

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

CRIMINAL APPLICATION (APL) NO. 378 OF 2015

Bhaskar s/o Ishwarsingh Shinde,
Aged : 38 years, Occ : Builder,
R/o Purava-Vijay, Birala Road,
Akola.

... **APPLICANT**

V E R S U S

1. State of Maharashtra,
Through P.S.O., P.S.,
Civil Lines, Akola.
2. Sau. Shilpa Manikrao Wagh,
Aged about : 44 years,
Occ : Household Work,
R/o Sai Nagar, New Tapadiya
Nagar, Akola, Tq. & Dist. Akola.

... **NON-APPLICANTS**

Shri S. D. Chopde, Advocate for applicant.
Shri S. D. Sirpurkar, A.P.P. for non-applicant No.1-State.
Shri N. B. Jawade, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 01/03/2021.

ORAL JUDGMENT : (PER : Z.A. HAQ, J.)

1. Heard.
2. The accused has filed application under Section 482 of the Code of Criminal Procedure praying that M.C.C. No.263/2015 filed by the non-applicant No.2 before the learned Judicial Magistrate (Court No.7), Akola and the First Information

Report bearing No.99/2015 registered with the non-applicant No.1 - Police Station for the offences punishable under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w Section 354 of the Indian Penal Code be quashed.

3. The First Information Report came to be registered as per the order passed under Section 156(3) of the Code of Criminal Procedure.

4. By an order dated 14/07/2015, this Court directed issuance of notice to the non-applicants. By an interim order, it was directed that further investigation in the matter shall stand stayed. The criminal application is admitted on 05/01/2016 and the interim order continues.

5. With the assistance of learned Advocate for the applicant, learned APP for the non-applicant No.1 and learned Advocate for the non-applicant No.2, we have gone through the First Information Report.

6. At the time of hearing, learned APP for the non-applicant No.1 produced the case diary and we have gone through

the statements of applicant, Mr. Dipak Mhasne and Mr. Mahesh Dhayde. In the report lodged by the non-applicant No.2 and in her statement recorded by the police, she has not alleged about any act on the part of the applicant which would amount to an offence under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Similarly, the accusations made by the non-applicant No.2 against the applicant regarding the offence under Section 354 of the Indian Penal Code are also vague and we find that the ingredients necessary to constitute the offence are not made out. Admittedly, the dispute had arisen over some trivial issue regarding the construction which was undertaken by the applicant in the neighbourhood of the non-applicant No.2. Though the non-applicant No.2 has produced two witnesses to support her claim, according to the Investigating Agency, the two witnesses are the friends of son of the non-applicant No.2. There is no independent witness to support the claim of the non-applicant No.2.

7. In the facts of the case, we find that the ingredients necessary to constitute the offence alleged against the applicant do not exist and therefore, in our view, the continuance of the criminal proceedings against the applicant would be an abuse of

process of Court. Hence, we deem it necessary to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure.

8. Learned Advocate for the non-applicant No.2 stated that the order passed by the learned Judicial Magistrate under Section 156(3) of the Code of Criminal Procedure was challenged by the applicant before Sessions Court by filing Criminal Revision Application No.52/2015, however, there is nothing on record to point out the progress of that matter.

Learned Advocate for the applicant states that he is not aware about the filing of the criminal revision application.

9. Be that as it may, as this application is pending from 2015, we are not inclined to adjourn the matter any further and the result of the criminal application shall govern the fate of the Criminal Revision Application No.52/2015 filed by the applicant before the Sessions Court.

10. Hence, the following order is passed :-

First Information Report No.99/2015 registered against the applicant with the non-applicant No.1 - Police Station is quashed.

11. Rule is made absolute accordingly.

CRIMINAL APPLICATION (APPP) NO. 704 OF 2015

In view of disposal of the Criminal Application (APL) No.378/2015, this application for grant of time for filing certified copy of order does not survive, hence it is disposed.

JUDGE

JUDGE

Choulwar