

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Criminal Application (APL) No.907 of 2019**

1. Arun Laxman Motghare,
Aged about 52 years,
Occupation – Service,
R/o 41, Cosmo Politin Society,
Somalwada,
Near Railway Crossing,
Khamla, Nagpur.

2. Naresh Ramji Motghare,
Aged 44 years,
Occupation – Service.

3. Mahesh Ashok Motghare,
Aged 27 years,
Occupation – Service.

Nos.2 & 3 both R/o Virli Khandar,
Tah. Pauni, Dist. Bhandara.

4. Rakesh Gulab Asole,
Aged 28 years,
Occupation – Service,
R/o Murmadi/Tup, Tah. Lakhani,
Dist. Bhandara.

... Applicants/
Accused

Versus

1. State of Maharashtra,
through Police Station Officer,
Police Station: Adyal,
Tah. Pauni, Distt. Bhandara.

2. Bhaurao Gangaram Panchwate,
Aged 42 years,
Occupation – Service,
R/o Village Kosara,
Post: Kondha,
Tah. Pauni, Dist. Bhandara,
Police Station: Adyal.

... Informant

... Respondents

Shri Sunil Manohar, Senior Advocate, assisted by Shri A.A. Dhawas, Advocate for Applicants.

Shri S.S. Doifode, Additional Public Prosecutor for Respondent No.1-State.

Shri S.V. Sirpurkar, Advocate for Respondent No.2.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 18th JULY, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The applicant No.1 is the Principal of Dr. Arun Motghare College, while the applicant Nos.2, 3 and 4 are the employees of the said College. It appears that due to some misconduct on the part of the respondent No.2, the departmental enquiries have been held against him. The last chargesheet that was issued to the respondent No.2 is dated 3-6-2019, which levels several charges of misconduct against him.

3. The respondent No.2 thereafter filed a police complaint against the applicants alleging his humiliation and being subjected to abuses on caste basis by the applicants. However, the concerned police officer, after making enquiries, found no substance in the complaint and, therefore, submitted a report to the Superintendent of Police, Bhandara, on 13-10-2018 stating therein that no case was

made out by the respondent No.2 for registration of the offences against the applicants. In the said report submitted to the Superintendent of Police, Bhandara, the Sub-Divisional Police Officer, Paoni, has given details of various acts of misconduct on the part of the respondent No.2. It is not known as to what action thereafter was taken by the Superintendent of Police, Bhandara in the present matter. But, one thing is certain that no offence was registered against the applicants.

4. The respondent No.2 had, meanwhile, filed an application under Section 156(3) of the Code of Criminal Procedure against the applicant Nos.1 and 2 containing almost similar allegations. In this complaint, the respondent No.2 alleged that the applicant Nos.1 and 2 intentionally subjected the respondent No.2 to physical and economic hardships and harassment on the ground that the respondent No.2 belonged to Scheduled Caste category. The respondent No.2 also alleged that by issuing a false chargesheet to him, the applicant Nos.1 and 2 wanted to only see that the respondent No.2 was removed from the service by hook or crook.

5. The learned Magistrate, however, rejected the said application for want of jurisdiction. The respondent No.2 thereafter filed another application under Section 156(3) of the Code of Criminal Procedure

before the Special Court, Bhandara, containing the same allegations. This time, the respondent No.2 also added one more allegation. He alleged that the applicant Nos.1 and 2 were in the habit of giving caste based abuses to the respondent No.2 and for that they would on and off say that the respondent No.2 being a Chambhar by caste did not deserve any job in an Educational Institution and his right place was in the street and his right job was of polishing of footwears of others.

6. The learned Special Judge, who was the Principal District and Sessions Judge, Bhandara, found that the allegations so made in the application were vague and, therefore, further found that no *prima facie* case was made out against the applicant Nos.1 and 2 under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the Atrocities Act”). On these grounds, the learned Special Judge rejected the said application by his order dated 15-12-2018.

7. The respondent No.2 did not challenge the legality and correctness or otherwise of the order dated 15-12-2018 passed by the learned Special Judge and thus the said order attained finality.

8. Thereafter, when another chargesheet was issued for initiating the departmental enquiry against the respondent No.2 in the month of June 2019, the respondent No.2 lodged an F.I.R. with Police Station Adyal, District Bhandara, on 13-7-2019 against these applicants. In this F.I.R., in addition to the applicant Nos.1 and 2, the applicant No.3 was also added as an accused. However, the nature of allegations did not change. Same allegations, as were in the previous complaint, have been made in this complaint. In this complaint as well, it is alleged that these applicants would on and off abuse the respondent No.2 by saying that his real job was of doing polishing of footwears in the street, he being a Chambhar by caste. No further details of this incident have been given by the respondent No.2. The respondent No.2 has also not disclosed in the complaint that his similar complaint has been found to be not disclosing commission of any cognizable offence by the Special Court of competent jurisdiction and that there is an order passed in that regard by the Special Court.

9. On the basis of this complaint, Police Station Adyal has registered an offence under Section 3(x) of the Atrocities Act, which is again challenged for its correctness or otherwise by the applicants in the present application.

10. Shri Manohar, learned Senior Advocate appearing for the applicants, submits that the earlier order passed by the Special Court is binding upon the respondent No.2 and, therefore, on the basis of the same allegations, which have been found to be not disclosing any cognizable offence by the Special Court, no F.I.R. could have been lodged by the respondent No.2 and its cognizance could not have been taken by Police Station Adyal. The learned Senior Advocate further submits that the allegations made against the applicants in the said F.I.R. are vague and even if they are taken at their face value, they do not constitute any offence, muchless an offence punishable under Section 3(x) of the Atrocities Act.

11. Shri Doifode, learned Additional Public Prosecutor appearing for the respondent No.1- State, submits that during the course of enquiry, the Investigating Officer, i.e. the Sub-Divisional Police Officer, Bhandara, recorded the statements of several witnesses and these statements revealed that there is a general boycott imposed on the respondent No.2 on the instructions of the applicant No.1, which boycott amounts to humiliation and violation of human rights of the respondent No.2 on the ground that he belongs to Scheduled Caste category and as such, according to him, such social boycott and humiliation and also violation of human rights *prima facie* amount to commission of cognizable offence under the provisions of the

Atrocities Act.

12. Shri Sirpurkar, learned counsel appearing for the respondent No.2, submits that the complaint of the respondent No.2 is supported by atleast three witnesses, viz. Rajendra Chunnilal Gajbhiye, Saroj Shankar Meshram and Sudhir Namdeo Ramteke and, therefore, *prima facie* the offence already registered against the applicants is made out. He further submits that the order passed by the learned Special Judge would not be binding upon the concerned Investigating Officer, though it was binding upon the respondent No.2. He further submits that when the abuses were repeated, a new offence for every repeated caste based abuse was committed and that is how the offence has been registered against the applicants by the present Investigating Officer. Thus, he submits that this is not a fit case for making any interference in the matter.

13. On going through the fresh complaint lodged by the respondent No.2 with Police Station Adyal and also the other documents including the chargesheet served upon him for proceeding with the departmental enquiry against the respondent No.2 and the previous report of the Investigating Officer and the order of the Special Court, we find that there is a great substance in the submissions of the learned Senior Advocate for the applicants.

14. While we accept the argument of the respondent No.2 that the order passed by the Special Court rejecting his application filed under Section 156(3) of the Code of Criminal Procedure is not binding upon the Investigating Officer, which is also the argument of the learned Additional Public Prosecutor, we do not accept the further argument that the Investigating Officer was well within his right to register an offence punishable under Section 3(x) of the Atrocities Act against the applicants on the basis of the same allegations. These allegations, as contained in the present complaint, were also there in the previous complaint filed by the applicant. On earlier occasion, on the basis of these allegations, no offence whatsoever was registered against the applicant Nos.1 and 2 and, therefore, it does not appear reasonable and proper that because of the change of the Investigating Officer, an offence under Section 3(x) of the Atrocities Act should have been registered, although the allegations are same. This is all the more so because the respondent No.2 is repeating his previous allegations and is not saying that the caste abuses were again given after he had made a complaint earlier, thereby indicating no change of circumstances. The allegations made in the present complaint are only a repeat of allegations in earlier complaint and do not indicate that the abuses were being given continuously during certain period of time and, therefore, the present Investigating Officer should have been mindful

of the fact that this is not a case which, *prima facie*, discloses commission of new offence, other than the one alleged in previous complaint in which the earlier Investigating Officer did not register any offence.

15. Same position obtains in respect of the application filed by the respondent No.2 under Section 156(3) of the Code of Criminal Procedure before the Special Court. On its perusal, we find that same allegations as in the present complaint are made. In that application, the respondent No.2 alleged that the applicant Nos.1 and 2 were in the habit of saying that the respondent No.2 being a Chambhar by caste had no capacity to perform any service and that his real job was there in the street and it was that of doing polishing of footwears of others. In the present complaint also, the same allegations are made without change of any single word. The learned Special Judge has found these allegations as vague, as no further details, such as the date and the time when the incident had taken place, were mentioned in the application. Same fact situation continues even now. The allegations made in the present case are equally vague and, therefore, we do not think that any offence, muchless an offence punishable under Section 3(x) of the Atrocities Act, could have been registered against the applicants.

16. We must make it clear here that the offence so registered against the applicants is the one which was there under the old Atrocities Act before amendment was effected in 2016. After the amendment, this very offence is now an offence which is made punishable under Section 3(1)(r), which reads thus :

“3. Punishments for offences of atrocities.--(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

...

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

A bare perusal of the above-referred Section would be enough to make it clear to us that the insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe must be made in any place which is within public view. In the complaint lodged with Police Station Adyal, the respondent No.2 has not disclosed the place where the alleged caste based abuses have been given by the applicants and, therefore, it cannot be ascertained as to whether or not those caste based abuses, assuming the incident to be true, were given in a place which was within public view. On this ground also, we find that the complaint made by the respondent No.2 with Police Station Adyal is vague and does not disclose any offence as having been, *prima facie*, committed, the cognizance of which could be

taken as per the provisions of the Atrocities Act.

17. The complaint of the respondent No.2 also alleges social boycott imposed upon the respondent No.2 by the applicant No.1. Some instances have been given by the respondent No.2 in order to substantiate his allegations. According to him, the applicant No.1 did not allow him to work in the manner as would be suitable to his position, did not allow him to talk with the other employees, and subjected the respondent No.2 to some economic hardships and harassment, such as delayed payment of the salary. These allegations, again we find, are vague in nature as they give no further details, such as the position or rank in respect of which there was hindrance, the dates, time and place when and where the obstacles were created, the manner of obstruction and so on. That apart, these instances, even if they are taken to be correct just for the sake of argument, would not amount to imposition of any social boycott upon the respondent No.2 by the applicant No.1 just because the respondent No.2 belongs to Scheduled Caste category. Boycott is an act imposed upon a person with a view to banish that person from the Society or group of persons, whereas in the present case, the respondent No.2 has been permitted to enter the College, has been permitted to perform his duty as Senior Clerk, and has also been paid his salary, may be belatedly; but the belated payment of salary cannot be taken to be a case of any

economic harassment or social boycott. Therefore, even after considering the nature of allegations made by the respondent No.2 against the applicants, the detailed discussion of which has already been made in the earlier paragraphs, we do not think that any *prima facie* case is made out for an offence punishable under Section 3(1)(r) of the amended Atrocities Act or Section 3(1)(x) of the old Atrocities Act against any of the applicants.

18. It appears to us that this complaint has been filed by the respondent No.2 with Police Station Adyal with a view to settle his score against the applicants, probably because the respondent No.2 was annoyed with the action of the Management in issuing him two chargesheets alleging various acts of misconduct on his part. The last F.I.R. dated 13-7-2019, in particular, appears to be a fall-out of the chargesheet issued by the Management against the respondent No.2 in the month of June 2019. Then, the respondent No.2 has also suppressed material facts while making the complaint before Police Station Adyal against the applicants. He was under a duty to reveal whatever had happened to his earlier complaint and applications filed under Section 156(3) of the Code of Criminal Procedure in the complaint, containing more or less similar allegations, but he did not disclose anything about those complaints, applications and the orders passed by the concerned Courts. In fact, the order passed by the

learned Judge of the Special Court, Bhandara, rejecting his application under Section 156(3) of the Code of Criminal Procedure, containing same allegations, had attained finality and on the basis of the same, he could not have filed the present complaint. Of course, if any such caste based abuses alleged by the respondent No.2 are repeated, a new offence would be every time there is a repeat abuse. But, that is not the allegation; not the case of the respondent No.2.

19. The learned Additional Public Prosecutor for the respondent No.1 and the learned counsel for the respondent No.2 have invited our attention to statements of three witnesses, viz. Rajendra Chunnilal Gajbhiye, Saroj Shankar Meshram, and Sudhir Namdeo Ramteke, which according to them, support the case of the respondent No.2. We have carefully considered the statements given by these three witnesses. These statements, in our considered view, do not support in any manner the version of the respondent No.2.

20. Witness Rajendra Chunnilal Gajbhiye has stated that he was told about the social boycott imposed upon the respondent No.2. However, he does not have any personal knowledge about the social boycott. Even otherwise, he does not clarify as to which acts were perpetrated by the applicants which amounted to social boycott imposed upon the respondent No.2. Witness Saroj Shankar Meshram

has come out with a different version than the narration of abuses given by the respondent No.2. He has stated about some different abuses which have not been stated by the respondent No.2 in the complaint before the Investigating Officer. Witness Sudhir Namdeo Ramteke does not have any personal information about the alleged abusive treatment meted out to the respondent No.2. It would be clear from these statements that none of these witnesses supports and substantiates the case of the respondent No.2.

21. In the case of *Babu Venkatesh and others v. State of Karnataka and another*, reported in (2022) 5 SCC 639, the Supreme Court has reiterated the principles of law laid down in the case of *State of Haryana v. Bhajan Lal*, reported in 1992 Supp (1) SCC 335, which should be borne in mind while dealing with the applications filed for quashing of the F.I.R. One of the parameters, which has been laid down in this case, is of the allegations, taken at their face value, not disclosing commission of any offence or not making out any case. In the present case, even if the allegations made by the respondent No.2 against the applicants are taken at their face value and accepted as true, still they do not make out any offence against the applicants. Thus, this is a fit case for making interference in the matter.

22. The criminal application is, therefore, allowed in terms of prayer clause (A), which reads thus :

“(A) To call for the entire record and proceedings of Crime No.133/2019 for offences P/U/ss 3(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered against present applicant by Police Station, Adyal, Distt. Bhandara and further be pleased to issue necessary directions, orders to quash the above said FIR dated 13/07/2019 in the above said Crime and further be pleased to quash entire proceeding consequent to the said F.I.R.”

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar