

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

Criminal Writ Petition No. 127 of 2021

Syed Sadiq Ali Vs. The State of Maharashtra and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.P.J.P. Dubey, Advocate for the petitioner
Mr. S.A. Ashirgade, APP for the respondents No.1,3 and 4
Mr. S.B. Gandhe, Advocate for the respondents No.5 and 6

CORAM : MANISH PITALE, J.

DATED : JULY 08, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioner has challenged concurrent orders passed by the two Courts below on an application submitted by him under Section 156(3) of the Code of Criminal Procedure.

3. It was the case of the petitioner that he had been allegedly treated in a particular manner by respondents No.5, 6 and 7 in the concerned Police Station, which gave rise to offences under Sections 153-A, 294, 295-A, 298, 504 and 506 of the Indian Penal Code. In the application filed before the Magistrate under Section 156(3) of the Code of Criminal Procedure, the applicant stated the nature of abusive language allegedly used by the said

respondents against him and that he was allegedly beaten up by the said respondents. In paragraph No.7 of the said application, the petitioner specifically claimed that offences under the aforementioned provisions of the Indian Penal Code had been committed by the respondents No.5 to 7.

4. The Judicial Magistrate First Class, Amravati, passed order dated 20/08/2016, taking note of the contentions raised on behalf of the petitioner. In the order, the Magistrate concluded that essential ingredients of offences under the said provisions were not made out at all and on this basis, the application was rejected.

5. Aggrieved by the same, the petitioner filed a Revision Application before the Sessions Court. By order dated 15/04/2019, the Court of Additional Sessions Judge, Amravati rejected the Revision Application, thereby confirming the order of the Magistrate.

6. Mr. Dubey, learned counsel appearing for the petitioner vehemently submitted that both the Courts below had erred in holding against the petitioner. It was submitted that the incident in question had taken place on 16/05/2016. The respondents No.5 to 7 had allegedly abused and beaten the petitioner and the manner in which the acts were

carried out, demonstrated the ingredients of the offences under the aforementioned provisions of the Indian Penal Code. It was submitted that the Courts below failed to appreciate this aspect of the matter. It was further submitted that on 16/05/2016 itself, the petitioner had sought registration of offence by submitting Complaint before the respondent No.5, but, the said respondent refused to register any FIR in the matter. In this situation, the petitioner was constrained to approach the Commissioner of Police on 23/05/2016. According to learned counsel for the petitioner, when nothing came out of the same, on 11/08/2016, he was constrained to file the aforementioned Complaint under Section 156(3) of the Code of Criminal Procedure before the Magistrate. According to the learned counsel for the petitioner, a bare perusal of the Complaint would show that essential ingredients of the offences were made out and the two Courts below erred in holding against the petitioner.

7. Mr. S.A. Ashirgade, learned APP appeared on behalf of the respondent – State. He submitted that the Courts below had considered the grievance of the petitioner in detail. None of the ingredients of the said alleged offences were made out and that, therefore, no interference was warranted in the impugned orders.

8. Mr. S.B. Gandhe, learned counsel appeared

on behalf of respondents No.5 and 6. Attention of this Court was invited to diary entries of the relevant date, including 16/05/2016 to contend that the incident alleged by the petitioner had never taken place. In fact, the petitioner, despite being a friend of police had allegedly helped an accused in a particular case to abscond and that this had led to heated exchange in the Police Station. It was submitted that the impugned orders did not deserve any interference.

8. It is noted from the record that the respondent No.7 has died during pendency of the present Writ Petition.

9. Having heard the learned counsel for the rival parties and upon perusal of material on record, this Court finds that the concurrent conclusions given by the two Courts below on the question of alleged offences under Sections 153-A, 294, 295-A, 298 and 504 of the Indian Penal Code cannot be said to be erroneous. This Court has perused the Complaint dated 11/08/2016, filed by the petitioner under Section 156(3) of the Code of Criminal Procedure and upon appreciating the contents thereof, it is found that none of the ingredients of the aforesaid offences can be said to be made out. The said offences pertain to promoting enmity between different religious groups, obscene acts and songs, deliberate and malicious act intended to outrage religious feeling, uttering obscene words

and intentional insult with intent to provoke breach of peace. A perusal of the Complaint and the nature of grievances raised by the petitioner would show that even if the statements made therein were to be accepted, none of the ingredients of the said offences are made out.

10. Therefore, to that extent, both the Courts below were justified in holding against the petitioner. But, at the same time, perusal of the contents of the Complaint, particularly in paragraph No.2 thereof, would show that the Magistrate ought to have examined whether ingredients of offence under Section 506 of the Indian Penal Code were made out or not. Since the entire discussion and drift of the orders of the Magistrate and the Sessions Court have concentrated on the aforementioned alleged offences under Sections 153-A, 294, 295-A, 298 and 504 of the Indian Penal Code, perhaps the Magistrate has not paid attention to this aspect of the matter.

11. Therefore, to the limited extent of examining the said aspect of the matter, the case deserves to be remanded to the Magistrate for consideration.

12. Since respondent No.7 is already dead, there is no question of the matter proceeding against the said respondent any further.

13. The impugned orders are confirmed to the extent that they hold that ingredients of offences under Sections 153-A, 294, 295-A, 298 and 504 of the Indian Penal Code are not made out. To that extent, there can be no interference in the impugned orders passed by the Magistrate and the Sessions Court. At the same time, for the aforesaid limited aspect of the matter, pertaining to Section 506 of the Indian Penal Code, the petitioner is relegated back to the Magistrate's Court for agitating the said limited aspect. The respondents No.5 and 6 will have to be heard by the Magistrate before taking any view on that aspect of the matter.

14. It is made clear that this Court has not expressed any opinion on the said specific aspect for which the petitioner is being given an opportunity to make out his case before the Magistrate.

15. Since the alleged incident is of May, 2016, the Magistrate is expected to take up the grievance of the petitioner to the said limited aspect of the matter expeditiously and to dispose of the same as early as possible.

16. The Writ Petition is disposed of with above observations.

JUDGE