

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 570 OF 2021

Shri. Rajabhau @ Rajendra S/o Digambar Mane,
Age : 48 years, Occu. Social Work and Business,
R/o. Hudco, Tuljapur, Dist. Osmanabad.

....Applicant

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Superintendent of Police,
Osmanabad, Dist. Osmanabad.
3. In-charge Police Station Officer,
Tuljapur Police Station, Nanded,
Tal. and Dist. Nanded.
4. Mr. Harshwardhan Govind Gawali,
Age : years, Occup. Service as PI,
Police Station, Tuljapur, R/o. Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.

....Respondents

...

Advocate for Applicant : Mr. Adinath B. Jagtap
APP for Respondents : Mr. S. J. Salgare

...

**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : AUGUST 20, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] :-

1. By this application filed under Section 482 of the Code of Criminal Procedure, the applicant seeks quashing and setting aside of the Charge Sheet No. 74 of 2020 in Crime No. 02 of 2020, registered with Tuljapur Police Station, Tuljapur, District Osmanabad for the offences punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 500 of the Indian Penal Code and prosecution, if any, arising out of the said FIR.

2. It is the prosecution case that, Respondent No. 4 filed an F.I.R. vide C.R. No. 02 of 2020 at Tuljapur Police Station, District Osmanabad, against the applicant, on 2.1.2020 for the offence punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922 (hereinafter referred to as 'the said Act') and Section 500 of the Indian Penal Code. It is contended in the FIR that Respondent No. 4 was working in Tuljapur Police Station as Police Inspector from 2.11.2019. It is further contended that Respondent No. 4 and Sub-Divisional Police Officer Shri. Dilip Tiparse had taken steps to curb the illegal activities which were going on in the past within local jurisdiction of Tuljapur Police Station. It is further contended that Respondent No. 4 was not succumbing to pressure of anybody and, therefore, the co-accused has made false allegations against him and Tiparse by sending representation to his superior officer and by publishing news in local newspaper.

3. It is further contention of respondent No. 4 that he came across a news item published in 'Khadtar Pravas' newspaper that a crime of rape was registered against him on the basis of a complaint filed by a lady police officer. It is further contended that after completion of investigation, 'B' summary report was filed in the said crime and even thereafter, such news was published. It is contended that when he was taking steps to curb the illegal activities going on within the jurisdiction of the Police Station, it was published in the said news that he was hand in glove with the persons involved in illegal activities and he was receiving share in the money made by those persons. It is further contended that it was also published in the said news that he had joined hands with thieves and was getting 50% share in the property stolen by the thieves. It is contended that it was also published in the said news that for settlement of the disputes between the parties, he was extracting money from both the sides.

4. It is the contention of respondent No. 4 in F.I.R. that he had put in 28 years of service and he had worked with honesty and integrity throughout. It is his contention that due to the said news published in the newspaper, he is feeling disturbed and depressed as the news item has defamed him in the society. It is contended that it is the applicant from whose WhatsApp number the said news item was forwarded to the Editor of 'Khadtar Prawas' so as to publish the same in the newspaper and, therefore, the applicant has committed the offence punishable under section 3 of the said Act and section 500 of the Indian Penal Code.

5. On the basis of this report, the Crime at C.R. No. 02/2019 was registered against the co-accused (Ravindra Dhawale) but on completion of investigation, the name of present applicant came to be added. During pendency of the matter, chargesheet was filed for these offences.

6. The Applicant has filed this Criminal Application under Section 482 of the Code of Criminal procedure for quashing of criminal proceedings.

7. This Court has carefully gone through the papers filed by both the sides. The learned APP has strongly opposed the present application.

8. The papers contain record like remand reports. That record shows that in the aforesaid crime, present applicant was arrested on 30.06.2020 and he was released by issuing notice under Section 41(1) (a) of the Code of Criminal Procedure.

9. The record shows that on 02.03.2018 one lady police officer filed complaint against respondent No. 4 that he had sexually exploited her and he had committed the offence punishable under section 376(2)G) of Indian Penal Code and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The crime at C.R. No. 79/2018 was registered on the basis of said report in Ashti Police Station, District Beed.

10. Perusal of the FIR shows that the applicant had forwarded the news item that was published in the newspaper 'Khadtar Prawas' from his WhatsApp number to the Editor of the said newspaper and further he had posted the said news on his Facebook account. In general, the allegations of bad character and corruption were made against respondent No. 4. Photocopy of weekly newspaper 'Khadtar Pravass' dated 30.12.2019 is also produced on the record. One Prabhakar Londhe is shown as editor of this newspaper. Initially, the F.I.R. was registered against one Ravindra Baliram Dhawale but on completion of investigation, the name of present applicant came to be added.

11. The learned counsel Shri. Adinath Jagtap representing the applicant submitted that at any stretch of imagination and even after accepting the allegations made by respondent No. 4 as they are, it cannot be said that the applicant has committed the offence punishable under section 3 of the said Act. In support of his submission, he has relied upon the decision of this Court in the cases of **Mr. Ravindra s/o Baliram Dhawale vs. The State of Maharashtra and others** [Criminal Application No. 356 of 2020, decided on 23.11.2020] wherein Mr. Ravindra Dhawale was the main accused and the present applicant is accused no.2. The present case arises out of the same offence wherein Mr. Ravindra Dhawale was granted relief by this Court. He further relied upon the decision of this Court in the case of **Sunil Madhukar Dhepe and another vs. The State of Maharashtra and another** [Criminal Application No. 437 of 2021, decided on August 03, 2022].

12. This Court has carefully gone through the provisions of the Act. This Act was enacted by British in the year 1922. The object and reasons of the Act are given as under :

“Statement of Objects and Reasons :- In view of the attempts that have been made and are being made (a) by means of threats, intimidation and otherwise to induce members of the police-force to refrain from doing their duty, and (b) to spread disaffection among them, the Government of India have for some time had under consideration the question of penalising such attempts. Neither the Indian Penal Code nor the Indian Police Act, 1861, contains provisions to meet this evil. A prosecution could doubtless in certain cases be instituted under section 29 of the Indian Police Act, 1861, read with the abetment sections of the Indian Penal Code, but section 29 of the Police Act was designed to meet ordinary breaches of discipline, and would not cover many dangerous forms of tampering with the police. Moreover, the maximum punishment permissible under that section, viz., three months’ rigorous imprisonment is manifestly inadequate for serious offences of this nature. The Government of India are accordingly of opinion that the authorities should be given additional means of dealing with this form of crime, and its proposed, therefore, to enact the attached Bill, which has been framed on the lines of section 3 of the English Police Act of 1919 (9 and 10 Geo. V. Ch. 46).

13. Section 3 of the Act runs as under :-

“3. Penalty for causing disaffection, etc. :-

Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police force, or induce or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his services or to commit a breach of discipline, shall, on

conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation.- Expressions of disapprobation of the Government with a view to obtain their alteration by lawful means or disapprobation of the administrative or other action of the Government do not constitute an offence under this section unless they are made for the purpose of causing or are likely to cause disaffection."

14. In fact, we would like to adopt the interpretation that has been made by the Division Bench of this Court in the case of Ravindra Dhawale (supra), wherein note was taken of the judgment delivered by the Gujarat High Court in Criminal M. A. No.7536/2008 (Bharat Desai, Editor, Times of India and Anr. Vs. State of Gujarat and Anr.) decided with other applications on 18.4.2012. Perusal of this judgment delivered by Gujarat High Court shows that relief of quashing of F.I.R. was claimed by the editor of Times of India and the crime was registered for offences punishable under section 124-A, 120-B and 34 of I.P.C. and section 3 of the Act. The facts mentioned in the judgment show that various articles were published in Times of India on different occasions against the newly appointed Police Commissioner of Ahmedabad. There were similar allegations like contacts with criminals etc., against the said Police Commissioner. The Police Commissioner filed report due to the publication of such allegations in newspaper and the crime was registered. There was one more circumstance in that case. There were comments in the newspaper against the State Government that a person of criminal background was appointed as Police Commissioner of Ahmedabad. It
sgp

was the case of State that due to such publication there was possibility of creation of disaffection amongst members of police force and that had created probability that subordinates of Police Commissioner may refuse to obey his orders and that may also spread indiscipline. The High Court held that such comments questioning the wisdom of State Government cannot lead to inference that there was intention of the publisher to induce or incite police which is requirement of section 3 of the Act. It is further held that 'such disaffection needs to be created amongst police and it should be against the Government'. In view of the wording of section 3, this Court holds that the interpretation of section 3 made by Gujarat High Court needs to be accepted and used in the present matter also.

15. Further, observations by the Hon'ble Apex Court in Civil Appeal No. 4815/2013 (N. Sengodan Vs. Secretary to Government, Home (Prohibition and Excise) Department, Chennai and others) in relation to Section 3 of the said Act were also noted. In para no. 29, the Hon'ble Apex Court has made following observations :-

“29. It is apparent from Section 3 of the Act 1966 that there is no specific ban to form association but there is a restriction to form association. A Police personnel can be a member of, or can be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations only with the express sanction of the Central Government or of the prescribed authority. For attracting the penalty under Section 3 for causing disaffection, it is to be proved that the person concerned intentionally caused or attempted to cause or done any

act which is likely to be disaffection towards the Government established by law in this country among the members of the Police force or induces or attempts to induce or does any act which he knows likely to induce any member of the Police force to withhold his service or committed breach of discipline.”

. By making similar observations, this Court had, vide order dated 03.12.2012, granted relief in Criminal Application No. 3613/2012 [**Vijay Harakchand Tatiya and Others Vs. The State of Maharashtra**].

16. In the present matter, the relevant allegations made against respondent No. 4 are already quoted. It is the case of respondent No. 4 that allegations are unfounded and they have defamed him. In view of the wording of section 3 of the said Act, it can be said that the purpose of the publication of the matter was not to create disaffection amongst police or incite them to act against the Government. Thus, even if the allegations made in the F.I.R. are accepted as they are, they cannot make out offence punishable under section 3 of the said Act.

17. The reading of the news item will not in any way create disaffection amongst police against the State Government and, therefore, continuation of the proceedings against the applicant would be an abuse of process of law. It can be said that the aforesaid allegations made by the applicant may attract at the most offence of defamation punishable under section 500 of the Indian Penal Code. It is open to respondent No. 4 to take appropriate action permissible

under law for making such allegations against him. The use of section 3 of the said Act is not possible in such a case and it can be said that respondent No. 4 took such steps that may amount to abuse of the power. This Court holds that the complaint filed against applicant for offence punishable under section 3 of the Act needs to be quashed and set aside. If that part of the case is quashed and set aside, the remaining offence punishable under section 500 of I.P.C. is non-cognizable one and police case will not be tenable. The learned J.M.F.C. may take appropriate steps in view of this situation. In the result, we pass the following order :-

ORDER

- (1) Criminal Application is allowed.
- (2) The Charge sheet No. 74 of 2020 in Crime No. 02 of 2020 registered with Tuljapur Police Station, Tuljapur, District Osmanabad and the proceedings arising therefrom for the offence punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922 stands quashed and set aside.
- (3) Insofar as offence under Section 500 of the Indian Penal Code is concerned, it is open to the informant to agitate his private grievance like his defamation which may be punishable under section 500 of I.P.C. by filing appropriate proceeding.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE