

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.969 OF 2022

1. James T. George
2. Suburaj A. ... Applicants

Versus

1. The State of Maharashtra
2. Shantabai Annasaheb Kalunke ... Respondents

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Mr. G. S. Rane, Advocate for applicants.

Mr. B. V. Virdhe, APP for the respondent No.1 – State.

Mrs. M. V. Narwade, Advocate for respondent No.2 (Appointed)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20.06.2022

ORDER :-

. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to challenge the order dated 12.02.2022 passed by the learned Special Judge under the Atrocities Act, Ambajogai, Dist. Beed in Criminal Miscellaneous Application No.26 of 2017, whereby process came to be issued against the applicants for the offence punishable under Section 3(i)(g), 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”), Section 506 of Indian Penal Code.

2. Heard learned Advocate Mr. G. S. Rane for the applicants, learned APP Mr. B. V. Virdhe for the respondent No.1 – State and learned Advocate Mrs. M. V. Narwade for respondent No.2.

3. It has been vehemently submitted on behalf of the applicants that the learned Special Judge had not considered the documents on record, the discrepancies on the face of the contents of the complaint, verification and statement under Section 200 of the Code of Criminal Procedure. The applicants are the employees of Power Grid and there was nothing personal for them to interfere in the property. As per the complaint, the complainant says that she has encroached upon Survey No.484 and has erected a house. Power Grid had undertaken construction of tower near the house of the complainant and for that purpose, various vehicles belonging to the company use the said space. According to the complainant, intentionally the *Kaccha* road is used by those vehicles though there is a cement road available from the backside of the house of complainant. She had resisted the company vehicles to go from the *Kaccha* road, however, there is no heat. On 17.05.2017, she had restrained the vehicles of the Power Grid Corporation at about 10.00 a.m. At 10.30 a.m., she says that the accused persons went to the said place and abused her in the name of caste. So also, it is stated that accused Nos.1 and 5 went near her and outraged her modesty by

dragging her, holding her hand and given threats to kill.

4. It has been further submitted on behalf of the applicants that in fact initially the complaint was filed before the learned Judicial Magistrate First Class, Ambajogai, but he had returned it for its presentation before the Special Court under the Atrocities Act. Though she had prayed for investigation under Section 156(3) of the Code of Criminal Procedure, the learned Special Judge, Ambajogai by order dated 22.06.2017 had refused to pass such order, but then had put the matter for verification under Section 200 of the Code of Criminal Procedure. In her statement under Section 200 of the Code of Criminal Procedure, the complainant had come with the case that she was cultivating the land from Gut No.484 and earning from the same. The alleged abuses given in the complaint and her verification are totally different. Thereafter, the matter was sent for inquiry under Section 202 of the Code of Criminal Procedure and the report was submitted on 22.02.2018. It was concluded by the Investigating Officer that the present applicants being Non Maharashtrians are unable to speak in Marathi and, therefore, they could not have uttered the abuses that too specific for a particular caste in Marathi. It was then stated that one of the accused Surojkanta himself is a member of Scheduled Caste and, therefore, the offence is not attracted against him. After it was seen that

the report of the Investigating Officer is not supporting the complainant, thereafter, the learned Special Judge has conducted the inquiry himself and in the said deposition, the complainant has stated that she resides in *Gairan* land. She does not say that she was cultivating it. She then states that applicant No.1 had caught hold of her hand and took her away from the place where she had sat on the road obstructing the vehicles going in front of house. She has then stated that the applicant No.1 told that they had purchased the land and then she told that she is residing there since beginning. She be allowed to take the crop from the field. Her said testimony is not as per the complaint and verification. She had examined one Vishwas Bansi Patil. He has given some different version and it is stated that the petitioners and other 3-4 persons asked complainant to come out of the house and another version has been given by him. CW-3 Balasaheb Namdev Kalunke claiming to be the eye witness has again given a different version. All these facts were not considered by the learned Special Judge under the Atrocities Act, but directly issued process under Section 3(i)(g), 3(i)(r) of the Atrocities Act and Section 506 of Indian Penal Code and dismissed the complaint as against accused Nos.2, 3 and 4. When the said order is without application of mind, it cannot be allowed to be sustained. He prayed for allowing the application.

5. Per contra, the learned APP as well as learned Advocate appointed to represent the cause of respondent No.2, since she had failed to appear, supported the reasons given by the learned Special Judge while issuing process. They contended that the minor discrepancies are bound to be there but for that purpose, the entire complaint cannot be dismissed under Section 203 of the Code of Criminal Procedure.

6. At the outset, it is to be noted that the petitioners are the employees of Power Grid Corporation. There could not have been a personal interest of the applicants. In the complaint, the complainant has not stated as to how she was knowing the applicants and since when the applicants were knowing the complainant. Without there being any acquaintance of any kind, there could not have been knowledge to the applicants about the caste of the complainant. Furthermore, it is to be noted that the Power Grid Corporation was not claiming ownership or any right over the piece of land from Survey No.484 where the complainant has made encroachment. The complainant has intentionally not given the area of her encroachment. Another fact is that when she herself admits that she was there by way of encroachment, how she could resist the vehicles of the Power Grid Corporation from using a particular path. Process has been issued under Section 3(i)(g) of the Atrocities Act. In order to prove the said offence, the complainant

should prove that she has been wrongly dispossessed from her land or premises or interferes with the enjoyment of her rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom. The contents of the complaint, verification, statement under Section 202 of the Code of Criminal Procedure is totally silent on the point that she has been dispossessed. Rather she is coming with the case that she was objecting plying of the vehicles of the Power Grid Corporation, as her children were small. That is what has been said in her complaint paragraph No.3, verification under Section 200 of the Code of Criminal Procedure, but in her testimony under Section 202 of the Code of Criminal Procedure, she has stated that since vehicles used to come, she had stopped them. Therefore, there was no question of her dispossession by the applicants or by even Power Grid Corporation.

7. As regards the offence under Section 3(1)(r) of the Atrocities Act is concerned, the alleged abuses given in complaint, verification, statement under Section 202 of the Code of Criminal Procedure are totally different. Mere use of word “ધેડ” and “મીંગડો” in all these statements will not attract ingredients of Section 3(1)(r) of the Atrocities Act. As aforesaid, unless the complainant would have *prima facie* shown that the accused were knowing the caste of the complainant

since prior to the date of incident i.e. 17.05.2017, there could not have been issuance of process. The learned Special Judge has absolutely not considered the report filed by the police under Section 202 of the Code of Criminal Procedure. No doubt, after that report was submitted, the learned Special Judge had resorted to hold an inquiry under Section 202 of the Code of Criminal Procedure, but while considering the point of issuance of process, definitely the said report ought to have been considered. The report says that statements of in all six persons were recorded and after considering those statements, it could be gathered that there was only some exchange of words when the complainant had stopped the vehicles of the Power Grid Corporation from proceeding further in front of her house. It has also been stated in the report that after the Power Grid Corporation started its project, the complainant had tried to get compensation and when it was found that the land belongs to the Government, no compensation was paid to her. When the complainant herself states that she is at that place by making encroachment, then she had no right to resist the company from plying its vehicles and it appears that with some intention, the said complaint has been lodged. Even as regards the offence under Section 506 of Indian Penal Code is concerned, there is no consistency in her statements as well as statements as well as statements of her witnesses.

The witnesses who have been examined under Section 202 of the Code of Criminal Procedure given different version.

8. Taking cognizance of an offence is a serious business. Proper application of mind to the facts of the case, the material that is produced and the ingredient of the offences is required. In ***Pepsi Foods Limited and another Vs. Special Judicial Magistrate and others, [(1998) 5 SCC 749]***, it has been held thus :-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

The principle was reiterated in *M/s. GHCL Employees Stock Option Trust Vs. M/s India Infoline Limited, [2013 (4) SCC 505]* stating that summoning an accused in a criminal case is a serious matter and that as the matter of course, criminal case against a person cannot be set into motion.

The three Judge Bench's decision in *Sunil Bharti Mittal Vs. Central Bureau of Investigation, [AIR 2015 SC 923]*, lays down the following law :-

“A wide discretion has been given as to grant or refusal of process under Section 204 and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction. However, the words “sufficient grounds for proceeding” appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the orders need not contain detailed reasons. A fortiori, the order would be bad-in-law if the reason given turns out to be ex-facie incorrect.

However, there has to be a proper satisfaction in this behalf which should be duly recorded by the Special Judge on the basis of material on record. When no such exercise is done, the order summoning accused persons would be liable to be set aside.”

Further in *Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and others*, [(2019) 16 SCC 610], it has been observed that “to be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one’s dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused.” Further in *Birla Corporation Limited (Supra)*, it has been observed, “At the stage of issuance of process, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused.” Relying upon the decision in *Jagdish Ram Vs. State of Rajasthan and another*, [(2004) 4 SCC 432] above observations have been made.

9. The non application of mind by the learned Special Judge can be seen from the fact that in paragraph No.2, it has been stated that the predecessor of the Special Judge had taken cognizance of the complaint and recorded the evidence of three witnesses including complainant. In fact the cognizance has to be taken under Section 204 of the Code of Criminal Procedure by issuing process. It was the inquiry that was made under Section 202 of the Code of Criminal Procedure by the predecessor of the learned Special Judge, who has passed the impugned order.

10. In view of the fact that the impugned order has been passed without proper application of mind, it requires interference under the inherent powers of this court under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) The application stands allowed.

II) The order of issuing process against the applicants, who were original accused Nos.1 and 5, passed in Criminal Miscellaneous Application No.26 of 2017 by the learned Special Judge under the Atrocities Act, Ambajogai, Dist. Beed dated 12.02.2022 is hereby set aside. The said complaint stands

dismissed under Section 203 of the Code of Criminal Procedure against the applicants also.

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by the High Court Legal Services, Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

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