

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

CRIMINAL WRIT PETITION NO. 141 OF 2023

**DIGAMBAR VITHAL MAHALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. V. B. Anjanwatikar, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. A. D. Patil, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 27th OCTOBER, 2023

P.C. :-

1. Petitioner being aggrieved by impugned order rejecting his application for further investigation under Section 173(8) of Code of Criminal Procedure (for short 'Cr.P.C.') has preferred this petition by invoking provisions of Article 227 of the Constitution of India.

2. Petitioner is the complainant who had filed complaint against respondent No.2 for the offences punishable under Section 295 of the Indian Penal Code (for short 'IPC') and under Sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act') coupled with under Section 66(a) of Information and Technology Act (for short 'IT Act'). It is alleged by the petitioner that respondent No.2 with an intention to humiliate and defame the petitioner

who belongs to scheduled caste community has forwarded a message and thereby has committed offences as alleged. The said report came to be lodged on 15th September, 2014 whereas charge-sheet is filed on 12th February, 2015. On 14th October, 2022 an application was filed under Section 173(8) of Cr.P.C. by complainant for seeking further investigation in to the crime. The said application filed below Exhibit 41 was rejected by the Special Judge-2 and Addl. Sessions Judge, Amalner in Spl. Atro. Case No. 5 of 2015 on 16th November, 2022.

3. Learned counsel for the petitioner submits that the investigation in to the crime has not been properly and fully done, as there are about 200 persons on the WhatsApp group concerned, however, statement of all these persons are not recorded by the Investigating Officer. It is also contended that the certificate under Section 65B of the Evidence Act has not been procured in order to prove the offence under the IT Act.

4. Learned counsel for respondent No.2 opposed the said contention by pointing out facts of the case which according to him indicate that this court in Criminal Revision Application No. 156 of 2017 has categorically observed that offence under Section 120B of IPC of criminal conspiracy is not made out in the present case. It is submitted that the application in question has been filed in order to cause harassment and it is abuse of

process of law.

5. The facts from the record indicate that the petitioner filed report on 15th September, 2014 with concerned police station and after investigation charge-sheet came to be filed on 12th February, 2015. Application (Exhibit 41) is filed on 14th October, 2022. Order passed by the learned Special Judge-2 and Addl. Sessions Judge depicts that informant is involved in the entire process of investigation, remand as well as filing of the charge-sheet and he was duly represented at all these stages through Advocate. It is observed that in his statement as well as statements of witnesses there is no whisper about essential ingredient attracting provisions of Section 120 B of IPC. It is also observed that this Court in Criminal Revision Application No. 159 of 2017 has held that there is no material on record to frame charge under Section 120 B of IPC and it is after the said order application (Exhibit 41) is filed. Learned Court has also held that after five years of the alleged incident the applicant is seeking re-investigation. On the basis of these facts appearing before Court it is observed by Trial Court that filing of such application is nothing but abuse of process of law.

6. In the facts and circumstances of the case, the said observations made by the learned Trial Court are not misplaced. The material on

record support the said observations. This Court, therefore, concurs with the said findings recording by the Trial Court that filing of application (Exhibit 41) is abuse of process of law so also filing of present petition. This petition therefore deserves to be dismissed with exemplary cost. However, keeping in mind the fact that the petitioner belongs to scheduled caste community, this Court refrains itself from imposing any cost. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp