

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

66 CRIMINAL WRIT PETITION NO.239 OF 2022

SAYYED UMAIR PASHA S/O. ABDUL QUADAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Shermale K. N.

APP for Respondent State: Mr. S. D. Ghayal

Advocate for Respondent No.2 : Ms Sanyukta. N. Suryawanshi (Appointed)

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

DATE : 9th January, 2023

ORDER:

Heard finally with consent of learned counsel for the respective parties.

1. The applicants have filed this petition for quashing the FIR No.230/2021 registered with City Police Station Ambajogai, Dist. Beed and criminal proceedings being Special Case No. 86/2021 pending on the file of learned Additional Sessions Judge, Ambajogai, District Beed for the offences punishable under sections 341, 327, 504, r/w 34 of the Indian Penal code and under sections 3(1)(r), 3(1)(s), 3(2)(va) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989.

2. Heard learned counsel for the applicants as well as learned APP for the State and learned counsel for respondent No.2.

3. We have perused the record and considered the submissions advanced by the learned advocates for the respective parties. The record

prima facie indicates that respondent No.2 is running a shop in the name of Abhijit Solar and he is engaged in the work of installing solar panels. The FIR reveals that Dr. Abdul Kadar, father of the applicants herein, had requested respondent No.2 to install solar panel at his residence, for which respondent No.2 had given estimate of Rs. 2,50,000/-. It is stated that Dr. Kadar had given him an advance of Rs. One lakh. Respondent No.2 has claimed that Dr. Kadar decided not to install the solar panel and asked him to return the money. The respondent No.2 had expressed his inability to return the money since he had utilized the same for purchasing the required material. It is alleged that Dr. Kadar, the father of the applicants, insisted on return of Rs.1,00,000/- with interest. He took forcible possession of his vehicle bearing No. MH-23-E-7920 and obtained writing from respondent No.2 that he would take the vehicle only after payment of the amount.

4. Respondent No.2 has stated that on 22.06.2021, while he was proceeding towards his residence o his Car MH-44-397, both the applicants stopped his vehicle and demanded cash of Rs.1,50,000/-. They allegedly abused him over his caste and forced him to alight from the vehicle and took forcible possession of the vehicle bearing No. MH-44- 397. Respondent No.2 therefore lodged the complaint, pursuant to which the aforesaid crime has been registered.

5. It is pertinent to note that on 24.03.2021 i.e. much prior to lodging of the FIR, applicant No.1 had lodged report before the Ambajogai City Police station against respondent No.2/complainant stating that respondent No.2 had assured to install solar panel at their residence and had taken advance of Rs.1,10,000/- for the work. Applicant no.1 has stated that his father has paid him Rs.1,10,000/- despite which the respondent No.2 failed to install solar panel. It is stated that on 24.12.2021, respondent No.2 executed a bond wherein he had agreed to keep his car with the father of the applicants till the time the money was repaid. Applicant No.1 had stated that the respondent No. 2 has refused to pay the money and when they insisted for payment of money he threatened to lodge a false case under Atrocities Act and further informed that he had already lodged similar complaints against another persons.

6. A perusal of the FIR and the other material collected in the course of the investigation reveals that there was dispute between the parties over repayment of the advance given to respondent No.2. The respondent No.2 had himself given it in writing that he would repay the amount. That the applicants had stopped the respondent No.2 on the road and demanded money would not constitute offence of wrongful restraint. Though the respondent No.2 has alleged that he has been abused over his caste, the respondent No.2 has neither disclosed his

caste nor the abusive words. In fact respondent No.2 does not even claim that the applicants were aware that he belonged to a particular caste and hence the 'intention' which is essential ingredient of offence under the S.C. and S.T. (Prevention of Atrocities) Act is lacking.

7. In our considered view, the FIR as well as other material on record, does not disclose commission of alleged offence. Hence, continuance of the proceedings shall be abuse of process of law. Under the circumstances, the application is allowed. F.I.R. No.230/2021 registered with City Police Station Ambajogai, Tq. Ambajogai Dist. Beed and criminal proceedings being Special Case No. 86/2021 pending on the file of learned Additional Sessions Judge, Ambajogai, District Beed for the offences punishable under Sections 341, 327, 504, r/w 34 of the Indian Penal Code and under sections 3(1)(r), 3(1)(s), 3(2)(va) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989 stand quashed and set aside.

8. Fees of the advocate appointed for respondent No.2 is quantified at Rs.6,000/-.

(R. M. JOSHI, J)

(SMT. ANUJA PRABHUDESSAI J.)

JPChavan