshpande v/s. State of Maharashtra** [2003 (4) Mh.L.J. 101].

5. Heard learned Counsel for the parties and perused the material on record. In the present case, the Court of Special Judge

has concluded that the statements of the witnesses and the material on record indicated that there was an attempt to frame the respondent for offences under the Act of 1989 and much emphasis was placed on the fact that the allegations pertaining to the offences under the Act of 1989 were included only in the supplementary statements.

6. Before analyzing the material on record and the correctness or otherwise of the impugned order, it would be appropriate to refer to the principles to be applied when such a question comes up for consideration i.e. as to whether the accused deserves to face trial by framing of charges. In the case of **Sajjan Kumar v/s. CBI** [(2010) 9 SCC 368] the aforesaid principles have been culled out and stated as follows :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) *The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

7. In the case of **Asim Sheriff v/s National Investigation Agency** (supra), after quoting the aforesaid principles, the Hon'ble Supreme Court has further stated as follows:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

8. It is clear from the above-quoted principles laid down by the Hon'ble Supreme Court that although the Court is not supposed to hold a mini trial at this stage, what is to be examined is as to whether the material placed on record along with the charge sheet discloses a grave suspicion against the accused person

and whether such grave suspicion would justify framing of charges against the accused person.

9. It is also a settled principle of law that the FIR need not be an encyclopedia of the manner in which the alleged incident has occurred but the information submitted to the police must describe the incident truthfully and in the manner in which it has occurred. Thereupon offences can be registered depending on which offence under the IPC or any Special Act can be said to be made out on the basis of such statement given to the police.

10. In the present case, a perusal of the information given by the victim, which led to the registration of the FIR, would show that according to the informant/ victim an incident occurred at about 1:30am on 04/06/2018, wherein the respondent allegedly threatened the informant/victim and assaulted him with fists and blows. The statements of two alleged eyewitnesses also described the incident in identical terms and there is reference only to assault on the victim by fists and blows. On this basis, offences were registered against the respondent under Sections 504, 323, 427 and 506(ii) of the IPC.

11. Thereafter, on 06/06/2018 i.e. two days after the incident the victim submitted a detailed typewritten complaint before the police with regard to the very same incident. In the said typewritten detailed complaint, for the first time, there was a

reference made to use of abusive language based on caste, indicating that offences under the Act of 1989 had been committed. This typewritten complaint is the basis for invoking offences under the Act of 1989. Thereafter, on 10/07/2018, i.e. after more than a month of the alleged incident, a supplementary statement of the victim was recorded wherein reference was made to the alleged abusive language used by the respondent on the basis of caste at the time of the incident. It was stated that the detailed typewritten complaint submitted on 06/06/2018 was after consulting an Advocate. It is interesting that the victim stated in the supplementary statement that since he was not aware about the Act of 1989, he had not narrated the actual caste related words that were allegedly used by the respondent at the time of the incident.

12. Record also shows that while the two alleged eyewitnesses i.e. one Arturo D'souza and Olencio Simoes had made no reference to any caste based abusive language used by the respondent at the time of the incident, in their supplementary statements recorded on 10/07/2018 and 11/07/2018, they also for the first time came up with the allegation of use of such caste based abusive language by the respondent at the time of the incident. A statement of one Rupesh Samant, being a journalist recorded on 18/07/2018, shows that according to him although he did hear the altercation that occurred at the time of the

incident, he stated that he had not heard any caste based comments or remarks uttered by the respondent or any member of his group.

13. The aforesaid material placed along with the charge-sheet clearly indicates that the allegations pertaining to caste based abusive language allegedly used by the respondent was an afterthought and an attempt to rake up offences under the Act of 1989. A reference to the consultation with the Advocate and alleged ignorance of the Act of 1989 being the reason for not giving such information to the police at the first instance is indicative of the manner in which the victim in the instant case has sought to rake up the offences under the Act, 1989, whereas in the first instance such allegation was not made. If the incident had occurred in the manner in which the victim and the alleged eyewitnesses in their supplementary statements claimed to have occurred, such crucial information regarding abusive language on the basis of caste used by the respondent would have been stated in the very initial statements recorded by the police. Therefore, the Court of the Special Judge is justified in concluding that the entire allegations pertaining to the Act of 1989 appeared to be an afterthought and an attempt to frame the respondent for offences under the said Act.

14. Insofar as reliance placed on the judgment in the case of **Hitesh Verma v/s. State of Uttarakhand and Another** [(2020) 10 SCC 710] on behalf of the respondent is concerned, the question of examining ingredients of offences under the Act of 1989 would arise only if there is prima facie material to show that such offences could be alleged against the respondent in the first place. This Court agrees with the Court of Special Judge that the offences under the Act of 1989 were sought to be invoked as an afterthought and therefore, there was no suspicion much less grave suspicion raised in the present case against the respondent as regards the said alleged offences.

15. In so far as the offences with regard to IPC are concerned, except Section 506(ii) of the IPC, none of the other offences are cognizable offences. A perusal of the initial statements of the victim and the alleged eyewitnesses as also other material on record would show that even insofar as Section 506(ii) is concerned the essential ingredients thereof are not made out. Even if in the initial statements given by the victim and the eyewitnesses there is a reference to threat extended by the respondent, other than saying that the victim was threatened, there is no other material on record to indicate that the essential ingredients of the serious offence under Section 506(ii) of the IPC are made out. The material on record has to be appreciated in its entirety. It appears that an incident of a heated exchange

between the parties did occur, but on overall scrutiny of the material, this Court is of the opinion that the investigating authority failed to bring on record sufficient material for framing of charges against the respondent.

16. The Court below has taken a possible view of the matter and in terms of the principles laid down in the above quoted judgment of the Hon'ble Supreme Court in **Sajjan Kumar v/s. CBI**(supra), when two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Court is empowered to discharge the accused. Applying the said principle, this Court finds that there is no merit in the present application. Accordingly, the present application is dismissed.

MANISH PITALE, J.

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