

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

CRIMINAL APPEAL NO.525 OF 2022

**VINAYAK VENKATRAO DARADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. A.V. Patil Indrale, Advocate for the Applicants
Mr. P.G. Borade, APP for Respondent Nos.1 and 2/State
Mr. Yogesh Bolkar, Advocate for Respondent No.3

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 SEPTEMBER 2022

PER COURT:-

. Heard finally with the consent of both the side at admission stage.

2. At the outset let me place on record that the petitioner has initially filed criminal writ petition No.993 of 2021 so as to challenge the order passed by the learned Additional Sessions Judge, Ahmedpur in 'A' Summary No. 02 of 2020. The petition was placed before the Division Bench of this Court firstly on 09.09.2021, and the Division Bench of this Court (Coram : Sunil P. Deshmukh and N.B. Suryawanshi, JJ.) was pleased to grant interim relief in terms of prayer clause (C). That relief came to be continued from time to time. On 07.07.2022, the Division Bench of this Court

(Coram : Sarang V. Kotwal and Bharat P. Deshpande, JJ.) was pleased to accord permission to the present petitioner to convert the criminal writ petition into an Appeal in view of provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for the sake of convenience). Accordingly, criminal writ petition No.993 of 2021 came to be converted into an appeal, and the appeal came to be registered vide criminal appeal No.525 of 2022.

3. Heard Mr.A.V.Patil Indrale, learned counsel for the appellant, Mr. Borade, learned APP for Respondent Nos. 1 and 2 and Mr. Yogesh Bolkar, learned counsel for respondent No.3.

4. Mr. A.V. Patil, learned counsel for the appellant invited my attention to the copy of order passed by the learned Additional Sessions Judge, Ahmedpur in 'A' Summary No. 02 of 2020. He also invited my attention to Section 3(1)(r) and (s) of the Atrocities Act. He pointed out that the provision of the Atrocities Act do not attract against the appellant since the mandatory requirement is not fulfilled. He further submitted that the F.I.R. is very much

doubtful in the background of inordinate delay of four years. He submitted that the alleged incident of outraging the modesty and abuses with reference to the caste had taken place on 10.03.2016 at 11.00 a.m. He submitted that the according to the allegations levelled by the first informant in the said F.I.R., the appellant alleged to have caught hold her hand with bad intention, and further abused her with reference to her caste. He pointed out that no action was initiated by the first informant in a span of four years. After four years, she lodged the F.I.R. with Parbhani police about the alleged incident of the year 2016 and Parbhani police registered the F.I.R. by zero (0) number and forwarded it to Kingaon Police Station, District Latur.

5. He submitted that the Sub Divisional Police Officer, Ahmedpur has conducted the investigation and found that there was no sufficient evidence against the appellant. As such, the Investigating Officer submitted 'A' Summary report before the Special Court/Additional Sessions Judge. The Special Court/Additional Sessions Judge, Ahmedpur issued the notice to the first informant and called her response. The first informant resisted to accept the 'A' Summary report. The learned Additional Sessions Judge, Ahmedpur was

pleased to reject 'A' Summary report without taking into consideration the background of departmental action initiated against the first informant about her unauthorized absence and proceeding on leave without getting the leave sanctioned well in advance. He submitted that the show cause notice was issued to the first informant on the basis of the report submitted by the appellant.

6. Mr. Patil, learned counsel for the appellant also invited my attention to the various documents placed on record in order to show the departmental action initiated by the appellant. He submitted that when the departmental action was initiated against the first informant, she lodged the F.I.R. by stating about the alleged incident of the year 2016, which is totally false. The investigating officer has recorded the statement of witnesses and found that there is no sufficient evidence to proceed with the case, and accordingly arrived at the conclusion to submit 'A' Summary report. The learned Additional Sessions Judge has not considered the aspect of departmental action initiated by the first informant and the inordinate delay in lodging of the F.I.R.. He submitted that the order passed by the learned Additional Sessions Judge is bad in law and liable to be quashed and set aside.

7. Per contra, Mr. Yogesh Bolkar, learned counsel for respondent No.3/first informant supported the order passed by the learned Additional Sessions Judge, Ahmedpur dated 01.03.2021. He also invited my attention to the protest application filed on behalf of the respondent No.3/first informant before the learned Additional Sessions Judge, Ahmedpur. He pointed out that each and every para were replied by the first informant with details. He submitted that the appellant has committed a serious offence of outraging modesty of the first informant in the school, where both of them are serving. She did not lodge the F.I.R. promptly because of apprehension of losing the job. He submitted that the learned Additional Sessions Judge has considered all these aspects, and rightly rejected the 'A' Summary report submitted by the investigating officer. He submitted that as per his instructions, the investigating of the case is going on. In this background, no interference is called for in the impugned order.

8. Mr. Borade, learned APP for respondent Nos.1 and 2/State also argued on similar lines. He supported the impugned order passed by the Additional Sessions Judge,

Ahmedpur. He submitted that even though there was inordinate delay in lodging the F.I.R. having regard to the serious nature of the offence alleged against the appellant, the learned Additional Sessions Judge, Ahmedpur has rightly rejected the 'A' Summary report.

9. I have considered the submissions of both the sides and the learned APP for respondent Nos.2 and 3/State. Perused the impugned order passed by the Additional Sessions Judge, Ahmedpur in 'A' Summary No.02 of 2020 dated 01.03.2021, the report submitted by the Sub Divisional Officer, reply/protest application given on behalf of the first informant before the Special Court, the copy of the F.I.R. and other papers.

10. On going through the copy of the F.I.R., it would reveal that crime No.13 of 2020 came to be registered at Kingaon Police Station against the appellant for the offences punishable under Section 354, 354-A, 504, 506 of the Indian Penal Code and under Sections 3(1)(r)(s) and 3(i)(w)(i)(ii) of the Atrocities Act. The investigation of the case was entrusted to the Sub Divisional Police Officer, Ahmedpur. The Sub Divisional Police Officer, Ahmedpur has conducted the

investigation and found that there was no sufficient evidence against the appellant, and also opined that there are no chances to get evidence in near future and submitted the 'A' Summary report before the Special Court/Additional Sessions Judge, Ahmedpur.

11. The 'A' Summary report submitted by the Sub Divisional Police Officer, Ahmedpur is found well reasoned. It seems that the Sub Divisional Police Officer/Investigating Officer has recorded the statements of various witnesses during the course of investigation. On going through the report, it is evident that no teacher from the school has supported the version of the first informant. Another peon who is working in the same school has also not supported to the version of the first informant. No independent witness is coming forward to support the narration of the first informant about the alleged incident, which has taken place long back in the year 2016. The appellant has placed on record so many documents on record (Page Nos.55, 59, 61, 65, 69, 71). On going through the same, it is evident that the first informant was in habit to remain absent from duty. She was not discharging her duty properly, and she has tendered her apology (माफीनामा). It is further evident that there was no

improvement in the conduct of the first informant and she repeated the same practice of remaining absent from duty, and proceeding on leave without getting sanctioned leave well in advance. As such, show cause notice was issued to the first informant on the basis of the report submitted by the appellant. Action was initiated and now vide order dated 10.03.2022, punishment has been given to the first informant by withholding certain increments and her absence from the duty has been treated as leave without pay. In this background, the entire allegations levelled in the F.I.R. are to be seen.

12. On careful study of the F.I.R. filed by the first informant in the background of her service record, it can be safely said that the genesis of the prosecution launched by the first informant is based upon doubtful platform. She has disclosed about the alleged incident of outraging of modesty and giving abuses with reference to her caste on 10.03.2016 by the appellant, which prompted her to lodge the F.I.R. after considerable gap of four years. The alleged incident had taken place on 10.03.2016 and she lodged the F.I.R. on 22.01.2022. No prudent man would accept such an inordinate delay from a lady, who was subjected to outraging

of modesty at the hands of her Headmaster of the school, where both of them are serving. Even though Mr. Bolkar, learned counsel, for respondent No.3/first informant submitted that she had apprehension of losing her job and she did not lodge the F.I.R. promptly, it is difficult to digest the submissions of the learned counsel for respondent No.3/first informant.

13. On careful scrutiny of "A' Summary report submitted by the Sub Divisional Police Officer, Ahmedpur, one would find that the Sub Divisional Police Officer, Ahmedpur seems to have conducted the investigation of the case in a fair manner. It was a fair investigation, as appearing from the report. It is mentioned in the report that no independent witnesses are coming forward to corroborate the version of the first informant. The alleged incident had taken place prior to four years. Obviously, supporting witnesses are necessary. On perusing the report submitted by the Sub Divisional Police Officer, Ahmedpur, it would be clear that no independent witnesses have supported the version of the first informant regarding alleged incident of outraging her modesty and the abuses with reference to her caste, except two witnesses, who are stated to be her mother-in-law and

landlord. The teachers and the co-peon not stated before the investigating officer that the first informant disclosed them about outraging of her modesty and abuses with reference to caste. By considering the statements of witnesses recorded during the course of investigation, the Sub Divisional Police Officer, Ahmedpur arrived at a conclusion, which appears to be on proper track. When there is no sufficient evidence, no option is left before the investigating agency except to file 'A' Summary report with a provision that further part of the investigation would be initiated whenever such evidence may be available.

14. On going through the order passed by the Additional Sessions Judge, Ahmedpur, it is observed by the learned Additional Sessions Judge that *prima facie* evidence is there to proceed against the appellant under Section 354 of the Indian Penal Code and the provisions of the Atrocities Act, more particularly, under Section 3(1)(r)(s), those observations are without any material. It is difficult to attract the provisions of Section 3(1)(r)(s) of the Atrocities Act in view of the evidence on record collected by the investigating agency. The reasons recorded by the learned

Additional Sessions Judge, Ahmedpur while rejecting the 'A' Summary report are found improper and incorrect.

15. It can be inferred that the first informant, in order to save her job and the proposed departmental action against her, put the criminal law in motion against the appellant, who is the Headmaster of the school. She is working in the same school as a peon. As such, lodging of such F.I.R. cannot be ruled out at the instance of the first informant in order to save her job, particularly when there are no independent witnesses to the incident. The alleged incident of outraging of modesty and abuses with reference to caste prior to four years tried to be capitalized by the first informant with dishonest intention. On the other hand, the appellant has received many awards including district awardee teacher. He has good service record. His image is tried to be tarnished by lodging suspicious F.I.R.

16. Having regard to the above reasons and discussion, I am of the view that the order passed by the learned Additional Sessions Judge, Ahmedpur dated 01.03.2021 is bad in law and liable to be quashed and set aside.

17. In the result, the appeal succeeds.

ORDER

- (i) The appeal stands allowed in terms of prayer clause (B).
- (ii) The learned Additional Sessions Judge, Ahmedpur to pass appropriate order in proceedings of 'A' Summary report No.02 of 2020 in view of observations and findings recorded by this Court within one month from the date of receipt of the writ of this Court.
- (iii) The appeal is accordingly disposed of .
- (iv) Inform the concerned Court accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane