

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

CRIMINAL APPLICATION NO.2007 OF 2020

Sanjay S/o Shivdatt Vyas,
Age-49 years, Occu:Business,
as Agent in property dealing,
R/o-Pap Vinash Road, Latur,
Taluka and District-Latur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Office In-charge,
Gandhi Chowk Police Station,
Latur, Taluka and District-Latur,
- 2) The Sub Divisional Police Officer/
Deputy Superintendent of Police,
Sub-Division Latur Cirty, Latur,
Taluka and District-Latur,
- 3) Pradhan S/o Shivajirao Sonkamble,
Age-42 years, Occu:Legal Practioner,
R/o-Siddharth Housing Society, Latur,
Taluka and District-Latur.

...RESPONDENTS

...
Ms.Anjali Bajpai Dube Advocate for Applicant.
Mr.M.M. Nerlikar, A.P.P. for Respondent Nos.1 and 2.
Mr.P.V. Barde Advocate for Respondent No.3.
...

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

DATE : 12th DECEMBER, 2022

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

1. Present Application has been filed invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing and setting aside the First Information Report (for short "FIR") vide Crime No.315 of 2020 dated 30th September 2020 registered with Gandhi Chowk Police Station, Latur against the applicant for the offence punishable under Section 504 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"), and by way of amendment the applicant has prayed for quashing and setting aside the charge-sheet filed before the learned Special Judge under the Atrocities Act, Latur.

2. Heard Ms. Anjali Bajpai Dube learned Advocate for the applicant, Mr. M.M. Nerlikar, learned A.P.P. for respondent Nos.1 and 2 and Mr. P.V. Barde, learned Advocate for respondent No.3.

3. It has been vehemently submitted on behalf of the applicant that the applicant is a businessman. He has some financial transactions, for which he had issued cheques to one

Kuldeepsing Nagusing Thakur. The cheques were dishonoured and complaint under Section 138 of the Negotiable Instruments Act came to be filed against the present applicant. Present respondent No.3 is the original informant, who was representing said Kuldeepsing Nagusing Thakur as his legal advisor. On 30th September 2020 when the applicant was in his house, respondent No.3 suddenly came inside the house, by wearing mask. Respondent No.3 asked the applicant, as to whether he has recognized respondent No.3. Applicant told that he has not recognized him. Then respondent No.3 introduced himself and told that though the applicant has won the case against Kuldeepsing Thakur, yet he will have to pay half of the amount to respondent No.3. When the applicant resisted, he had man-handled the applicant and then he fled away from the house. Immediately thereafter the applicant had lodged written complaint with Police Inspector, Gandhi Chowk Police Station, Latur on the same day and on the basis of the said written complaint, offence vide Crime No.316 of 2020 came to be registered with the said Police Station against respondent No.3, for the offences punishable under Sections 452, 384, 323, 504, 506 of the Indian Penal Code. However, respondent No.3 – informant then lodged report vide Crime No.315 of 2020, making

allegations that the present applicant has abused respondent No.3 in the name of his caste. Apparently, the said FIR is tainted with malafides. Even the charge-sheet that has been produced, would show that some third persons were present but how they would have heard anything itself is a question. Another fact is that when the FIR is tainted with malafides, it would be injustice to ask the applicant to face the trial.

4. Per contra, the learned APP as well as the learned Advocate for respondent No.3 strongly opposed the application and submitted that the FIR lodged by the present applicant is subsequent to the FIR lodged by respondent No.3, and therefore, it cannot be said that the prior FIR is tainted with malafides. The contents of the FIR stood corroborated with the statements of witnesses, who had seen and heard the applicant giving abuses in the name of the caste to respondent No.3. Respondent No.3 is a member of scheduled caste and therefore, there is prima facie evidence against the applicant. This cannot be said to be a fit case where inherent powers of this Court should be exercised for quashing the FIR as well as the charge-sheet.

5. At the outset, it is to be noted that the question, whether the FIR is tainted with malafides, would come subsequently, but first of all we should consider whether the FIR as well as the contents in the charge-sheet are sufficient to attract the offences.

6. In order to consider all the aspects involved and whether the offences under the Atrocities Act and under Indian Penal Code are being attracted, it is necessary to consider the contents of the FIR first. Informant – respondent No.3 appears to have given written complaint to Police Inspector, Gandhi Chowk Police Station and it has been treated as FIR. Respondent No.3 has stated that around 9.30 a.m. on 30th September 2020 he was proceeding towards Shrinagar through Khadak Hanuman road. At that time, petrol from his vehicle got exhausted near the house of the applicant. Respondent No.3 was knowing the applicant and therefore, he went to applicant to ask to lend him the vehicle of the applicant so that he can bring petrol. Informant then states that the applicant told him that when he does not have financial capacity to fill up the petrol then why he has purchased the vehicle, the persons of inferior caste like “Mahar” should not purchase the vehicles, why he is out-casting

him (applicant) by demanding the vehicle, he (applicant) was going out for his work but his day would be ruined. Thereafter, by abusing respondent No.3, applicant had asked him to leave.

7. Important point to be noted is that respondent No.3 in his complaint application, which has been treated as FIR, has not specified as to where he was standing and asking the applicant for vehicle and where the applicant was standing while allegedly uttering those words or abusing him. But then, respondent No.3 says that the persons going from the road had intervened in their dispute. Respondent No.3 has not given the names of those persons who were present. The spot panchnama which has been executed on 1st October 2020 between 14.10 hours to 15.00 hours, would show the spot as steps outside the house of the accused – applicant. Till that time, it can be seen that there was no clarification by respondent No.3 that the said incident had taken place outside the house of the accused, and that too, on the steps of the house. One more glaring aspect that is to be harped upon is that the written complaint cum FIR does not give details as to how respondent No.3 was knowing the applicant. Unless the acquaintance is of such level that it would give confidence in the informant that the person to whom he is asking

for lending the vehicle would lend it, he would not have approached. But then there should not have been any hesitation on the part of the informant – respondent No.3 to disclose as to how he was knowing the applicant and importantly, how the applicant was knowing the informant with name as well as his caste also. All those recitals are absent in the FIR and therefore, it cannot be said that the ingredients of the offence under the Atrocities Act are attracted here.

8. There are statements of only two witnesses, one is Sudhir Ashokrao Kherodkar and another is Maruti Kashinath Ratnaparkhe. It is to be noted that Sudhir Kherodkar, in his statement under Section 161 of the Code of Criminal Procedure, states that he knows informant since last two years as he is the brother-in-law of friend Shilratna Sirsate. This witness has also stated that whenever he used to go to Court he used to meet the informant as he was knowing that informant is an Advocate. Similar statement is also made by Maruti Rathaparkhe, who states that he used to visit Latur Court frequently as he is the recovery agent of Ambedkar Nagari Sahakari Patsanstha, Latur as their account holders are serving in Latur Court. In that connection he knew the informant. We want to point out tht the

witnesses are giving the details as to how they were knowing the informant, but the informant is not giving the details as to how he was was knowing accused – applicant and how accused was knowing the informant with his name as well as caste. At the cost of the repetition, since those recitals are missing in the FIR, we are of the considered view that the offence under the Atrocities Act is prima facie also not made out. Knowledge of the accused about the caste of the informant is the basic ingredient in the offences punishable under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. When recitals about the knowledge itself are missing in the FIR, the offences will not get attracted.

9. Witness Sudhir Kherodkar has stated that when he was proceeding from Papwinash Mandir to Khadak Hanuman, he saw the vehicle of the informant and he saw the informant standing on the steps of one house facing north. He found that there was dispute going on between the informant and the person standing in the door and then he says that the said person gave abuses in the name of caste and insulted the informant. He also states that when the dispute was going on, one more person came at that place, whose name he was not knowing, but then upon inquiry with the informant, he came to know that the person who was

insulting the informant, is the applicant. That means, Sudhir Kherodkar does not say that he was knowing Maruti Ratnaparkhe. But Maruti Ratnaparkhe states that Kherodkar was present. Both of them have stated that the informant was standing on the steps outside the house which was facing towards north. Interestingly, their statements have been recorded on 2nd October 2020 i.e. on the next day of the spot panchnama. Both the witnesses have stated that they had gone there on their motorcycle. The point of dispute at which time they went there would be important because if they had gone since before the insulting words uttered by the applicant, then when both of them i.e. witnesses were knowing the informant, there was no necessity for the informant to ask the applicant to lend his vehicle. If they had come at a later point of time i.e. after the dispute has started, they could not have heard the entire conversation, and if we consider the FIR, then the incident could not have lasted for more than five minutes. But both the witnesses have stated exactly the same utterances which are appearing in the complaint application – FIR.

10. Thus, the place of incident was never disclosed in the complaint application as well as FIR on the basis of which itself

the offence was not made out. Subsequent revealing of the spot cannot be considered.

11. We would like to rely on the decision in ***Prathvi Raj Chauhan Vs. Union of India and others, (2020) 4 SCC 727***, wherein it has been held that :-

“12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.”

12. Thus, we can say that this Court has power to quash the case in exceptional circumstances. Further observations in ***Union of India Vs. State of Maharashtra and others, (2020) 4 SCC 761***, wherein the Hon’ble Supreme Court had reviewed the directions issued by it and held that if there is a false and unsubstantiated FIR, the proceedings under Section 482 of the Code can be invoked. The Hon’ble Supreme Court has held as under :-

“52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not

resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceedings under Section 482 CrPC."

13. We are aware of the fact that there is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of 1a as a class, but if an offence is registered on the basis of the FIR which is the outcome of malafides for any reason, then in such cases this Court should use its powers under Section 482 of the Code of Criminal Procedure.

14. Though the complaint application and the FIR lodged by the present applicant against the informant is subsequent, it is to be noted that in his complaint application the applicant has stated that he had not recognized the informant and the informant was required to be introduce himself to the applicant. With this background, at least, now respondent No.3 could have clarified, as to how the applicant – accused had the knowledge prior to the alleged date of incident, about his name as well as his caste. No such affidavit-in-reply has been filed on behalf of respondent No.3. Hence, we found that this is a case which is befitting in the guidelines and parameters laid down in ***State of Haryana and others vs. Ch. Bhajanlal and others, AIR 1992 SC 604*** and therefore, the Application deserves to be allowed. Hence the following order:-

ORDER

(I) Criminal Application stands allowed.

(II) The First Information Report vide Crime No.315 of 2020 dated 30th September 2020 registered with Gandhi Chowk Police Station, Latur against the applicant for the offence punishable under Section 504 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled

Tribes (Prevention of Atrocities) Act, 1989 and the charge-sheet bearing No.167 of 2020 and subsequent proceedings, if any, filed before the learned Special Judge, under the Atrocities Act, Latur, arising out of the said First Information Report, stand quashed and set aside as against the applicant.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN23