

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

CRIMINAL WRIT PETITION NO. 821 OF 2023

Uttamrao Dhondaji Shinde

... PETITIONER

VERSUS

1. The State of Maharashtra
Though Dharmabad Police Station, Dist. Naned

2. Sau. Shobha Jeevan Shelke ... RESPONDENTS

Mr. A. M. Gaikwad, Advocate for the petitioner
Mr. V. S. Badakh, APP for the respondent/State
Mr. U. B. Deshmukh, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 25/10/2023

PRONOUNCED ON : 30/10/2023

ORDER :-

1. This petitions is filed taking exception to the order dated 12th May, 2023 passed by Addl. Sessions Judge, Biloli in Cri. Rev. Application No. 07/2016 whereby the order passed by JMFC, Osmanabad dated 21st April, 2015 below Exhibits 1 and 4 of accepting B final report No. 04/2015, is set aside.

2. Petitions is an accused of the offence punishable under Sections 504, 506 of Indian Penal Code (for short 'IPC') and under Sections 3(1) (viii), (ix) and (x) of the SC and ST (Prevention of Atrocities) Act (for

short 'Atrocities Act'). An application came to be filed by respondent before JMFC, Osmanabad seeking direction to investigate under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.'). The allegations in the said application are that an incident occurred on 09th March, 2015 wherein at Pansare Chowk, Dharmabad original applicant/complainant was threatened and abused over her caste. An order was passed on 21st April, 2015 in OMCA No. 106/2015 directing investigation under Section 156(3) of Cr.P.C. Dharmabad Police registered the crime bearing No. 40/2015 and the same was investigated into. Police filed B summary report before the Magistrate bearing No. 4/2015 with the observation that in the investigation it is revealed that the accused was not present at the spot and the complaint is false. Informant and complainant was heard and order came to be passed on 22nd April, 2016. The said order was challenged successfully before the Revisional Court who by passing impugned order remitted the matter back to JMFC for passing order afresh after considering the provisions of Section 103 of Evidence Act. It is held by the Revisional Court that the plea of alibi can be considered at the time of trial and burden to prove the same lies on accused.

3. Learned counsel for the petitioner submits that the Revisional Court has committed serious error in reversing the order passed by the Magistrate with observation that the plea of alibi is taken by the

accused and the same is required to be proved by him in the trial. It is submitted that it is not a case wherein a plea of alibi has been raised during trial by the accused but herein this case on the basis of investigation conducted it is found that the accused was not present at the spot but he was at the place which is at the distance of 90 km therefrom. It is submitted that the invocation of provisions of Section 103 of Evidence Act by revisional Court is totally misplaced. It is also submitted that there is no allegation about there being no proper investigation in to the crime nor any bias or malafide is attributed to the Investigating Officer.

4. Learned counsel for the respondent/original complainant opposed the said contentions by referring to the statement of complainant which according to him gets corroborated by the statements of Laxman and Madhavrao. According to him said issue as to whether the accused was present or not at the spot can only be decided during trial. Thus, according to him there is no infirmity the order impugned.

5. In the instant case, the JMFC has directed the concerned Police to investigate into the crime by invoking provisions of Section 156(3) of Cr.P.C. The crime in question was investigated accordingly. It is not the case of the complainant that the investigation was not properly done or was biased. Bombay Police Manual, 1959 provides for

submission of final reports. Police can file A, B or C summary instead of filing charge-sheet under Section 173 (2) of Cr.P.C. In the instant case B summary is filed with specific observation that from CDR as well as from the statement of one of the witness it is found that accused was present at the distance about 90 km from the alleged spot of the incident. In such circumstances, Investigating Officer was of the view that this is the case of false complaint. Before accepting B summary complainant's counsel was duly heard. Even during the course of hearing it is not sought to be canvassed by the complainant that no proper investigation has been carried out or CDR collected does not indicate the correct position about the presence of the accused at the place at far distance from the spot of incident. Since Magistrate found no reason to discard the said report, it was accepted.

6. Learned Revisional Court interfered with the said order without holding that the investigation carried out by the Investigating Officer is not proper or biased etc. Thus, the investigation carried out as well as the material collected during the course of investigation is also accepted by the Revisional Court. Revisional Court has interfered with the said order on the assumption that the accused had taken a plea of alibi and therefore in view of Section 103 of Evidence Act the burden is on the accused to prove such plea. It is also observed that the JMFC has not assigned any reason for discarding the statements of witnesses

i.e. Laxman and Madhavrao. These observations are factually legally incorrect. B summary has been filed by the Police on the basis of material collected during the investigation. At any stage prior to commencement of trial question of accused raising and accepting any plea of alibi does not arrive. It is trite law even at the stage of seeking discharge, defence of the accused cannot be considered. It is only in the event, such plea is raised during trial the burden would be on the accused to prove the same as contemplated under Section 103 of Evidence Act. At the stage of investigation accused neither has a right claim nor any duty to prove any stand including alibi.

7. As far as the statement of Laxman and Madhavrao is concerned, order passed by the Magistrate clearly shows that the entire record was perused. The statements of these witness were also duly considered as reflected in the order passed by the Magistrate. Herein this case it is pertinent to note that as per the complaint itself there are political disputes between the parties. The alleged incident has occurred on 9th March, 2015 whereas the application was made to the Magistrate on 2nd April, 2015. The statements of these two witnesses were recorded on 9th May, 2015 i.e. much belatedly. In this backdrop there is conclusive evidence in the form of CDR of petitioner coupled with statement of witness which indicates that at the relevant time he was present at the place far away from the alleged place of the occurrence

of the incident. In such circumstances, the order passed by the Magistrate could not be called at perverse in order to cause any interference in to the same by the Revisional Court.

8. If the arguments advanced on behalf of respondent that once statements are there to show involvement of petitioner in alleged crime, it is mandatory that the case must go for trial, is accepted then in all cases filing of charge-sheet would be must. In that event it would not be possible for Investigating Agency to find out whether complaint is genuine, bogus etc. This also will preclude filing of any summary even after fair and proper investigation of the crime and that in each and every case it would be imperative for the Investigating Agency to file charge-sheet. This is not the intention of the law. There are safeguards provided in order to ensure that the innocent person is not harassed by filing of false and frivolous complaint.

9. In view of above discussion, impugned order is set aside. Order passed by the Magistrate stands restored.

(R. M. JOSHI, J.)

ssp