

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 392 OF 2021

Somnath s/o Mansaram Bobade and others

vs.

State of Maharashtra and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. M. Tirukh, Advocate for applicants.
Mr. A. S. Fulzele, APP for respondent No.1.
Mr. S. B. Gandhe, Advocate for respondent No.2

**CORAM : MANISH PITALE AND
VALMIKI SA MENEZES JJ.**

DATE : 25/08/2022

Heard learned counsel for the parties.

2. At the outset, the learned counsel appearing for the applicants submits that he has instructions not to press this application for applicant Nos.1 and 2. Therefore, he has made submission for grant of prayer in this application, only insofar as applicant Nos.3 to 6 are concerned.

3. Mr.Tirukh, learned counsel for the applicants submits that in the present case First Information Report (FIR)No.51 of 2021 dated 19/02/2021, stood registered at Police Station, Patur,

District Akola on the basis of an order dated 09/02/2021, passed by the Court of Additional Sessions Judge, Akola, whereby an application under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) filed at the behest of the non-applicant No.2 was allowed.

4. According to the learned counsel for the applicants, the report leading to registration of the FIR is verbatim reproduction of the application filed on behalf of the non-applicant No.2 under Section 156(3) of the Cr.P.C.

5. It is submitted that even if the contents of the said report leading to registration of the FIR, are to be accepted as it is, none of the offences alleged against applicant Nos.3 to 6 are even prima facie made out. It is submitted that if this Court appreciates the specific role attributed to applicant Nos.3 to 6, even as per the claim of the non-applicant No.2, none of the cognizable offences under the Indian Penal Code (IPC) are attracted and there are no ingredients made out even prima facie as regards offences under the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act'). On this basis, it is submitted that atleast insofar as

applicant Nos.3 to 6 are concerned, the application deserves to be allowed.

6. Mr. Fulzele, learned APP appeared on behalf of the non-applicant No.1 State and he referred to the report leading to registration of the FIR. He submitted that this Court may consider allowing the proceeding to continue against all the applicants, as the material on record indicates that semblance of a case is indeed made out against all the applicants.

7. Mr.Gandhe learned counsel for the non-applicant No.2 i.e. original informer/complainant and he supported the contentions raised by the learned APP.

8. We have perused the report leading to registration of the FIR. It is clear that even as per the non-applicant No.2, the role attributable to applicant Nos.1 and 2 in the said incident was distinguishable from the role specifically attributed to applicant Nos.3 to 6. We find that insofar as applicant Nos.3 to 6 are concerned, the only allegation levelled against them is that during the course of the incident they reached the spot and assaulted the non-applicant No.2 and his wife with fists and blows and that the applicant No.5

twisted the hand of the wife of the non-applicant No.2. There is no other act attributed to the applicant Nos. 3 to 6. There is no reference to any abuse in the name of caste or any sexual overture on the part of the applicant Nos.3 to 6, as against the wife of the non-applicant No.2. We are restricting analysis of the subject FIR only as regards the acts attributed to applicant Nos.3 to 6.

9. Accepting the allegations so made against respondent Nos.3 to 6 in the report leading to registration of the FIR, we find that none of the offences registered under the provisions of the Atrocities Act i.e. Sections 3(1)(b), 3(1)(r), 3(1)(s) and 3(1)(w)(i) thereof are even prima facie made out against the applicant Nos.3 to 6.

10. Section 3(1)(b) of the said Act pertains to an act of dumping excreta, sewage, carcasses or any obnoxious substance in premises or entrance of the premises occupied by a member of a Schedule Caste or Schedule Tribe. Section 3(1)(r) pertains to intentionally insulting or intimidating with intent to humiliate a member of such community in any place within public view. Section 3(1)(s) pertains to abusing any member of such community by caste name in any place within public view and Section

3(1)(w)(i) pertains to intentionally touching a woman belonging to such community knowing that she belongs to such community, when such act of touching is of a sexual nature and is without the recipient's consent.

11. We find that even if the allegations specifically levelled against applicant Nos.3 to 6 are to be accepted as it is, none of the ingredients of the aforesaid offences are made out against the said applicants.

12. Insofar as the offences under the IPC are concerned, we find that only the offences under Section 324 and 354 are cognizable offences. Section 324 pertains to voluntarily causing hurt by dangerous weapons or means. There is no allegation against the applicant Nos.3 to 6 of having used any weapons during the course of the incident and specific allegation is that they physically assaulted non-applicant No.2 and his wife by fists and blows and that the applicant No.5 twisted the hand of the wife of the non-applicant No.2. On the face of it, Section 324 of the IPC could not have been invoked against applicant Nos.3 to 6. That leaves us with only Section 354 of the IPC, which pertains to assault or use of criminal force against any woman with intent

to outrage her modesty. As noted above, the only allegation made against the applicant Nos.3 to 6 is that they reached the spot of the incident and assaulted the non-applicant No.2 and his wife by fists and blows and applicant No.5 twisted her hand. There is no further allegation levelled against the applicant Nos.3 to 6 indicating even prima facie that an intention to outrage the modesty of the wife of non-applicant No.2 could be made out. All other offences under the IPC are non-cognizable and therefore, the FIR could not have been registered for such offences against applicant Nos.3 to 6. On an analysis of the material available on record that accepting the same as it is, we find that there is substance in the contention raised on behalf of applicant Nos.3 to 6 that the FIR could not have been registered against them and it deserved to be quashed.

13. In view of the above, the application is partly allowed and the FIR bearing No. 51 of 2021 dated 19/02/2021, registered at Police Station Patur, District Akola, is quashed as against applicant Nos.3 to 6.

JUDGE

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*30.08.2022
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