

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

CRIMINAL APPLICATION (APL) NO.237 OF 2015

Sau. Mangalatai Pramodrao Dike,
Aged about 43 years,
Occ.: Sarpanch,
At. Pathrod, Tq. Achalpur,
Dist. Amravati.

....APPLICANT

// VERSUS //

1. The State of Maharashtra,
through P. S.O. Pathrod,
Tq. Achalpur, Dist. Amravati.

2. Smt. Mangala Omprakash Badal,
Age – 41 years,
Occ.- Grampanchayat Member,
R/o. Pathrod, Tq. Achalpur,
Dist. Amravati.

.... NON-APPLICANTS

Ms. Mayuri Deshmukh, A.P.P for the non-applicant No.1/State.
Ms. P. P. Choube, Advocate (Appointed) for non-applicant No.2.

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

DATE : 25.02.2021.

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.3007/2015 registered with the non-applicant No.1-Police Station for the offence punishable under

Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The initial, First Information Report came to be filed against the applicant on 26.01.2015 in relation to incident of the same date. In the said report though there are allegations of abuse, there are no accusations that the applicant abused non-applicant No.2 in the name of caste.

4. The non-applicant No.2, on 05.02.2015, registered the First Information Report in relation to the incident occurred on 26.01.2015. In the second First Information Report, it is alleged by the non-applicant No.2 that the applicant abused the non-applicant No.2 in the name of her caste. The applicant has therefore, challenged registration of the First Information Report by filing the present application.

5. This Court on 20.04.2015 issued notice to the non-applicants. This Court on 24.08.2015, issued Rule and granted stay to the proceedings against the applicant.

6. In pursuance of the notice, the non-applicant No.1 has filed reply and it is stated that the incident alleged by the non-applicant No.2 occurred on 26.01.2015 in presence of Smt.

Vacchalabai Ibude, Smt. Chhaya Nimborkar, Sumtai Metkar and others. It is pertinent to note that in the reply, the non-applicant No.1 has not disclosed about report lodged on 26.01.2015. In the reply only reference is made to report dated 05.02.2015.

7. The non-applicant No.2 had also filed reply and it is stated that on 26.01.2015, the applicant abused the non-applicant No.2. The non-applicant No.2 has stated that she is illiterate. In the first report she had not mentioned about her caste. Thereafter, on 29.01.2015, the non-cognizable offence was registered.

8. The non-applicant No.2 thereafter, filed a complaint with the non-applicant No.1 and stated about the incident of 26.01.2015. It is stated that the non-applicant No.2 did not intended to file second report but she was constrained to file second report because the non-applicant No.1 deliberately did not record the correct facts in the first report.

9. We have carefully considered the contents of the First Information Report. On perusal of the documents annexed by the applicant, it appears that the non-applicant No.1 initially had lodged report on 26.01.2015 itself in relation to the incident which occurred on same day. Conspicuously in the said report, the allegations regarding abuse in the name of caste of non-applicant

No.2 are absent. It is only in the report lodged on 05.02.2015, for the first time, the non-applicant No.2 lodged fresh report which contains abuses in the name of caste against the non-applicant No.2.

10. We have perused the statements of witnesses placed on record by the learned A.P. P. On perusal of the statements, it appears that all those statements are recorded on 23.02.2015.

11. This Court while admitting the application had recorded a *prima facie* finding that the allegations regarding abuse in the name of caste of non-applicant No.2 were absent and the same were found in second report dated 05.02.2015, which *prima facie* is an after thought to implicate the applicant. In spite of *prima facie* finding of this Court, in the replies filed by the non-applicant No.1 and the non-applicant No.2, there is no explanation regarding delay in recording the statements of witnesses, which are placed on record and recorded on 23.02.2015.

12. On overall consideration of the facts and circumstances, considering the fact that in the first report lodged by the non-applicant No.2, the allegations containing abuse in the name of caste of non-applicant No.2 were absent, we are satisfied that the prosecution against the applicant is not legitimate prosecution. We

are satisfied that the continuation of the present proceedings against the applicant would amount to abuse of process of Court.

13. We therefore, pass the following order.

The First Information Report bearing No.3007/2015 registered with the Non-applicant No.1 – Police Station against the applicant for the offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

Rule is made absolute in the above terms.

50% fees of the Advocate appointed for the non-applicant No.2 be paid as per the Rules.

JUDGE

JUDGE