

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3852 OF 2019

Rakesh Shreshta .. Petitioner
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Girish Kulkarni, a/w. Mr. Kunal Nawale, for the Petitioner.

Mrs. S.D. Shinde, APP, for Respondent No.1.

Mr. Karan Dua, i/b. Bhandary and Bhandary, for Respondent No.2.

Mr. S.N. Bhide, Assistant Registrar present in Court.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 29 OCTOBER 2021.

P.C:-

This petition is filed under Section 226 of the Constitution of India and Section 482 of the Criminal Procedure Code seeking to quash the record and proceedings of SCST Special Case No.2 of 2019 pending before Additional Sessions Judge Dindoshi arising out of CR No.404 of 2018 filed by Respondent No.2.

2. Respondent No.2 filed the FIR against the Petitioner under Section 3(1)(r)(s) and 3(2) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SC/ST Act”) and Section 504 of the Indian Penal Code. There is a reference to sub-section 5 in the charge-sheet, which the learned Counsel for the parties and learned APP point out is a typographic error and that the alphabet 5 is actually (s) of Section 3(1). They also point out that there is no sub-section 5 of the Act of 1989.

3. The FIR was filed by Respondent No.2 stating that on 22 September 2018, where Respondent No.2 resides, a road repair work was going on. The Petitioner was present there to supervise the repair work. At that time, an altercation took place between the Petitioner and one more person and upon Respondent No.2 intervening, the Petitioner abused Respondent No.2, a member of the Scheduled Caste, with reference to his caste status. According to Respondent No.2, Respondent No.2 had only sought to intervene in the quarrel, and because he intervened, the Petitioner was enraged and insulted him with reference to his caste.

4. After the petition was filed seeking to quash the FIR on merits, while the petition is pending, learned Counsel for the Petitioner and Respondent No.2 state that their respective clients decided to amicably resolve the dispute.

5. As regards Section 506 of the Indian Penal Code is concerned, the punishment is upto two years. There is nothing in the

FIR that suggests that there is any threat to cause death or grievous hurt. Therefore, second part of Section 506 is not attracted, which calls for a punishment upto 7 years.

6. The offences under the Act of 1989 Section 3(1)(r) refers to intentional insults and intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view and Section 3(1)(s) refers to abuses to any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view. Section 3(2)(va) provides for punishment as may be specified under the Indian Penal Code with fine.

7. As regards the question whether this Court can quash the proceedings under the Act of 1989 by consent of parties, the recent decision of the three learned Judge of Apex Court in the case of *Ramawatar vs. State of Madhya Pradesh*¹ provides the guidance. In this case also, the facts were identical as to the present case. In the case before the Supreme Court, the appellant and the complainant were neighbours. An incident took place, where the co-accused of the appellant broke down the wall and when it was resisted by the appellant, quarrel took place and an FIR was filed. On the next day, when the complainant was residing in front of a residence, the appellant and his brother, being aggrieved by the FIR by the complainant, abused her with repeated reference to her caste and

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threatened her with dire consequences. The investigation was taken further. The trial court found that the appellant's actions inured in controversy under Section 3(1)(s) of the Act of 1989 and convicted the appellant. An appeal was filed before the High Court of Madhya Pradesh and the order of conviction was maintained by the High Court. Thereafter, the appellant had approached the Supreme Court, and when the appeal came up for hearing, the parties had informed the Supreme Court that they have compromised the matter. Before the Supreme Court, the State, while not controverting the factum of compromise, opposed the quashing of crime in proceeding by consent contending that settlement between the parties is inconsistent in terms of Section 320 of Criminal Procedure Code, the offence was not compounded. The Supreme Court negatived the contentions and observed that the inherent powers of the Supreme Court under Article 142 of the Constitution and of the High Court under Section 482 of the Criminal Procedure Code is not taken away to quash proceedings under the Act of 1989 by consent of parties, if a suitable case for such exercise is made out. The observations in that regard are found in paragraphs 15, 16 and 18 below:

“15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The Act is also a recognition of

the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr.P.C.

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18. We may hasten to add that in cases such as the present, the Courts ought to be even more vigilant to ensure that the complainant-victim has entered into the compromise on the volition of his/her free will and not on account of any duress. It cannot be understated that since members of the Scheduled Caste and Scheduled Tribe belong to the weaker sections of our country, they are more prone to acts of coercion, and therefore ought to be accorded a higher level of protection. If the Courts find even a hint of compulsion or force, no relief

can be given to the accused party. What factors the Courts should consider, would depend on the facts and circumstances of each case.”

8. In the light of this guidance provided, we have examined the facts of the present case. From the FIR itself it can be seen that the quarrel was between the Petitioner and one Raju Patole. The learned Counsel for the parties pointed out that while this quarrel was going on, Respondent No.2 intervened and it was at that time, the Petitioner was in agitated state of mind. With that agitated state of mind he uttered insults with reference to caste. The learned Counsel submitted that there was no calculated attempt to intentionally insult or humiliate Respondent No.2 with reference of him being member of Scheduled Caste. We find merit in these submissions. It is quite clear from the FIR that the abuses were primarily on account of anger and frustration having interrupted the quarrel of the Petitioner with some other person. We also note that from the plain reading of the FIR there does not appear to be any mental deprivation on the part of the Petitioner.

9. As regards the object of the Act, which is for protection of persons belonging to weaker and backward sections of the society, even while quashing the proceedings under the Act by consent, the Court must ensure certain safeguards. With that view in mind, we had asked the learned Counsel for Respondent No.2 as to the stand taken by Respondent No.2 whether on his own accord or coercion. The

learned Counsel for Respondent No.2 informed us that it was his free will. Respondent No.2 was present in the Court yesterday and we had passed an order asking the Registrar (Judicial) of this Court to interact with the Petitioner and Respondent No.2 separately and ascertain whether Respondent No.2 is willing to settle the dispute on his own accord. Such interaction has taken place. It is informed by the Court Officer present that not only Respondent No.2 has stated that he is settling the dispute on his own free will, but even the Petitioner has apologized to him, which apology he has accepted. To take further care, we had asked the learned Counsel for the Petitioner if the Petitioner is ready and willing to apologize to Respondent No.2. Learned Counsel for the Petitioner, upon instructions, stated that the Petitioner is ready to apologize to Respondent No.2 and is also ready to file an affidavit. The Petitioner has filed an affidavit of apology on 20 October 2021. We have perused the affidavit. The apology is entirely unconditional. The affidavit is also filed by Respondent No.2 accepting the apology.

10. Considering these facts and the stand taken by the parties before us, whereby we discern that the incident took place in spur of moment where the Petitioner had no intention to deliberately abuse Respondent No.2 with reference to the caste, has shown true remorse, which is also accepted by Respondent No.2 and that the Apex Court has permitted such course of action to be taken in the case of

Ramawatar in identical circumstances, we find that a case is made out for quashing these proceedings in the light of what is stated above.

11. Accordingly, the writ petition is allowed. FIR bearing C.R.No.404 of 2018 for offences punishable under Section 3(1)(4), (5), 3(2)(va) of the SCST Act, and 506 of the Indian Penal Code lodged with Versova Police Station at the instance of Respondent No.2 and consequently further proceedings in charge sheet in SCST Special Case No.02 of 2019, pending before the Additional Sessions Judge, Dindoshi Court, arising out of FIR bearing C.R.No.404 of 2018, are quashed and set aside.

12. The Petitioner will pay Rs.25,000/- to the Mumbai Police Welfare Fund, A/C. No.465010100008693, Axis Bank, Lamington Road Branch, IFSC Code-UTIB0000465, within period of four weeks. The order shall come into force after the costs are so paid and receipt is lodged in the Registry of this Court.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)