

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2662 OF 2021

Gajanan Narayan Makne

Applicant

Versus

The State of Maharashtra & others

Respondents

Mr. N. S. Kadarale, Advocate for the applicant.

Mrs. M. A. Deshpande, APP for respondents No. 1 and 2.

Mr. P. B. Rakhunde, Advocate for respondent No. 3.

CORAM : MANGESH S. PATIL &

R. M. JOSHI, JJ.

DATE : 9 MARCH 2023.

PER COURT :

1. The petitioner is invoking the powers of this Court under Section 482 of the Code of Criminal Procedure and seeking quashment of the crime registered pursuant to the First Information Report No. 109/2021 Chakur Police Station, Dist. Latur and the subsequent criminal case registered pursuant to the charge-sheet No. 110/2021 bearing Special Case (Atro) No. 51/2021 pending before the Special Court at Latur for the offences punishable under Sections 452, 354-A, 506, 342 of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter "SC & ST Act").

2. The respondent No. 3 lodged the First Information Report with an initial version about the applicant having entered her house surreptitiously on 23.03.2021 at 10.00 pm and molested her. It is alleged that threatening her not to disclose the incident to anybody, he left the premises by bolting the house from outside. She approached the police and lodged the First Information Report on 24.03.2021 and initially, the offence was registered under Sections 452, 354(A) and 506 of the Indian Penal Code. The investigation proceeded. A panchanama was drawn.

3. On 29.03.2021, a supplementary statement of the respondent No. 3 was recorded wherein she *inter alia* stated that though she had stated her caste to be Koli while lodging the First Information Report, infact, she belonged to Mahadev Koli Scheduled Caste and by annexing a copy of the school record, she tried to improvise. Based on her such statement, the offence punishable under Section 342 of the Indian Penal Code as also the aforementioned offence under the SC & ST Act were added.

4. Pursuant to the registration of such crime under the SC & ST Act, the further investigation was handed over to the officer of

the rank of Assistant Superintendent of Police who has filed his affidavit-in-reply. He apparently caused the statement of the respondent No. 3 to be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure. He arrested the applicant and submitted the charge-sheet.

5. The learned advocate for the applicant vehemently submits that, the ingredients constituting the offences under the SC & ST Act cannot be made out even by accepting the First Information Report and the supplementary statement of the respondent No. 3. He submits that, it has been held by the Supreme Court and even this Court that the offence under the SC & ST Act can be made out only by demonstrating that the offence was being committed with an intent to insult a person belonging to the Scheduled Caste or Scheduled Tribe.

6. He would also refer to the provisions of the SC & ST Act, particularly Section 9 and Rule 7 of the Rules framed thereunder, to submit that though the investigation was subsequently handed over to the officer of the competent rank as is indicated therein, except arrest of the applicant and filing of the charge-sheet, he has not

undertaken any investigation worth the name. Such faulty investigation by a non-competent officer initially and lack of investigation by the officer of the requisite rank subsequently, would go to the root of maintainability of the charge. He would refer to the following decisions :-

- i) State of Madhya Pradesh vs. Babbu Rathore and another (2020) 2 Supreme Court Cases 577;*
- ii) State of Punjab vs. Hardial Singh 2009(15) SCC 106;*
- iii) State of Andhra Pradesh vs. Viswanadula Chetti Babu 2011 AIR (SCW) 12;*
- iv) Hitesh Verma vs. State of Uttarakhand and another (2010) 10 Supreme Court Cases 710;*
- v) Tejas Kamlakar Chawre vs. State of Maharashtra & another Criminal Application (APL) No. 171/2016 Decided on 14.12.2020*

7. The learned APP and the learned advocate for the respondent No. 3 would strongly oppose the application. They submit that once the offence was registered under the SC & ST Act, the further investigation has been carried out by the officer of the requisite rank. There was no point in once again carrying out spot panchanama or re-recording the statements of the witnesses. He has taken initiative in causing the statement of the respondent No. 3 to

be recorded under Section 164 of the Code of Criminal Procedure and having satisfied himself about commission of the crime under the SC & ST Act, has arrested the applicant and filed the charge-sheet. Nothing further was expected of him to be undertaken except carrying forward the investigation that was already done.

8. The learned APP and the learned advocate for the respondent No. 3 would further submit that as far as the offence under Section 3(1)(w)(i) of the SC & ST Act, having intention to molest the person belonging to the Scheduled Caste or Scheduled Tribe is not the requirement. Only knowledge about the caste or the tribe of the offender is sufficient. The decisions cited by the applicant do not comprehend and specifically address the ingredients of offence punishable under Section 3(1)(w)(i) of the SC & ST Act. Thus, offence punishable under Section 3(1)(w)(i) of the SC & ST Act does not require intention to commit the offence with sufficient animus to insult a person belonging to Scheduled Caste or Scheduled Tribe.

9. We have considered the rival submissions and perused the decisions cited at the bar. We have also gone through the police

papers and particularly the statement of respondent no. 3 recorded under Section 164 of the Code of Criminal Procedure.

10. At the outset, it is necessary to note that, knowledge of the offender about the victim being of Scheduled Caste or Scheduled Tribe is a necessary concomitant and a vital ingredient for constituting the offence under Section 3(1)(w)(i) of the SC & ST Act. Neither the First Information Report nor even the supplementary statement of the respondent No. 3 makes even a faint attempt at attributing the applicant with the knowledge of her caste. Even in her statement under Section 164 of the Code of Criminal Procedure recorded by the Magistrate after the Special Investigating Officer has undertaken the investigation, she has not attributed the applicant with knowledge of her caste.

11. Again, even the learned APP and the learned advocate for the respondent No. 3 could not point out to us that apart from the respondent No. 3, if some other witness, whose statement has been recorded under Section 161 of the Code of Criminal Procedure, at least has attributed the applicant with such knowledge. In the absence of iota of material in the entire charge-sheet to demonstrate

that the applicant had committed the crime having known the fact that the respondent No. 3 belonged to Scheduled Caste or Scheduled Tribe, the necessary ingredient for constituting the offence punishable under Section 3(1)(w)(i) of the SC & ST Act cannot be discerned.

12. Again, so far as the offence under Section 3(1)(r) and 3(1)(s) of the SC & ST Act are concerned, there is no dearth of decisions to hold that the intention of the applicant to insult the victim on caste lines is a necessary ingredient. Even that is conspicuously absent in the First Information Report, supplementary statement and the statement of the respondent No. 3 recorded under Section 164 of the Code of Criminal Procedure.

13. The upshot of the above discussion necessary ingredients for constituting the offences under the SC & ST Act are absent.

14. Surprisingly, in the teeth of such material, we cannot comprehend as to how the Special Investigating Officer who has submitted the charge-sheet could satisfy himself regarding commission of offence under the SC & ST Act. Though an affidavit-

in-reply is filed by the Assistant Superintendent of Police, no attempt has been made to demonstrate as to how the Investigating Officer could reach such a conclusion. All in all, from the material collected by the Special Investigating Officer which forms part of the charge-sheet, no offence under the SC & ST Act can be made out.

15. This makes us imperative to follow the course as is indicated by the Supreme Court in the matter of *State of Madhya Pradesh vs. Chunnilal*, (2009) 12 SCC 649, wherein also the offence was involving the provisions of the Indian Penal Code as also under the SC & ST Act, the course available has been stated to be that so far as the offence under the Indian Penal Code, even on the basis of the investigation under the Code of Criminal Procedure, the trial can proceed with the Court of Magistrate of competent jurisdiction even if the investigation under the SC & ST Act is found to be faulty.

16. In the result, the application is partly allowed. First Information Report No. 109/2021 registered with Chakur Police Station, Dist. Latur and the subsequent criminal case registered pursuant to the charge-sheet No. 110/2021 bearing Special Case (Atro) No. 51/2021 pending before the Special Court at Latur, to the

extent of the offences punishable under the SC & ST Act, is quashed and set aside. The charge-sheet shall be transmitted to the Court of Magistrate competent to try it under the offences under the Indian Penal Code for trial in accordance with law.

(R. M. JOSHI)
Judge

(MANGESH S. PATIL)
Judge

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