

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

42 CRIMINAL APPLICATION NO. 2391 OF 2020

SWAPNIL SATISH PANGARKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Sanjay Bhojwani
APP for Respondent No.1 : Mr. M. M Nerlikar
Advocate for Respondent No.2 : Mr. P. P. Kothari
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CORAM : SARANG V. KOTWAL
BHARAT P. DESHPANDE, JJ.
DATED : 04 JULY 2022

PER COURT:-

1. This is an application for quashing of the FIR registered vide C.R.No. 364 of 2020 at Udgir Rural Police Station, Tq. Udgir, District Latur, resulting in Spl. Case No. 18 of 2021 pending on the file of learned Ad-hoc District Judge-1, Udgir. The charge-sheet is filed under Sections 498-A, 323, 504, 506 r/w 34 of IPC and under Sections 3(1) (a), 3(1)(s), 3(1)(12), 3(1)(z), 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Atrocities Act").

2. Heard Mr. Bhojwani, learned counsel for the applicants, Mr. Nerlikar, learned APP for respondent no.1 State and Mr. Kothari, learned counsel for respondent no.2.

3. The F.I.R. is lodged by the wife of applicant no.1. Applicant nos. 2 and 3 are parents of applicant no.1, applicant no.4 is applicant no.1's sister and applicant no.5 is husband of applicant no.4.

4. The F.I.R. is lodged by the informant on 22.09.2020. She has stated that she got married with applicant no.1 on 19.02.2017. He is not a member of a scheduled caste or a scheduled tribe. She had spent for the entire expenditure of marriage. Applicant no.1 had got acquainted with the informant during their C.A. class. The informant got a job in December 2012 and she was earning good salary. Applicant no.1, knowing that, deliberately with greedy intention, developed friendship with her and proposed for marriage. At that time, the informant had clearly told him that his family may not accept her because of her caste. At that time, applicant no.1 had assured her that there would be no difficulty. Before marriage itself, applicant nos. 2 and 3 had told her that they were unhappy with this decision, but only for the sake of applicant no.1's insistence, they were giving their consent.

At the same time, they demanded the entire expenses for the wedding from the informant and her family. She was asked to spend for 350 people who were to attend the marriage from the applicants' side. After marriage, she was treated properly for 8 to 10 days. Because of her job, she had to stay in Mumbai. She used to go to her matrimonial house at Nashik for every weekend. On 08.04.2017, when she visited Nashik, applicant nos. 2, 3 and 4 asked her to pay Rs.25,000/- per month and on that ground, the informant was assaulted and abused. On 23.04.2017, they took away all the articles and ornaments, which were given to her by her parents and other relatives which she had kept in the flat at Pune. She has further stated in the F.I.R. that on 24.04.2017, applicant nos. 2, 3 and 4 assaulted her. Applicant nos. 2 and 4 gave her burn injuries by using a hot knife. She was humiliated with reference to her caste. The informant used to pay them Rs.25,000/- to Rs.30,000/- per month, but even then the harassment continued. On 26.04.2017, she was driven out of their house at odd hours at 2.30 a.m.. On 30.04.2017, applicant no.1 went to U.S.A. for his job. From May 2017, he used to contact her telephonically. He used to tell her that, he did not wish to continue their relationship of husband and wife because she was belonging to a lower caste. He used to demand money for

purchasing a flat. In July 2017, at his instance, the informant went to U.S.A. There, he used to humiliate her with reference to her caste. She stated that whenever his friends used to visit his house, at that time, she was forced to drink his urine. This was repeated 10 to 15 times. Applicant no.2 used to instigate him telephonically and because of that, she was forced to move inside the house and in their garden without her clothes. She was made to stand in the garden without wearing clothes. In August 2017, she was sent back to India. In November 2017, she again went back to America and again the humiliation continued. It is her case that in November, 2018, applicant nos. 4 and 5 had called her telephonically and had abused her with reference to her caste. She was continuously harassed for fulfilling the demand of Rupees one Crore twenty five lakh for purchasing a flat. She has stated that she was bearing with the harassment as she wanted to continue to stay with her husband. She has stated that in U.S.A., till May 2019, there was no change in the situation. When she came back to India, she used to stay at Nashik, Mumbai or Udgir. Applicant nos. 2 to 5 used to always humiliate her with reference to her caste and used to harass her. In September, 2019, she was driven out from the house at Nashik. In January 2020, she filed a petition before the Family Court for

restitution of conjugal rights. In February 2020, she attempted to go to her husband i.e. applicant no.1 in America, but he refused to take her in his house. She came back to India. It is her case that when she came back to India, applicant nos. 2, 3 and 4 retained her ornaments and threw her out of her house. Her family tried to intervene, but even they were humiliated. On 07.09.2020, the informant and her uncle had gone to Nashik to the applicant's house. Applicant No.2 then came from outside. She abused the informant with reference to her caste. Applicant no.3 came out with an iron bar and started abusing with reference to their caste. The people in the locality gathered there and tried to stop them from doing all this. Applicant no.2 continued abusing the informant with reference to her caste. On 12.09.2020, she came to her parents' house. She telephonically called the applicant no.2. Again applicant no.2, 3 and 4 started abusing her with reference to her caste and started demanding money. At that time, she had kept her speaker on. Her family members and other two friends heard the conversation. Ultimately, she lodged the F.I.R with all these allegations.

5. Learned counsel for the applicants submitted that serious allegations are made for the instances from 2017 up to 2020. Before registering the F.I.R., no grievance was made by the informant. Neither

an N.C. nor any complaint was made by the informant. He submitted that on 18.12.2019, applicant no.1 sent a notice through his advocate making allegations against her and asking her to take steps for obtaining divorce by mutual consent. The informant had replied to that notice through her advocate vide reply dated 01.02.2020 and in that reply, no allegations, as are made in the F.I.R., were made specifically. Applicant no.1 filed proceedings for divorce on 31.12.2019 in the Family Court under Section 13(IA) of the Hindu Marriage Act. On her part, the informant had filed a petition for restitution of conjugal rights on 04.01.2020 and even in that petition, she had not made allegations as she has made in the F.I.R. Learned counsel therefore submitted that the F.I.R. is lodged as an afterthought and the allegations in the F.I.R. are not the truth. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case *Hitesh Verma v. The State of Uttarakhand and another* in Criminal Appeal No. 707 of 2020 dated 05.11.2020. He submitted that in that case, the Hon'ble Supreme Court had held that the offences under the Atrocities Act were not made out and the F.I.R. was quashed. He submitted that, therefore, this Court has ample power to quash the proceedings.

6. Learned counsel for respondent no.2, on the other hand, submitted that the allegations in the F.I.R. clearly make out all the offences as are applied in this particular case. He relied on the judgment of the Hon'ble Supreme Court in the case ***State of Odisha v. Pratima Mohanty and others*** (Criminal Appeal Nos. 1455-1456 of 2021 decided on 11.12.2021 which is reported in AIR 2022 SC 41) to contend that quashing of the F.I.R. or other similar proceedings is an exceptional remedy and the power should not be exercised by embarking upon any enquiry as to the reliability or genuineness of the allegations made in the F.I.R. / complaint.

7. We have considered these submissions. As narrated above, the allegations in the F.I.R. are very serious. Apart from the allegations of commission of offence punishable under Section 498-A and other offences under IPC, the offences under the Atrocities Act are also specifically mentioned in the F.I.R. There is one particular incident dated 07.09.2020 when, in public view, applicant nos. 2 and 3 had abused the informant with reference to her caste. Learned counsel for the applicants tried to contend that on that day, the informant was not in Nashik. However, at this stage, it is not possible to hold that she was not in Nashik and the incident did not take place as alleged. Therefore,

the ingredients of the offence under the Atrocities Act are clearly made out in this F.I.R. Apart from that, there are very serious allegations of the applicant no.1 forcing the informant to drink his urine. Thus, the allegations are very serious and the genuineness and truthfulness of such allegations can only be decided during trial. In the present proceedings for quashing, it is not possible to record a finding that the allegations made by the first informant are false.

8. Apart from that, there are statements of the family members and family friends of the informant, who have supported the informant's case. These witnesses are Narsing Lakwale and Kalpana Lakwale, who are parents of the informant, Ganesh Gaikwad is her uncle, Prashant Gaikwad is her another uncle and Shilratna Shelhalkar is a friend of the informant's father. Prashant and Shilratna have stated that on 12.09.2020, when the informant had called applicant no.2, the phone was kept on speaker mode and at that time, applicant no.2 had abused the informant with reference to her caste and that conversation was heard by these witnesses and other family members. Therefore, to that extent there is corroboration to the allegations made by the first informant.

9. The contention of the learned counsel for the applicants that offences under the Atrocities Act are not made out is also not correct. In the F.I.R., there are allegations that she was assaulted and threatened. Applicant no.3 had threatened to cause harm to her. This act falls within the meaning of Section 506 of IPC. This Section is included in the Schedule of the Atrocities Act and therefore, the offence under Section 3(2)(va) is clearly made out. All other Sections 3(1)(a), 3(1)(s), 3(1)(z) and 3(1)(r) of the Atrocities Act which are applied are clearly seen in the F.I.R. and other statements. It appears that the F.I.R. mentions Section 3(1)(xii) of the Atrocities Act, however, that Section was in existence prior to the amendment in the year 2016. There are specific allegations against each of these applicants. Only because the husband had sent a notice prior in point of time or had initiated divorce proceedings before any steps taken by the informant; it is no ground for quashing of these proceedings. It is clear, as is mentioned in the F.I.R. itself, that the informant, till filing of the F.I.R., tried very hard for reconciliation and ultimately she was left with no option but to tell the entire story.

10. In the writ jurisdiction, it is not possible to record a finding that the informant is not telling the truth. In that context, the judgment relied on by the learned counsel for respondent no.2 in the case ***State of Odisha v. Pratima Mohanty and others*** (supra) assumes importance.

Para 6.2 of that judgment reads thus:

“6.2. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Code of Criminal Procedure when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 code of Criminal Procedure the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Code of Criminal Procedure is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

11. Similar view is expressed by the Hon'ble Supreme Court in the case of ***Ramveer Upadhyay v. State of U.P.*** as reported in **2022 Cri.L.J. 2075**. In paragraph 39, it is observed thus :

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

12. In *Hitesh Verma's* case (supra), relied on by the learned counsel for the applicants, the facts were different. The challenge in that case was to the applicability of only Section 3(1)(r) of the Atrocities Act. In that case since that particular incident had not taken place in 'public view', it was held that the said Section was not applicable. In the present case before us, many Sections of the Atrocities Act are applied. Ingredients of these Sections and those of I.P.C. offences are clearly made out.

13. Thus, considering all these factors, this is not a case where the proceedings can be quashed. Serious allegations of commission of serious offences are made out. All the ingredients of the offences are satisfied in the description of the F.I.R. As mentioned earlier, the allegations are very serious. The informant was treated with extreme inhuman behaviour. Therefore, we are not inclined to quash the proceedings. Hence, the application is rejected.

BHARAT P. DESHPANDE, J.

SARANG V. KOTWAL, J.