

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

CRIMINAL APPLICATION (APL) NO.146 OF 2016

Smt. Usha Mohan Motghare,
Age : 54 yrs., Occ. - House wife,
R/o. Mangaldip Nagar – 2,
Manewada Besa Road, Nagpur,
Dist. : Nagpur. Mobile No.

....APPLICANT

----- VERSUS -----

1. State of Maharashtra,
Through its Secretary,
Ministry of Home Department,
Mantralaya, Madam Cama Road,
Mumbai – 32.
2. B. M. Totewad,
Age – Adult, Occ.- Service-
Police Sub-Inspector,
O/o. - Police Station Hudkeshwar,
Nagpur.
3. Police Inspector,
Hudkeshwar Police Station,
Nagpur, Dist.: Nagpur.
4. Vishal Janbaji Choudhary,
Age : Adult,
R/o. Mangaldip Nagar -2,
Manewada Besa Road,
Nagpur.

.... NON-APPLICANTS

Shri N. S. Rao, A.PP for the non-applicant No.1 and 3/State.

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

DATE : 03.03.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged registration of the First Information Report No.541/2015 dated 07.12.2015 registered with the non-applicant No.3 - Police Station for the offences punishable under Sections 294, 506, 143 and 149 of the Indian Penal Code.

3. The First Information Report came to be registered against the applicant and others with the accusations that the applicant and others had abused the non-applicant No.4 and assaulted the non-applicant No.4. In the report, the non-applicant No.4 has stated that the applicant alongwith 10 to 15 other persons had abused the non-applicant No.4. The applicant has therefore, challenged registration of the First Information Report by filing the present application.

4. This Court on 06.04.2016 issued notice to the non-applicants and on 23.01.2017, issued Rule and granted *Ad interim* relief in terms of prayer clause (ii).

5. The non-applicant No.3 has filed reply and has stated that Investigating Officer has recorded statements of non-applicant No.4 and other persons who were present on the date of incident and they have stated that the applicant and others had abused the non-applicant No.4 and also thrown stones on the non-applicant No.4.

6. We have carefully considered the allegation in the First Information Report alongwith material produced by the applicant. From the material produced by the applicant, it appears that the applicant and others had filed the First Information Report on 06.12.2015 against the non-applicant No.4 under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989") and other offences under the provisions of the Indian Penal Code. The impugned First Information Report is registered on 07.12.2015. We have perused the statements of witnesses recorded by the Investigating Officer. After careful perusal of the statements of witnesses, we are satisfied that the statements are recorded mechanically without changing even a word. In each statement, the each witness have stated names of 31 persons which appears to be unbelievable. The material averments in the statement of witnesses are same and are parrot like. On perusal of the statements of

witnesses, we are satisfied that it is inherently improbable for every witness to remember names of 31 accused and to state exactly same words which are allegedly stated by the applicant and others.

7. On over all consideration of the accusations in the First Information Report, in the light of First Information Report lodged by the applicant against the non-applicant No.4 under the provisions of the Act of 1989, and considering mechanical statement of witnesses recorded by the Investigating Officer, we are satisfied that the report lodged by the non-applicant No.4 is not legitimate prosecution. We are therefore, satisfied that to secure the ends of justice, the First Information Report lodged against the applicant used to be quashed and set aside.

8. We therefore, pass the following order.

The First Information Report No.541/2015 dated 07.12.2015 registered with the non-applicant No.3 - Police Station for the offences punishable under Sections 294, 506, 143 and 149 of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE