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

CRIMINAL APPLICATION NO.2558 OF 2021

Prashant S/o Shivaji Mitkar,
Age-41 years, Occu:Service,
R/o-Naldurg, Taluka-Tuljapur,
District-Osmanabad

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Station,
Tuljapur, District-Osmanabad,

2) Sumitra Angad Pandhare,
Age-41 years, Occu:Service,
R/o-C/o-Sanjay Shankar Ghange,
Rachana Hites, Behind Arya Samaj
Mandir, Beside Ladies Club,
Osmanabad, District-Osmanabad.

...RESPONDENTS

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Mr.Rajendra S. Deshmukh, Senior Counsel i/b. Mr. D.R. Deshmukh Advocate for Applicant.
Mr.M.M. Nerlikar, A.P.P. for Respondent No.1.
Mr.N.R. Shaikh Advocate and Mr. Shaikh Ashraf Patel Advocate for Respondent No.2.

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**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 23rd NOVEMBER, 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") as well as by way of amendment quashing of the entire charge-sheet against the present applicant. The FIR was lodged by respondent No.2 with Tuljapur Police Station, District-Osmanabad vide Crime No.327 of 2021 on 30th September 2021 for the offence punishable under Section 406, 420, 467, 468, 471 of the Indian Penal Code and under Section 3(1)(p) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act") and after completion of the charge-sheet, during the pendency of the Application, it is before the learned Special Judge under the Atrocities Act at Osmanabad vide Special Case (Atrocity) No.18 of 2022.

2. Heard learned Senior Counsel Mr. Rajendra S. Deshmukh, instructed by learned Advocate Mr. D.R. Deshmukh Advocate for the applicant, learned APP Mr. M.M. Nerlikar, for Respondent No.1 and learned Advocate Mr. N.R. Shaikh with learned Advocate Mr. Shaikh Ashraf Patel for Respondent No.2.

3. It has been vehemently submitted by the learned Senior Counsel representing the applicant that perusal of the FIR would

show that the informant is admitting that she had taken loan from Sandhya Shikshak Sahakari Patsanstha, Tuljapur. The informant – respondent No.2 has given 10 cheques towards the loan taken from the Patsanstha on 22nd November 2018. The informant has then stated that she has not repaid the entire loan. It is still remaining to be paid. It is then stated that out of those 10 cheques, one cheque bearing No.753018 has been misused by the applicant and it has been got issued in his name i.e. personal account. When that cheque was presented for encashment, it was dishonoured and then after issuing legal notice, the applicant has filed the complaint. It is then stated that the said act has been done by the applicant as he had the knowledge that respondent No.2 is member of the scheduled caste. Learned Senior Counsel pointed out that the private complaint came to be filed on 27th August 2021 before the learned Judicial Magistrate First Class, Tuljapur under Section 138 of the Negotiable Instruments Act. If the cheques were given to Patsanstha on 22nd November 2018, it could not have been the subject matter of the complaint and contents of the said complaint rather show that the said cheque was issued on 2nd June 2021 and when it was dishonoured on 8th July 2021 and returned to complainant – applicant on 8th July 2021, notice came to be issued on 28th July 2021 to the informant – respondent No.2 through the Advocate of the applicant. When the notice was not complied with, the said complaint was filed and after considering the documents on record, the learned Judicial Magistrate First Class has issued the process by order dated 29th September 2021. The period of limitation has been adhered to. The affidavits of two witnesses who were present at the time of handing over the cheque to the applicant, i.e. Sunil Balbhim Khatake and Manohar Yashwant Mane, would show that they had seen the informant issuing the cheque in favour of the present applicant. Another important point to be noted is that the Patsanstha had passed a resolution on 23rd August 2021 stating that the informant had given 10 cheques bearing Nos. 753009 to 753018 on or around 22nd November 2018. Those cheques were given as a security for loan of Rs.4,00,000/-. However, thereafter she had taken back those cheques giving acknowledgement thereof, but again handed over only 9 cheques at the time of demand of second loan. It was also stated in the said resolution that those cheques have not been misused. Present applicant was director till 2nd June 2021 only and it can be seen from the copy of the resolution. It could not have been stated that the present applicant was holding a key position who could have manipulated the said cheque. The receipt to that effect about taking the custody of those 9 cheques has been produced. Further the present applicant had filed a complaint application to the Police Inspector, Naldurg Police Station, Taluka-Tuljapur, District-Osmanabad, dated 18th May 2021 informing that respondent No.2 – informant was threatening him to implicate in a false case. Therefore, the said FIR by the present respondent No.2 is in fact the outcome of *malafides* and concocted efforts.

4. Learned Senior Counsel has further pointed out that in the supplementary statement, which came to be recorded on 6th October 2021, the informant has made substantial improvement and introduced new facts. The informant has then stated that since she was in the need of more amount of loan and she was not able to repay the entire loan amount, she gave further application for disbursement of loan amount. She has then denied the handwriting on the disputed cheque and the loan application form. The subsequent improvement by way of supplementary statement cannot be considered at all. Another fact that is required to be noted is that the FIR is silent as to how the applicant was knowing the caste of the informant. When

knowledge is the crux of the offence, there should be such pleadings which would indicate that the accused had knowledge about the caste of the informant. Reliance has been placed on the decision in ***Deepa Bajwa vs. State and others, 2004 (77) DRJ 725***. It was the fact, in this reported case, that FIR was not initially showing that the petitioner accused therein had the knowledge of the caste of the informant and therefore it was held that the first version of the complaint is always important and subsequent filling of lacuna is not permissible.

5. Learned Senior Counsel has further submitted that the statements of the witnesses would show that most of them were admitting that the informant had sought loan from the Patsanstha and had given 10 cheques in favour of Patsanstha in 2018. Statements of the employees as well as the co-teachers, who were also working in the same school where informant is working, would show that they had perused the register or at some place it is stated that they had seen the record in which 10 cheques were deposited by the informant, however, only 9 cheques were again given back by the informant when she has taken loan at the second time. The statements of the witnesses rather support the applicant. The documents which have been

seized in the matter would show that the second loan amount was sanctioned and towards the said extended loan, the informant had given only 9 cheques. The registers also depict the same. Taking into consideration the quality of the evidence that has been collected and the papers on record, this would be a fit case where inherent powers should be exercised.

6. Per contra, the learned APP as well as learned Advocate for respondent No.2 – informant submitted that the facts narrated and the evidence collected, would show many disputed facts. When facts are disputed, this Court should be slow in granting any relief. The informant has categorically stated that she had not received the custody of 10 cheques before the second loan could be sanctioned by Patsanstha. In the FIR, the informant has stated as to how she was knowing the applicant and how the applicant was knowing the informant including her caste to be the scheduled caste. There are statements of witnesses which would show that many times the applicant used to take the file of respondent No.2 as he was the chairman and later on also was having full hold in the Patsanstha and therefore, possibility of applicant taking away the said cheque without the consent of

the informant cannot be ruled out. Definitely the act of the applicant was to cause loss to a member of scheduled caste.

7. Learned Advocate for respondent No.2 has relied on the decision in ***Vinod D. Gangwal vs. State of Maharashtra and others, 2016 ALL MR(Cri) 3876***, wherein it is held that the truthfulness of the statement of the complainant cannot be straightaway rejected by attributing *malafides* on her and FIR cannot be quashed on that count. Learned Advocate for respondent No.2 has also relied on the decision in ***V.K.Mishra and another vs. State of Uttarakhand and another, AIR 2015 SC 3043***, wherein it has been held that FIR is not meant to be an encyclopedia nor is it expected to contain all the details of the prosecution case and it may be sufficient if the broad facts of the prosecution case are stated in the FIR. Learned Advocate submitted that the importance and reliability of the supplementary statement of the informant would be considered by the concerned Court at the time of trial.

8. Learned APP as well as learned Advocate appearing for respondent No.2 have pointed out the the extract of the register kept at the time of first loan taken by the informant, which

would show that the informant had handed over 10 cheques as alleged, to the Patsanstha. Thereafter there is also the extract of the register of the relevant portion i.e. second loan. It does not bear the signature of the informant – respondent No.2 in token of receiving back the cheques. However, then there is a separate receipt. When all the papers were expected to be executed at one and the same time, then how one document would not be executed and one would be executed. Therefore, it is submitted that the Application is surrounding towards the disputed facts, which cannot be gone into by this Court and this is not a fit case to exercise inherent jurisdiction of this Court.

9. Most of the facts have been reproduced and therefore, the same are not repeated by us. There are documents on record to show that the informant is a member of scheduled caste. In the FIR, informant has stated that earlier the applicant was serving as a teacher in the same school where she is serving as a teacher. They were knowing each other since many days prior to the FIR and therefore she says that the applicant had knowledge about the caste of the informant – respondent No.2. The intention to commit an offence is always hidden in the heart of the accused and unless the surrounding facts are weighed and

tested, it cannot be concluded that the applicant had no desire to do certain act.

10. In order to consider, as to whether the offences have been made out, prima facie, against the applicant or not, we will have to examine the FIR as well as the entire charge-sheet. As aforesaid, the contents of the charge-sheet would disclose that the informant had given in all 10 cheques towards the security of the loan taken by her. In the register in respect of second loan, we have not come across any signature taken from the informant as an acknowledgement for receipt of the disputed cheque. Here it is to be noted that in his complaint under Section 138 of the Negotiable Instruments Act the present applicant has given the same cheque number, therefore, unless there is prima facie evidence to show that the informant had received the custody of that cheque from the Patsanstha, she could not have given it to the applicant and therefore, as aforesaid, the second register does not contain such acknowledgment. The statement of witnesses, who are especially working with Patsanstha, would show that the applicant, in his capacity as a chairman of Patsanstha, was asking the concerned clerk to handover him the file of present respondent No.2 – informant.

11. The applicant cannot rely upon the order passed by the learned Magistrate of taking cognizance of the offence under Section 138 of the Negotiable Instruments Act. The process came to be issued by the learned Magistrate on the basis of the documents which were produced before him. The documents which have now been collected in the present matter, if would have been before the learned Magistrate, then he would not have issued the process against the present respondent No.2, would be the point which respondent No.2 to canvass before the concerned Court.

12. It has been contended by the applicant that he was the director of said Patsanstha and he was a chairman of said Patsanstha till 2nd June 2021 only and thereafter again he is a member / director. This is also required to be proved by him at the time of trial because the said point relates to the custody of or control over loan file of respondent No.2 – informant. The observation by the learned Single Judge of the Hon'ble Delhi High Court in the case of ***Deepa Bajwa vs. State and others***, (supra), were based upon the facts of that case and the assessment thereof. It would be for the prosecution to prove as

to why the alleged improvements in the supplementary statement were not forming part of the FIR.

13. At this stage, there is prima facie evidence against the present applicant and therefore, this cannot be taken as a fit case where the inherent powers should be exercised by this Court and the Application deserves to be rejected.

14. The Application, therefore, stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC22