

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

Criminal Appeal No. 375 of 2021

Lalitkumar S/o Shrinarayan Agrawal

Versus

The State of Maharashtra, through Police Station Officer, Police Station Ural,
Tahsil Balapur, District Akola and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Atharva Manohar, Advocate for the appellant.
Shri Vinod P. Thakre, APP for the respondent/State.
Mrs. Shilpa P. Giradkar, Advocate for the respondent
no.2.

**CORAM : ANIL S. KILOR, J.
DATED : 31st MARCH, 2022.**

In this appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short referred as "Atrocities Act") a challenge is raised to the order below Exh.21 dated 7th April, 2021 passed by the Judge Special Court, Akola in Special Atrocity Case No. 100 of 2020, rejecting the application filed by the appellant for discharge for the offence punishable under Section 354 of Indian Penal

Code and Sections 3 and 11 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Shri Atharva Manohar, learned counsel for the appellant, Shri, Vinod Thakre, learned Additional Public Prosecutor and Mrs. Giradkar, learned counsel for the respondent no.2.

3. The facts in brief are as under : On 19th June, 2020 First Information Report bearing Crime No. 164 of 2020 came to be filed by the respondent/complainant alleging that on 18th June, 2020 around 12.30 pm when the complainant was working on the farm of the accused as agricultural labour with other labourers, the accused grabbed the hand and told her that he loved her.

4. After investigation the chargesheet came to be filed against the accused for the offence punishable under Section 354 of Indian Penal Code and Sections 3 and 11 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. Thereupon an application for discharge of the accused was filed which came to be rejected vide impugned

order below Exh.21 dated 7th April, 2021 which is assailed in the present appeal.

6. Shri Manohar, learned counsel for the appellant at the outset submits he is not pressing the present application as far as offence under Section 354 of the Indian Penal Code is concern. However, he prays for discharge as regards offence registered under the Atrocities Act.

7. Shri Manohar, learned counsel for the appellant submits that there is no mention in the First Information Report that the appellant had knowledge about her caste and knowing the same, the appellant has committed the alleged offence.

8. It is submitted that in this case, presumption under Section 8 of the Atrocities Act, that the appellant was aware about the caste of the appellant, will not apply unless foundational facts are there and unless they are brought on record, rebuttal would not arise.

9. It is further submitted that even at the stage of discharge, the Court can examine whether the prosecution

has established foundational facts and in absence of any rebuttal whether conviction is permissible and in case the prosecution failed to established foundational facts there is no question of rebuttal and in that case at the stage of framing of charge, the Court can discharge the accused. For this purpose, he has placed reliance in the judgment of Hon'ble Supreme Court of India in the case of R.S.Nayak Vs. A.R.Antulay¹.

10. It is submitted that according to complainant's own version, she was employed for two or three times as a labourer in the field of the appellant which would sufficiently depicts that the appellant had no knowledge about the caste of the complainant.

11. He further argues that a person may work as a labour in a field on engaging him or her, to carry out certain work, however, that does not necessarily mean that the owner of the field would know the caste of each and every labour engaged by him.

12. He further submits that from the statement under Section 161 of the Code of Criminal Procedure, it is

¹ AIR 1986 SC 2045.

clear that she was not employed by the appellant but she was employed through a contractor, which gives more reason to say that the appellant had no knowledge about her castes. For this purpose, he also relied upon the dictionary meaning of word of 'Personal' which means person's private rather than professional life.

13. On the other hand Shri Thakre, learned Additional Public Prosecutor opposes the present application and submits that sufficient evidence is there on record to establish foundational facts. It is submitted that in view of the fact that the appellant and the complainant are the resident of the same village, the presumption under section 8(c) of the Atrocities Acts would apply in this case.

14. It is submitted that the appellant cannot take advantage of non-mentioning of fact by the complainant that the appellant had knowledge about her caste in the First Information Report as the First Information Report is not an encyclopedia. For this purpose he has placed

reliance *Ashabai Machindra Adhagale Vs. State of Maharashtra and others*².

15. Shri Thakre, learned Additional Public Prosecutor points out that, in the First Information Report, the complainant has specifically stated that the appellant knows her and she knows the appellant. He further submits that it is also clear from the First Information Report that both are the residents of the same village.

16. He further submits that at this stage, it is not safe to comment on whether the prosecution has established foundational facts or not. The same can be seen only on leading evidence.

17. It is submitted that while considering the prayer for discharge, the Court has required to consider the record of the case and documents submitted therewith and after hearing the parties may discharge the accused if the Court considers that there is no sufficient ground for proceeding against the accused. If, on the other hand the Court is of opinion that there is ground for presuming that

2 2009(3) SCC 789

the accused has committed an offence, the Court shall frame the charge. For this purpose he has placed reliance judgment of the Supreme Court of India in the case of Bhawana Bai Vs. Ghanshyam and others³.

18. Mrs. Giradkar, learned counsel for the respondent no.2 reiterated the contention of the learned Additional Public Prosecutor and prays for rejection of the present application.

19. To consider rival contentions of the parties, I have perused the record and the judgment cited by both the parties.

20. Since, the whole controversy revolves around the presumption under Section 8, it is appropriate to refer to Section 8 of the Atrocities Act.

“8. Presumption as to offences – In a prosecution for an offence under this Chapter, if it is proved that

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(a) the accused rendered [any financial assistance to a person accused of], or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.”

21. In this case Section 8(c) would be relevant which makes it clear that in a prosecution for an offence under Chapter II of the Act of 1989, if it is proved that the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless contrary is proved.

22. In the First Information Report, the complainant has stated that the appellant knows her and she knows the appellant. She also states that in last three years on many occasion she went to his field as agricultural labourer. She has also stated that her residential address and residential address of the appellant as ‘Juna Andura’.

23. If we refer to the statement under Section 161 of Code of Criminal Procedure, she again states that she knows the appellant and appellant knows her and her caste is “Boudha”. She further states that on two or three occasion, she went to the field of appellant as agricultural labourer. She has further stated that the address of the appellant and her address as ‘Juna Andura’.

24. Thus, from the First Information Report and the statement under Section 161 of Code of Criminal Procedure, *prima facie* there is material to show that the appellant knows the complainant as both are resident of same village i.e. ‘Juna Andura’.

25. The contention of learned counsel for the appellant that only because somebody employed someone directly or through contractor to carry out certain work, it is not necessary that the person employing the other person, knows the caste or tribe of that person. The said contention of the learned counsel for the appellant, cannot be accepted in this case for the reason that ‘Juna Andura’ is

a village. The complainant has specifically stated in the First Information Report and also in the statement under Section 161 of Code of Criminal Procedure that the appellant knows her. Hence, *prima facie* the presumption under Section 8 would come into play and unless the appellant rebuts it by adducing necessary evidence, it will continue to operate against the appellant.

26. The next contention of the learned counsel for the appellant is that as per the dictionary meaning of word personal be relates to person's private rather than his professional life. By pointing out this, he submits that from the First Information Report and the statement under Section 161 of Code of Criminal Procedure, it can be said that there was professional relations between the appellant and the complainant and there was no relation between them in private life.

27. This contention of the learned counsel for the appellant cannot be accepted because, there is no mention

in the First Information Report in what capacity the complainant and the appellant know each other.

28. The Hon'ble Supreme Court of India in the case of *Ashabai Machindra Adhagale Vs. State of Maharashtra and others* (supra) while dealing with the issue whether First Information Report should disclose all the facts and details relating to the offence has observed thus:

"7. In *CBI vs. Tapan Kumar Singh* (2003 (6) SCC 175) this Court elaborately dealt with the need of an FIR. It was inter-alia observed as follows: (SCC pp-183-84 paras 20 and 22)

"20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the

information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these

matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

29. Thus, all the details which the appellant is expecting in this case, in the First Information Report not necessarily be the part of the First Information Report. Moreover, merely certain things are not mentioned in the First Information Report, at this stage of framing of charge, the accused cannot claim benefit of the same and seek discharge.

30. In the case of *Bhawana Bai Vs. Ghanshyam and others* (supra), the Hon'ble Supreme Court of India while considering the issue in respect of framing of charge has observed thus:

"14. Considering the scope of Sections 227 and 228 CrI.P.C., in *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460, the Supreme Court held as under:-

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the record of the case and documents submitted therewith and, after hearing the parties, may either discharge the accused or where

it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39: (SCC pp. 41-42, para 4)

4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in

that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing, as enjoined by Section 227. If, on the other hand, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which (b) is exclusively triable by the court, he shall frame in writing a charge against the accused, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused

is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

31. The Hon’ble Supreme Court of India in clear terms has observed that once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly.

32. As far as the judgment relied upon by the learned counsel for the appellant in the case of *R.S.Nayak Vs. A.R.Antulay (supra)*, there is no dispute about the law

laid down in the case. However, in this case *prima facie* the facts and ingredients of Section 3 of the Atrocities Act, exist. Therefore, I do not find any error committed by the learned Special Court in rejecting the application of the appellant for discharge. Accordingly, I proceed to pass the following order:

- i. The criminal appeal is **rejected**.
- ii. The fees of Mrs. Shilpa Giratkar, learned appointed counsel, is quantified at Rs.2,500/- through High Court Legal Services Sub-Committee, Nagpur.

[ANIL S. KILOR, J.]