

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

CRIMINAL APPLICATION NO.1866 OF 2022

Sunil Prataprao Thakare,
Age-45 years, Occu:Business,
R/o- R.H. No.83, Gat No.74,
Kasliwal Marbal Estate, Beed Bypass
Road, Satara Parisar, Aurangabad,
District-Aurangabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Jincy, Aurangabad,
Taluka and District-Aurangabad,
- 2) Gaurabai Babulal Jatve,
Age-60 years, Occu:Household,
R/o-Lions Club Colony,
Mukundwadi, Aurangabad.

...RESPONDENTS

...
Mr.Amit T. Ghute Advocate for Applicant.
Mr.M.M. Nerlikar, A.P.P. for Respondent No.1 -State.
Mr.K.H. Dongre Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING ORDER : 21st NOVEMBER 2022

DATE OF PRONOUNCING ORDER : 15th DECEMBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the First Information Report (for short "FIR") vide Crime No.47 of 2021 registered with Jinsi Police Station, Aurangabad against the present applicant for the offence punishable under Section 354 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w) and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act") and the proceedings of Special Case No.122 of 2021 pending before the learned Special Judge under the Atrocities Act.

2. Heard Mr. Ghute, learned Advocate appearing for the applicant, Mr. Nerlikar, learned APP appearing for respondent No.1 and Mr. Dongre, learned Advocate appearing for respondent No.2.

3. The learned Advocate appearing for the applicant submits that FIR that has been lodged by respondent No.2 on 24th February 2021 is alleged to be in respect of the incident allegedly taken place on 29th November 2019. There is an

inordinate delay in lodging the FIR. In fact, no incident as alleged had taken place in the general body meeting of Lokvikas Nagari Sahakari Bank on 29th November 2019. Till December 2020, no complaint was lodged by respondent No.2 with the Police. In fact respondent No.2 was not member of the said Bank and question of her attending the said general body meeting on that day will not arise. The Bank had taken police protection for the conduct of the general body meeting for maintaining the law and order situation. In all four Police Constables were present at the time of meeting. The statements of those Police witnesses as well as other members who were present at the time of meeting would disclose that no such incident had taken place. Perusal of the FIR as well as the entire charge-sheet would show that the facts stated therein are not disclosing the ingredients of the offence with which the offence came to be registered. It will be a futile exercise to ask the applicant to face the trial and therefore, the said FIR as well as charge-sheet deserves to be quashed and set aside.

4. Per contra, the learned APP as well as the learned Advocate appearing for respondent No.2, have raised strong objection. They both have contended that the delay can be explained at the time of trial. In fact there is absolutely no delay

in lodging the FIR. Respondent No.2 had immediately gone to the Police Station, however, no action was taken. Under such circumstance, respondent No.2 was required to approach the learned Special Judge, under Section 156(3) of the Code of Criminal Procedure. After the directions were given by the learned Special Judge, the offence has been registered. If there would have been delay, that too unexplained, then the order would not have been passed, under Section 156(3) of the Code of Criminal Procedure, by the concerned Court. The utterances by the present applicant would definitely attract the offence under the provisions of the Atrocities Act. No doubt, some witnesses have stated that no such incident as alleged, has taken place, yet there are also statements of other witnesses who have specifically stated that such incident had taken place. Therefore, who is giving true facts, would be revealed only after the trial is ordered and this is not a fit case where the inherent powers should be exercised under Section 482 of the Code of Criminal Procedure.

5. Respondent No.2 has filed said FIR and the FIR is the outcome of the order passed under Section 156(3) of the Code of Criminal Procedure by the learned Special Judge under the Atrocities Act. This point will have to be borne in mind while

taking into consideration the point of delay, which would be discussed at a later point of time.

6. In the FIR, it is specifically stated that respondent No.2 is the member of Scheduled Caste and she has knowledge about the caste of the present applicant as well as the present applicant has knowledge about the caste of respondent No.2. Respondent No.2 - informant has stated that she is the member of Lokvikas Nagari Sahakari Bank of which applicant is also the member. She has stated that there was a general body meeting of the Bank between 11.00 a.m. to 12.00 noon on 29th November 2019 in Gulab Vishwa Hall, many members had come, including the present applicant as well as the co-accused. Respondent No.2 has stated that membership of the present applicant as well as co-accused was cancelled earlier. It is then stated that discussion started in respect of the Bank as well as the members in the said meeting and it was alleged about the misdeeds of the present applicant as well as co-accused. Respondent No.2 - informant wanted to take part in the discussion and therefore she stood up. Present applicant and co-accused were sitting by the side of the informant, and at that time the present applicant uttered the words by abusing the informant by caste and saying, as to why informant is pretending

to be clever (" ये चमटी तु कशाला शहानपणा करायला लागली "). At that time co-accused gave threat. The informant says that since the meeting was going on, she kept calm and when she started to go after the meeting, around 1.00 to 1.30 p.m., the present applicant and co-accused followed her. After going to some distance, the present applicant pushed her and he pulled saree of the informant and further abused in the name of the caste and asked that, why she was showing cleverness in the meeting (" ये चमटी तु मिटींग मध्ये कशाला जास्त शहाणपणा करीत होती "). With these allegations, the FIR has been lodged.

7. Supplementary statement of the informant has been recorded on 12th March 2021, in which she has almost reiterated the same facts, but as regards the further acts are concerned i.e. outside the meeting hall, it is stated that when informant was waiting for auto rickshaw below a Neem tree, at that time the applicant as well as co-accused went near her and by giving abuses in the name of caste, asked her as to why she attended the meeting (ये चमटी तु मिटींग मध्ये कशाला आली). The informant then states that the co-accused had pulled the pallu of her saree and present applicant had twisted her hand. Informant has then stated that immediately she has gone to the Jinsi Police Station

and had given complaint application. The informant has then stated that when the accused persons had abused her, one Babasaheb Pagare was present.

8. Now the investigation is over and the charge-sheet has been filed. It is to be noted from the complaint application, which has been filed on 29th November 2019 with Police Inspector, Jinsi Police Station, Aurangabad by the informant and which was received by the Police Station around 16.35 hours, that the informant had made the complaint with the Police on the same day. Thereafter, there is also a letter issued by the informant to the Deputy Commissioner of Police, Circle-II, Aurangabad City, Aurangabad on 28th December 2020, giving reference to her complaint to Police Inspector, Jinsi Police Station dated 29th November 2019, that though she had lodged report with the Police, no action has been taken and therefore, she had requested the said Police Officer to take the action. It appears that in spite of these two attempts on the part of the informant to lodge the report against the present applicant; FIR was not lodged and therefore, she was required to file application under Section 156(3) of the Code of Criminal Procedure before the learned Special Judge under the Atrocities Act. After the order was passed therein, the FIR has been

lodged. Therefore, it cannot be said that there was inordinate delay in lodging the FIR. The above referred documents definitely appear to be consistent, with some little bit variance. As regards the word "Chamati" (चमटी) is concerned, it is alleged that it is giving reference to the caste of the informant i.e. "Chambhar". However, as regards the incident alleged to have been taken place outside the hall is concerned, there is major variance. In her complaint application dated 29th November 2019, the informant has stated that when she started to go towards her house and went about 1500 ft., where she met the present applicant and he had then pushed her by saying "Chamati, Chamati" (चमटी, चमटी) and then she says that her modesty was outraged. In the said complaint application it is not stated that applicant had pulled any part of her saree. Pulling informant or pushing her would amount to outraging of modesty or not, would be decided by the trial Court, but it is to be noted that the informant has stated about touching her body in some manner by the present applicant outside the meeting hall also.

9. As regards the statements of the witnesses are concerned, witness Babasaheb Pagare has stated in his statement under Section 161 of the Code of Criminal Procedure that such incident

had taken place. Now, it has been tried to be contended by the applicant that since said Babasaheb Pagare has adverse interest, he had supported the informant and therefore he cannot be said to be an independent witness. We cannot go into this aspect. As regards other witnesses are concerned, the presence of the present applicant in the meeting has been highlighted by those witnesses also and some of them have stated that some altercations had taken place and some have stated that no incident had taken place at all. So, all these are the disputed facts. Even statement of one Jagannath Jadhav would show that some incident had taken place between the applicant and the informant. As regards the Police constables, who were present, they have stated that there were about 300 to 400 members who were present at the time of meeting and some of them were giving their opinion / speech on mike and except that they have not noted anything and the lady constable on duty has stated that a lady was speaking with one person in loud voice and therefore, she told that they should not fight and then that person left. When certain disputed facts have been raised, those cannot be considered. As regards the point that was also tried to be canvassed that the informant was not the member of the Bank is concerned, the presence of the informant in the meeting

can be seen from the statements of the witnesses on whose statements even the applicant is relying and therefore, this is not a fit case where the inherent powers should be exercised as it is not within the parameters laid down in ***State of Haryana and others vs. Ch. Bhajanlal and others, AIR 1992 SC 604*** and the application deserves to be rejected.

10. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC22