

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.182 OF 2022

Gumfabai w/o Gangadhar Bhalerao

... Petitioner

Versus

1. The State of Maharashtra

2. Nawab Mohammad Islam Malik

... Respondents

...

Mr. Ravindra Nirmal, Advocate for petitioner.

Mr. S. P. Sonpawale, APP for respondent No.1 – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08.07.2022

ORDER :-

1. Heard learned Advocate Mr. Ravindra Nirmal for the petitioner and learned APP Mr. S. P. Sonpawale for respondent No.1. It is not even necessary to issue notice to respondent No.2 taking into consideration the submissions and the impugned order.

2. The present petitioner is the original complainant, who had filed private complaint i.e. Criminal Miscellaneous Application No.268 of 2021 before the learned Special Judge under Atrocities Act, Aurangabad. By the said application, directions were sought to send her complaint for investigation under Section 156(3) of the Code of Criminal Procedure. It was contended by the petitioner – original complainant that she is a member of Scheduled Caste and she is the sister of one Dnyandev

Kachru Wankhede. Dnyandev's son Sameer Wankhede is serving as IRS Officer with the Government of India and when she had filed the said application, he was the Zonal Director of Narcotic Control Bureau at Mumbai. The said Sameer Wankhede and his father Dnyandev are also member of Scheduled Caste. It was then contended that respondent No.2 who is in the politics and was then serving as minister in the then Government of Maharashtra, was annoyed with the legal action that was taken against the son-in-law by said Sameer Wankhede and also with the arrest of one Mr. Aryan Khan son of Bollywood Actor Shahrukh Khan; respondent No.2 literally started campaign against Sameer Wankhede to defame him. It was tried to be contended that the Wankhede family belongs to muslim religion and by fabricating false record as member of Scheduled Caste, the service has been obtained. The video clips were collected in one pendrive and were submitted along with the complaint and it was then stated that with an intention to malign the entire family, which in fact belongs to Scheduled Caste, press conferences were held by respondent No.2. Because of such act on the part of respondent No.2, the entire family has been victimized and harassed. Respondent No.2 has committed offence punishable under Section 3(1)(q)(r)(u) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and, therefore, by the said

application, directions were sought for investigation under Section 156(3) of the Code of Criminal Procedure.

3. Learned Special Judge after hearing learned Advocate for the petitioner – complainant rejected the prayer to send the application for investigation under Section 156(3) of the Code of Criminal Procedure.

4. The learned Advocate for the petitioner submits that the learned Special Judge has not taken into consideration the harassment and the agony that the entire family is required to suffer because of the acts of the then minister. The entire campaign run by him was to insult Sameer Wankhede and his family. The complainant is definitely his extended family though related by blood. The minister had gone to such extent that he procured certain false documents and used to vacate viral on the social media. Merely because certain other matters are pending before the Higher Courts, the Special Judge ought not to have refused the prayer for sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure. The said order, therefore, deserves to be set aside.

5. At the outset, it is to be noted that the main person who would be aggrieved by any such campaign would be the person himself against whom the direct allegations have been made. It is not clear from the complaint that has been filed by the petitioner as to whether Mr. Sameer

Wankhede has taken any action against respondent No.2. Further, it appears that the father of Mr. Sameer Wankhede had filed certain proceedings before this Court at Principal Bench and those proceedings are pending. How the complainant/petitioner was directly concerned with the allegations those were made against Mr. Sameer Wankhede has not been explained. Merely because the petitioner/complainant is demanding an investigation under Section 156(3) of the Code of Criminal Procedure; the Magistrate or Special Judge under the Atrocities Act is not supposed to pass such orders mechanically. The learned Special Judge in this case appears to have gone through all those videos which were produced by the petitioner by way of pendrive. On the basis of those videos, which were produced before the learned Special Judge, it was opined by the learned Special Judge that the genuineness or otherwise of the documents relied upon by respondent No.2 and the caste certificate submitted by Mr. Sameer Wankhede is pending for determination before the competent authority. Therefore, whatever the respondent No.2 was claiming was his contention on the basis of some documents. Unless and until the validity of those documents is decided, any other person cannot get right to say that everything is being done only to harass the entire family. The petitioner cannot take the advantage of her relationship with Mr. Sameer Wankhede and file such

complaint when respondent No.2 has not made any direct allegations against the petitioner – complainant. When it is doubtful that a cognizable offence has been committed by a person, then the learned Special Judge was justified in not sending the complaint for investigation under Section 156(3) of the Code of Criminal Procedure. The other modes would be available to the petitioner to support her complaint. Under such circumstance, no case is made out to exercise the constitutional powers of this Court to quash and set aside the impugned order. The writ petition, therefore, stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm