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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL WRIT PETITION NO.182 OF 2017
WITH
CRIMINAL WRIT PETITION NO.184 OF 2017**

CRIMINAL WRIT PETITION NO.182 OF 2017

1. Mr. Sunil Kumar Kaul

Age: 58 years, Occ: Sub-divisional Engineer, (E),
BSNL R/at: Room no. A-9, Govind Nagar,
Agashi Road, Virar- (West)

2. Mr. R.P. Toppo

Age: 46 years, Occ: Executive Engineer (E), BSNL
R/at: House No. 85, 39 B Cross Cama
14th Main, 4th T Block, Jayanagar,
Bangalore – 560 041.

3. Mr. Ashok Kumar Agarwal

Age: 51 years, Occ: Chief Engineer (E), BSNL,
GM (HR & ADMIN)
R/at: MSEA 15, wms compound, 9th main,
47 cross, 5th block, Jaynagar,
Bangalore – 560 041.

... Petitioners.

Versus

1. The State of Goa

(Through Porvorim Police Station)

2. Mr. Suresh B. Bhosle

Age: 46 years, Occ: Employee of BSNL,
R/at: B 604, Cama Swami Prasad Shelar Park,
Khadakpada
Kalyan (West)
District Thane.

... Respondents.

**WITH
CRIMINAL WRIT PETITION NO.184 OF 2017**

1. Mr. Praveen Varshney

Age: 58 years, Occ: PGM (HR & ADMN), BSNL
R/at: A-053, Amrapali Leisure valley,
Noida-West, Gautam Budh Vihar,
Uttar Pradesh- 201306

... Petitioner.

Versus

1. The State of Goa

(Through Porvorim Police Station)

2. Mr. Suresh B. Bhosle

Age: 46 years, Occ: Employee of BSNL,
R/at: B 604, Cama Swami Prasad Shelar Park,
Khadakpada, Kalyan (West),
District Thane.

... Respondents.

Mr Eeshan Usapkar, Advocate for the Petitioners.

**Mr S.G. Bhobe, Public Prosecutor and Mr P. Faldessai, Additional
Public Prosecutor for Respondent No.1-State.**

Mr Preetam Talaulikar, Advocate for Respondent No.2.

CORAM: **M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON: **07 August, 2023**

PRONOUNCED ON: **21 August, 2023**

JUDGMENT: *(Per Bharat P. Deshpande, J.)*

1. Both these petitions are taken up for arguments together since they relate to the same complaint lodged by Respondent No.2, which resulted in the lodging of FIR No. 98/2017. On the basis of such FIR, investigations were carried out, and two separate charge sheets have been filed. The first charge sheet is pending before the Special Court/Sessions Judge, North Goa, vide Special Case No.1/2008 for the offences punishable under Section 167 of IPC read with Section 3(1)(ix) of Scheduled Castes and Scheduled Tribes (POA) Act. Another charge sheet was filed against Petitioner No.2 in Writ Petition No.182/2017 only under Section 167 of IPC since he belongs to the scheduled caste community.

2. Heard learned Counsel Mr Eeshan Usapkar for the Petitioners, learned Public Prosecutor Mr S.G. Bhohe and learned Additional Public Prosecutor Mr P. Faldessai, appear for the State and learned Counsel Mr Preetam Talaulikar appears for Respondent No.2.

3. Mr Usapkar learned Counsel for the Petitioners would submit that the FIRs nowhere disclosed the commission of offences under Section 3(1)(ix) of SCST (POA) Act and Section 167 of IPC and, therefore,

registration of such FIR against the Petitioner and further proceedings is clearly an abuse of the process of law. In his submissions, the learned Counsel for the Petitioners claimed that all the Petitioners were working in different posts and higher to the post occupied by Respondent No.2 in BSNL, and as the superior officers, they have recorded some adverse entries in the annual reports of Respondent No.2. Such reports were recorded as a duty of the superior officers and on the observations of the performance of Respondent No.2. Recording such reports and observing the performance of Respondent No.2 would not in any manner amount to an offence under Section 3 of the Special Act. He then submitted that such annual confidential reports and specifically the observations made by the Petitioners from time to time were considered by the higher authorities. He then submitted that though adverse remarks were expunged, the reason for doing so was completely different. According to him, the remarks were expunged only because the concerned authorities failed to communicate such adverse entries to Respondent No.2, thereby calling upon him to explain. He would then submit that only because such adverse entries were expunged would not in any manner establish that such entries were incorporated with a malafide intention or that such entries were completely false entries. Learned Counsel for the Petitioners would then submit that whatever entries were made and the transfer orders of Respondent No.2 were issued, were only as a part of duty and not on the basis of any intention or malice with the said person.

4. The learned Counsel would then submit that if the entire complaint is read as a whole, would nowhere show that the overt act alleged against

the Petitioners were carried out only with the knowledge that Respondent No.2 belongs to a particular category and in order to harass him. He, therefore, submitted that registration of such FIR and initiation of the proceedings, amounts to abuse of the process. In this respect, he placed reliance on the following decisions:-

(1) *State of Maharashtra vs. Shashikant*; 2013 ALL MR (Cri) 3060, (2) *A Chocklingam Regional Director & Ors. vs. State of Gujarat & Ors.*; (2014) SCC OnLine Guj 9083, (3) *Mr. S. Muralidharan vs. Mr. M. Muthukaruppan*; 2006 SCC OnLine Mad 1591, (4) *Gunmala Sales Pvt. Ltd. vs. Anu Mehta & Ors.*; 2014 ALL MR (Cri) 4446 (S.C.).

5. Learned Public Prosecutor appearing for the State would submit that the contents of the FIR were found *prima facie* against the Petitioners and ingredients of Section 3(1)(ix) are found to be established. He would submit that the charge sheet is already filed, which clearly goes to show that there is sufficient material to proceed with the trial. At this stage, no extraordinary case is made out for the grant of the relief claimed in the present petitions.

6. Mr Talaulikar learned Counsel appearing for Respondent No.2 forcefully submitted that the Petitioners being the higher officers, harassed and targeted Respondent No.2 and forced him orally to submit to their proposals from time to time. Though Respondent No.2 resisted, he was further targeted by transferring him from Goa to various other places only with a malafide intention. His annual confidential reports were written only to deny Respondent No.2 his legitimate right to promotions. False

entries were made with regard to such annual confidential reports. Respondent No.2 approached various authorities, however, his harassment continued. Since Respondent No.2 belongs to a particular caste, the Petitioners, who belong to a higher caste, targeted him and harassed him at all levels. He then submitted that even the integrity of Respondent No.2 was doubted, which appears to be clearly false report. The complaint was, therefore, filed only after the observation of the National Commission for Scheduled Castes at New Delhi directed the higher authorities of BSNL to take appropriate action against the Petitioners. Mr Talaulikar placed reliance on the decision of *Union of India vs. State of Maharashtra*; (2020) 4 SCC 761.

7. The rival contentions fall for a determination as under.

8. Respondent No.2 complained to Porvorim Police Station on 24.07.2017 against the present Petitioners making various allegations. The complaint runs into seven pages. Admittedly, in WPCR No.182/2017, Petitioner No.2-Mr. R.P. Toppo also belongs to the scheduled caste. Section 3 of the Act of 1989 deals with punishments for offences of atrocities wherein it is provided in Sub-Section 1 that “*whoever, not being a member of a Scheduled Caste or Scheduled Tribe, -*”. Therefore, the provisions of Section 3(1) are not attracted against Petitioner No.2, Mr. R.P. Toppo. The copy of FIR No.98/2017 registered at Porvorim Police Station clearly goes to show that the offences punishable under Section 167 r/w Section 34 of IPC and Section 3(1)(ix) of Scheduled Castes and Schedules (Prevention of Atrocities) Act, 1989 have been registered against four

officials of BSNL giving their names which includes the name of Petitioner No.2 Mr R.P. Toppo. This itself shows the non-application of mind on the part of the concerned police officer who registered the offence against Petitioner No.2, Mr. R.P. Toppo, without verifying the fact as to whether such person belongs to said caste or not.

9. Be that as it may, the complaint filed by Respondent No.2 shows the subject itself as a complaint against an open caste BSNL officer for caste-based harassment and mental torture under the Atrocities Act of 1989 and different IPC provisions. The names of four Petitioners are found recorded in Column No.4, which includes the name of Petitioner No.2 at Serial No.3, being the reviewing authority. Thus, Respondent No.2/Complainant himself is not aware of the caste of Petitioner No.2, Mr. R.P. Toppo. Respondent No.2/Complainant claimed that Petitioner No.2, Mr R.P. Toppo belongs to the upper caste.

10. On careful reading of the entire complaint, it is nowhere alleged by Respondent No.2/Complainant that the Petitioners/Accused knew that the Petitioners belonged to a scheduled caste, and only because of that, he was harassed by his higher authorities.

11. The provision of Section 3(1)(ix) reads thus:-

“ix – gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury and annoyance of a member of a Scheduled Caste or Scheduled Tribe.”

12. In the light of the above specific provisions, will have to examine the contents of the complaint/FIR so as to consider whether ingredients of such offence are *prima facie* made out on the face of the complaint. Before considering the contents of FIR, we would like to refer to the settled propositions of law with regard to the powers of this Court under Section 482 of Cr.P.C. The Supreme Court in the case of the ***State of Haryana and Ors. vs. Bhajan Lal and Ors***; 1992 Supp (1) SCC 335, laid down the guidelines in para Nos. 102 and 103, which reads thus:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not

disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

13. Similarly, in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors***; AIR 2021 SC 1918, the Apex Court, after

considering all the earlier decisions, again reiterated the same contentions and laid down the guidelines as under:-

“(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’ (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

14. In a recent decision in the case of **Salib @ Shalu @ Salim vs. State of U.P. & ors.**; Criminal Appeal No.2344/2023, Supreme Court observed in para No.26 as under:-

“26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby

attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

15. It, therefore, emerges from the above-settled propositions of law that if the ingredients of the offence alleged in the complaint are not made out or that the FIR and the proceedings are manifestly frivolous/vexatious and/or instituted with an ulterior motive of wreaking vengeance, then, in such circumstances, the Court owes a duty to look into the FIR with care and little more closely. Even in such circumstances, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In case of frivolous or vexatious proceedings, the Court owes a duty not only to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, try to read in between the lines. Similarly, while exercising jurisdiction under Section 482 of Cr.P.C. or Article 226 of the Constitution, the Court need not restrict itself only to the stage of the case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the material collected in the course of the investigation.

16. In the case of *Union of India vs. State of Maharashtra* (supra), the Supreme Court, while considering the review petition seeking a review of the judgment in the case of *Subhash Kashinath Mahajan vs. State of Maharashtra*; (2018) 6 SCC 454, considered in detail the provisions of Section 18 of the Atrocities Act qua Section 438 of Cr.P.C. and upheld the

directions given in the case of *Subhash* (supra) in para No. 79.2 which reads thus:-

“79.2 There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.”

17. While considering the powers under Section 482 of Cr.P.C., we have to consider the above propositions and accordingly will have to decide whether the FIR in the present case discloses ingredients of the offences alleged under Section 3(1)(ix) of SC ST (Prevention of Atrocities) Act and Section 167 of IPC. The complaint, along with documents appended to it, therefore, needs to be analysed. Such exercise is required for the reasons of the submissions made on behalf of Petitioners that they have been targeted unnecessarily by Respondent No.2/First Informant only when some observations were made in the letter dated 23.02.2010 by the Chief Engineer (E), BSNL, Mumbai, addressed to Liason Officer, Maharashtra Telecom Circle stating therein that there is no substantial reason for doubtful integrity and no evidence for other adverse entries on record. This letter was issued to Shri H. Prasad, the Liason Officer who forwarded the complaint of Respondent No.2 to the Chief Engineer for not considering his representation for expunging the remarks.

18. At this stage, it is necessary to note that the entire matter is with regard to some remarks in the Annual Confidential Reports of Respondent No.2/Informant, recorded by Petitioner No.1, approved by Petitioner No.2 and accepted by Petitioner No.3 in Writ Petition No.182/2017, in

2007. The letter dated 23.02.2010 (Exhibit F) was addressed by the Petitioner in Writ Petition No.184/2017, who was working at the relevant time as Chief Engineer (E), BSNL, Mumbai. The Annual Confidential Reports of 2006-07 were recorded by Petitioner No.1 vide his letter dated 11.05.2007 addressed to Executive Engineer (E), BSNL, Electrical Division, Goa, wherein he flagged his opinion about doubtful integrity of Respondent No.2/Informant on certain issues which he has categorically mentioned in his letter which reads thus:-

“EXHIBIT “A”

FROM

S.K.KAUL

PORVORIM GOA

Date: 11/5/2007

TO

THE EXECUTIVE ENGINEER (E)

BSNL Electrical Division

Goa

SUBJECT: Report Regarding doubtfulness in the integrity of Shri S.B.B. J.T.O (E)

This is in reference to Letter No.100(4)/2007/SEE/BSNL/M/66 of dated. I would like to share my view on the above subject.

Sh.S.B. Bhosle J.T.O (E) worked with me from 19.11.04 to 4.05.07, during this period following facts were observed and were conveyed to E.ECE as and when happened

1. Wrong measurement recorded in M.B (CT N were not installed and same measured by JTO) and I warned him verbally and got the CTN installed afterwards.

2. *Misguiding me on the site information.*
3. *Creating unhealthy situation in the office.*
4. *Spoiled the colony Mtce.work of Bamobim receiving station.*
5. *Kept unhealthy relation with colleagues.*
6. *Misguiding the agency and telling them not to carry out the work as per instructed by the SDE (E)*
7. *Always trying to find loophole in the system of BSNL.*
8. *Tried to frustrate his colleague by pressing agency to get the Xerox of measurements book recorded by his colleague J.T.O.*
9. *Always interfering in the official works which were not related to him or not in his scope of work. ”*

19. Prior to the above letter, the Executive Engineer (E), BSNL, Electrical Division, Panaji, Goa addressed a confidential letter to Respondent No.2/Informant which is at page 29 and it reads thus:-

“CONFIDENTIAL

*BHARAT SANCHAR NIGAM LIMITED
O/O EXECUTIVE ENGINEER (E)
ELECTRICAL DIVISION
5TH FLOOR, GOA SANCHAR BHAVAN
EDC COMPLEX, PATTO PLAZA
PANAJI, GOA
TEL-(0832) 2437504, 2437506 (FAX)*

No: 2(17)/EEE/BSNL/PJM/07/30-C

Dtd.03/05/07

*To
Sri S.B Bhosle
JTO(E), BSNL Electrical Subdivision
Porvorim*

It has come to the notice of undersigned that you approached some agencies before tender opening for the tender of “operation of electromechanical services of Altinha, Madgaon, Mapusa and Ratnagiri” instructing them to quote very high rate. Your above act implies doubtfulness in your integrity and the same has been viewed very seriously by undersigned. You are hereby warned not to repeat act like above in future, failing which severe action will be taken against you. It is to note further that Sri S.K Kaul, SDE(E), Porvorim had already warned you verbally regarding your measurement of CTs in TE Bldg Altinho in the work “SITC of 3 Phase electronic energy meters in T E Bldg, Althinho Panaji”, though agency had not provided any CT at site. You are hereby warned to refrain yourself from activities as above.

*sd/-
Executive Engineer (E)
BSNL Electrical Division
Panaji, Goa.*

Copy to:

- 1) SE(E), BSNL Electrical Circle, Mumbai for kind information please.*
- 2) SDE(E), BSNL Electrical Subdivision, Porvorim for necessary action.*
- 3) Guard file.”*

20. The Annexure II of the confidential report of Respondent No.2 which was written by Petitioner No.2 Mr R.P. Toppo reads thus:-

“ANNEXURE II

*C.R. OF
Shri S. B. Bhosle*

Report on integrity.

1. *Shri S.B. Bhosle has once measured the C.T's in measurement book without installing at the site. Verbal warning was given to him to not to repeat such mistake again. But However it was noticed he never took the advice so seriously.*
2. *Shri S.B. Bhosle has forced one of the Agency to give him the Xerox of the measurement book which were recorded by his colleague J.T.O (E). This was continued for several days by Shri S.B. Bhosle.*
3. *Shri S.B. Bhosle always tries to find loophole in the BSNL system and always try to miss guide his Seniors.*

Above statements of SDE (E) Porvorim are correct.”

21. Thereafter, the report was prepared, which is dated 31.05.2007, with the comments.

22. With this background, it is necessary to look into the allegations made against the Petitioners by Respondent No.2/First Informant.

23. The complaint was filed on 24.07.2017. Firstly, it gives a brief history claiming therein that the open caste officer in BSNL and, more specifically, the Petitioners orally instructed the First Informant to prepare some statements and accordingly prepared it. It is also claimed that the Petitioners instructed the First Informant orally to prepare the bill at higher rates only, and accordingly, he followed the instructions, prepared the bill and submitted it for necessary action. First of all, these instructions were allegedly given somewhere prior to 2007 when the First Informant was working in Goa. He did not raise any objection over such oral instructions for preparing bills at higher rates. He did not even intimate the higher officers over and above the Petitioners. The complaint was filed

after ten years. Therefore, the question of preparing bills at a higher rate on oral instructions is highly doubtful.

24. The second contention in the complaint is regarding the conspiracy by the Petitioners to spoil ACR of 2006-07. There are no specific details of such conspiracy, even though the First Informant admits that he prepared the bills at a higher rate through oral instructions.

25. The complaint further shows that adverse entries were recorded in his Annual Confidential Report of 2006-07 only to take revenge by the Petitioners. He contends that during his tenure from October 2004 to May 2007, he was never served with any letter and warning for any remarks in the memo containing adverse entries. He, therefore, claimed that such entries in the Annual Confidential Reports were fabricated/forged in order to transfer him from Goa to Latur in the year 2007. Only after he joined the new posting at Latur he was served with a letter dated 03.07.2007 informing him about the adverse entries. He immediately raised objections and requested expunging such entries.

26. Thus, the adverse entries for the year 2006-07 were recorded by the Reporting Officer on the basis of written letters dated 11.05.2007, 03.05.2007 and Annexure II to the ACR, quoted earlier.

27. The entire complaint nowhere claims that since the First Informant belongs to the SC category and that the Petitioners/Accused persons knew about it and, therefore, he was harassed. The aspect of writing of Annual Confidential Report is based on the service rules framed by the Government from time to time. The next higher officer/Reporting Officer

is duty bound to record his free and fair opinion in the Annual Confidential Report of the employee working under him, without the question of considering caste, creed, religion or otherwise. Such Annual Confidential Report must be only on the basis of the performance of such employees during the reporting period.

28. Only because the Petitioners being the reporting and higher officers, recorded their opinion in the Annual Confidential Report of the First Informant, which was subsequently expunged, cannot be considered as fabricated or forged entries or recorded with the intention to harass the employee of a particular caste.

29. The complaint further disclosed that the First Informant contested against the adverse entries in the year 2007 itself, but Petitioner Nos.1 and 2 did not consider such representation for a period of three years. The First Informant contends that it was only to harass the First Informant, and that is why such representation was kept pending for three years. He then claimed that only when he approached the Liaison officer in the year 2010 such adverse entries were expunged. Accordingly, the First Informant claimed that he suffered mental torture during those three years when his representation was kept pending and that it was only because he belonged to the scheduled caste community.

30. The complaint further discloses the intervention of the Liaison Officer of BSNL, Mumbai, and thereafter, he approached the National Commission of Scheduled Caste, Delhi, wherein some orders were passed.

31. The complaint then shows that the National Commission of Scheduled Castes, New Delhi, observed that BSNL Officers violated the DOPT guidelines in writing ACR and suggested that BSNL should take action against them under Section 4 of the SCST (Prevention of Atrocities) Act.

32. The complaint further shows that while giving a reply to the National Commission for Scheduled Caste, the reasons regarding the transfer of the First Informant from Goa to Latur were changed on two occasions. In the first place, it was claimed that since the integrity of Respondent No.2/Informant was considered doubtful, he was transferred from Goa to Latur. On the second occasion, it was claimed before the National Commission that such transfer was on the administrative exigencies. Taking a clue from such two claims raised by BSNL regarding the transfer, the First Informant alleged that false information has been placed before the National Commission and, therefore, the Petitioners committed offence.

33. In this regard, the order of transfer of the First Informant dated 04.05.2007 clearly shows that along with First Informant, 12 other officers from different stations were transferred. The order is dated 04.05.2007, whereas Annual Confidential Report is dated 11.05.2007. Thus, it is clear that Annual Confidential Report is subsequent to the issue of the transfer order. Even otherwise, the explanation given by the BSNL officer before the National Commission at the initial stage that such transfer was due to

doubtful integrity cannot be ruled out for the simple reason that the Reporting Officer raised such doubt.

34. While issuing a transfer order, the department is not required to give reasons for such a transfer. Similarly, the department is not required to mention that such a transfer is effected on the ground of doubtful integrity. The reason is obvious. Annual Confidential Reports are strictly confidential to the department and the employee, whereas transfer orders remain in the public domain. Secondly, the reason given before the National Commission regarding transfer on the ground of exigencies covers all aspects, which include the reasons for doubtful integrity. Therefore, both these reasons could go together. Only because two different reasons were disclosed before the National Commission in connection with transfer orders it cannot be presumed that the first reason is a false reason, whereas the second one is the correct one. Both reasons could go together. Thus, the contention of the First Informant that false information was given to the National Commission is again required to be considered as having no merit in it so as to fulfil criteria of the offence under Section 167 of IPC and Section 3 (1) (ix) of SC ST POA Act.

35. In the case of the *State of Maharashtra vs. Shashikant* (supra), the Division Bench of this Court (Nagpur Bench) was called upon to consider a similar aspect. Shri B.R. Gavai, J. as he then was, while speaking through the Bench, observed in para 16 as under:-

“16. It can, thus, clearly be seen that the entire grievance of the complainant is regarding denial of promotion to the post of Deputy Inspector General of Police when according to him he was due. It is

the case of the complainant that same was done in breach of the various Rules, Regulations and notifications issued by the Government and the Judgments of the Apex Court. It can, thus, clearly be seen that dispute of the present complainant with the State is purely a dispute pertaining to service matter. However, the complainant has attempted to bring it under the provisions of the Atrocities Act, taking advantage of the fact that the complainant belongs to Scheduled Caste. As already discussed hereinabove, we find that the complaint addressed to the learned Magistrate even if taken at its face value and correct in entirety, does not constitute ingredients so as to make out the offences punishable under Section 3(1) (ix) of the Atrocities Act. As already stated hereinabove, the learned counsel for the respondent complainant has fairly conceded that there are no ingredients to bring the offence under the ambit of Section 3(1) (x) and section 4 of the Atrocities Act. As such we need not analyse the averments made in the complaint in that regard. However, upon perusal of the entire complaint, it would be clear that there are no averments to connect the accused even remotely with the offence punishable under Section 3(1) (ix) and Section 4 of the Atrocities Act. Perusal of section 3 (1) (x) of the Atrocities Act would reveal that to constitute an offence a person must be accused of intentionally insulting or intimidating with intent to humiliate a member of a Scheduled caste or a Scheduled Tribe in any place within public view. Whereas, Section 4 provides for penalty when the public servant not being a member of the Scheduled Caste or a Scheduled Tribe willfully neglects his duties required to be performed by him under the said Act. We may state that there is not even a whisper regarding the same. No averments could be found in the entire complaint as to what are the duties which the accused were required to be performed under the Act and which are the duties neglected to be performed by them.”

36. Similarly, in para 18, the Court observed that if the allegations in the complaint are to be entertained, then every person belonging to Scheduled Caste or Scheduled Tribe who is denied promotion will have a cause of action to file a complaint under the provisions of Atrocities Act and name

the persons who are the members of Departmental Promotion Committee as accused. It is not impossible that a person with an ingenious mind if not selected in the selection process, may also invoke the provisions of the Atrocities Act against the members of the Selection Committee, alleging that he was not selected since he belongs to Scheduled Caste or Scheduled Tribe community and as such, the offence is made out under the provisions of Atrocities Act. If this is to be permitted, it would amount to nothing else but gross abuse of the process of law.

37. The facts of the matter in hand are quite similar to the case decided by the Division Bench of this Court sitting at Nagpur Bench. The First Informant complained about alleged harassment against his reporting officers. If such complaints are entertained, the reporting officers will not be able to give the correct opinion of the employee working under him or her, as the case may be, and more specifically, belonging to the Scheduled Caste or Scheduled Tribe community. The reporting officers are duty-bound to give their genuine and correct opinion while reporting about the employees working under them for the specified period. Thus, when a correct opinion is given which is found to be adverse, it cannot be considered as given with an intention to harass the employee belonging to a particular caste.

38. In the case of *A Chocklingam Regional Director* (supra), the Gujarat High Court was also dealing with similar aspects and, more particularly, the complaint filed by an employee under Section 3(1)(ix) of the Act of

1989. In such a matter, the Gujarat High Court has observed that the allegations in the complaint are found to be most absurd and frivolous.

39. In the case of *S. Muralidharan* (supra), the Madras High Court was called upon to decide a similar complaint filed under Section 3(1)(ix) of the Act of 1989. In that case, also, adverse remarks were recorded in the Annual Confidential Report, which led to the complaint filed against the higher officers and the same was challenged under Section 482 of Cr.P.C. In para 16, the Madras High Court has observed that Section 3(1)(ix) of the Act of 1989 will not apply to the action taken by a superior officer against the member of Scheduled Caste and Scheduled Tribe in the discharge of his official duties. In this regard, the Petitioners placed reliance on Section 22 of the Act of 1989, claiming that there is a protection of action taken in good faith. It further provides that no suit, prosecution or legal proceedings shall lie against any officer or authority of the Government or any other person for anything which in good faith done or intended to be done under this Act. Strictly speaking, such provisions will not apply as it says that anything done under the said Act in good faith will not attract any proceedings. Writing of ACRs is not an act done under the provisions of the Act of 1989. However, the same principle will certainly apply in the matter for the simple reason that the superior officers are duty-bound to record their free and fair opinion in the Annual Confidential Reports. Only because the complainant alleged that such entries in the ACR of 2006-07 were forged/false and were made only to harass him cannot be the basis for registering FIR. No doubt, the National Commission directed BSNL authorities that the concerned officers failed

to adhere to the DOPT directions, and for that purpose, warnings were issued to them. Even if the National Commission raised such observations, it will not amount to the commission of any offence by the Petitioners. Even if such adverse entries were deleted or expunged, the same will not in any manner *prima facie* show that such entries were made only to harass the First Informant.

40. Petitioner No.2, who also belongs to the Scheduled Caste community, made remarks against the First Informant. The provisions of Section 3 are not at all attracted against Petitioner No.2.

41. Similarly, the provisions of Section 167 of IPC are not at all attracted in the present matter. There is no material to show that the Petitioners being public servants, were charged with the preparation or translation of any documents, electronic record, etc., in a manner which they knew or believed to be incorrect, intending thereby to cause or knowing it to be likely that it may thereby cause injury to any person, commits such offence. First of all, the reasons given to the National Commission regarding the transfer of the First Informant though different from the first letter, would not in any manner amount to giving such false information or creating any document knowingly to be false. The first report was giving reasons for the doubtful integrity, whereas the second report says that the transfer was due to office exigencies. Both these grounds could go together. First of all, the reporting officer of the First Informant had, in fact, raised the aspect of doubtful integrity by giving certain reasons and, therefore, the ingredients of Section 167 of IPC are also not made out.

42. Accordingly, the First Information Report along with the charge sheet filed against the Petitioners, even if taken at their face value, do not *prima facie* constitute the offence under Section 3(1)(ix) of Atrocities Act and Section 167 of IPC, as observed in the case of *Bhajan Lal* (supra) and more specifically in para Nos. 102 (1), (2) and (3).

43. Both the above petitions are therefore allowed. FIR No. 98/2017, along with the charge sheets in Special Case No.1/2018, are hereby quashed and set aside. The Rule is made absolute in the above terms.

44. No costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

JOSE
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