

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 118 OF 2013

1. Sister Urmila D'mello
Age : 66 Years, Occ: Service,
At Present Residing at Holly
Family High School, Igatpuri
Dist. Nashik, Maharashtra

2. Sister Veronica Atharde
Age : 55 Years, Occ: Service,
At Present Residing at Holly
Family High School, Igatpuri
Dist. Nashik, Maharashtra

.. Applicants

Vs.

1. The State of Maharashtra,
Through Igatpuri Police Station,
Igatpuri, Nashik, Maharashtra

.. Respondent No. 1

2. Ratan Chandar Shinde
Age : 41 Years, Occ: Service,
At Talegaon, Rajwada
Tal. Igatpuri, Dist. Nashik, Maharashtra

.. Respondent No. 2
(Org. Complainant)

Mr. Niranjan Mundargi a/w Ms. Keral Mehta i/b Radhika Kamat for the Applicants.

Ms. Anamika Malhotra, APP, for the Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 4th NOVEMBER, 2023.

PRONOUNCED ON : 22nd DECEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) By this Application under Section 482 of the Code of Criminal Procedure, 1973, the Applicants invoke inherent powers of this Court and seeks quashing and setting aside of C.R. No. II-3/13, registered with Igatpuri Police Station, Nashik on 25th January, 2013, for the Offences Punishable under Sections 3 (1) (viii) & (x) of the Scheduled Castes & The Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Sections 352, 504 and 506 of the Indian Penal Code, 1860 against the Applicants.

2) Heard Mr. Niranjana Mundargi, learned Counsel for the Applicants and Ms. Anamika Malhotra, learned APP for Respondent No.1-State. Respondent No.2 is duly served. He has filed his affidavit-in-reply. However none appeared for Respondent No.2 when taken up for final hearing.

3) The ad-interim relief herein was granted on 1st February, 2013. Rule was issued on 5th February, 2013 and the ad-interim relief is continued until further orders.

4) The impugned F.I.R. has been registered on the complaint filed by Respondent No.2 wherein he narrated that, since 16th October, 2001 Respondent No. 2 has been working as a Peon in Family Convent High School, at *Igatpuri* (*‘the school’*, for short). Since then, he has been performing his duties such as cleaning classrooms, offices and carrying

correspondence from one office to another. In June, 2003 Applicant No.2 was transferred to the school as Headmistress. In the year 2006-2007 Applicant No.1 was transferred to the school as Manager. Since then, the Applicants knew that Respondent No.2 belongs to “*Navbuddha*” social status. It is stated that, Respondent No.2 was regularly performing his duties assigned by the school. The Applicants, however, caused him to do extra work *i.e.* cleaning toilet-bathroom, shit of domestic dog at their bungalow, and garden by removing garbage there. In the year 2006 itself, Respondent No.2 objected to said additional work on the ground that, it is not part of his duty, so henceforth he would do his school duties only, as before. Therefore, the Applicants got annoyed, and they abused, insulted and threatened to Respondent No.2 stating that “You are a lower cast person, you will have to do all the work told by us, otherwise we would remove you from the school by making false accusations against you” and then driven him out of the school. Yet Respondent No.2 used to daily attend his duties in the school. But both the Applicants were not allowing him to perform his duty for he refused to do the additional work. However, Respondent No.2 used to daily attend the school and be there till the day’s school is over. This continued for about three and half months. Thereafter also the Applicants insulted Respondent No.2 and caused his mental harassment for he refused to do the work told by them.

4.1) It is alleged that, then the Applicants prepared a false record and based on that gave a suspension notice to Respondent No.2 on 4th May, 2011 and after suspending him, a departmental inquiry was initiated against him. However, the Applicants abruptly stopped the inquiry and caused Respondent No.2 to resume his duty.

4.2) It is alleged that, Respondent No.2 had filed various complaints against the Applicants on account of his aforesaid harassment. During the inquiry of the said complaints, the Applicants assured that, henceforth they would not cause him such harassment, therefore, Respondent No.2 withdrew the said complaints. Thereafter, Respondent No.2 resumed his duty. The Applicants, however, continued to issue him false Memos on the pretext of not doing his duties satisfactory. That, on 7th January, 2013, the Applicants rushed on the person of Respondent No.2 on account of he refused to clean the school drainage and ground. At that time, the Applicants insulted Respondent No.2 saying that, "You are of lower caste, you will have to do all the work told by us" and gave him filthy abuses.

4.3) Respondent No.2 therefore lodged present crime. Hence this Petition for quashing of it.

Submissions:

5) Learned counsel for the Applicants submitted that, Respondent No.2 is of trouble some nature and did not want to work. He was sleeping

during school working hours and would wander in the school. Therefore, the Applicants initiated departmental inquiry against him. The Applicants have filed various complaints against Respondent No.2 with Igatpuri Police Station i.e. complaints dated 8.06.2011 and 06.08.2011 *vide* Exh. "D" Colly, complaints dated 28.06.2011, 04.12.2012 & 11.12.2012 *vide* Exh. "E" Colly and complaint dated 07.01.2013 *vide* Exh. "F". Therefore, Respondent No.1 out of vengeance lodged the subject F.I.R. Thus, said F.I.R. is nothing but an attempt to take revenge and settle personal score against the Applicants. Hence, said F.I.R. is false, vexatious, frivolous, and gross misuse of the process of law.

5.1) Learned Counsel for the Applicants submitted that, looking at the allegations in the F.I.R., the alleged offences under the special Act of 1989 and I.P.C. are not made out. Hence the Application may be allowed.

6) In contrast, learned APP submitted that the narration in the F.I.R. clearly makes out the offences levelled against the Applicants. As such, there is no substance in the Application.

7) In the affidavit-in-reply, Respondent No.2 has reiterated the contents of the F.I.R. In support of his reply, Respondent No.2 has referred various documents. The gist thereof is as under:

Exh.-'A' colly:

Papers of the enquiry held against Respondent No.2 by the school.

Exh.-‘B’ colly:

Complaints filed by Respondent No.2 with Igatpuri Police Station, Applicants, Managing Body of the School, Education Officer (Secondary), Zila Parishad, Nashik. This compilation also contains some correspondence addressed to the Applicants by Block Edn. Officer and Tahasildar, Igatpuri.

Exh.-‘C’ colly:

Service book of Respondent No.2.

Exh.-‘D’ colly:

Reply to Respondent No.2 by the Education Officer.

Exh.-‘E’ colly:

Complaint to Igatpuri Police Station dated 7th January, 2013 by Respondent No.2, alleging that Applicant No.2 abused him on caste, scuffled with him and threatened him.

8) Looking at the rival arguments, first; we have to examine as to whether the subject F.I.R. is counter blast to the disciplinary enquiry initiated by the Applicants or not. In this context we have carefully considered the documents presented by the Applicants and Respondent No.2, as referred above.

9) In so far as the papers of the disciplinary enquiry submitted by the parties are concerned, more or less, they are same. The enquiry papers contain a letter dated 8th June, 2011 (Exh.-‘D’). It was issued to Respondent No.2 by Applicant No.2, claiming that, the former has been disobeying Admin Orders, indulge in filing false complaints, remain absent without

leave, not diligent in duties, makes baseless demands of monetary benefits alleging it as part of his salary, going on illegal strike, commits breach of the service terms and conditions etc. Thereafter, the disciplinary enquiry was initiated.

10) In the documents of Respondent No.2, there is a complaint dated 10th March, 2011 (Exh.-‘A’ colly). It was addressed to the Chairman, *Panchayat Samittee* wherein Respondent No.2 complained that, Applicant No.2 causing him to do additional work as stated in the F.I.R., subjecting him to atrocity and deprived him of his salary, increment and DA.

11) The documents filed by the parties show that, after issuance of the said letter dated 8th June, 2011, the Applicants and Respondent No.2 involved in filing various complaints against each other to different authorities, as noted above. The complaints of Respondent No.2 claimed that the Applicants were asking him to do the works which were not part of his duty, they have been harassing and insulting him, he has not been given the salary as per the rules etc. The instances of filing complaints by the parties went on till 2012. Considering the complaints filed by the parties, one aspect that attracts our attention is that the main interest of Respondent No.2 was that the Applicants should accept his demand of the monetary benefits. But since it was not, Respondent No.2 was even prepared to go on strike. Therefore, disputes occurred amongst them frequently. Meanwhile, the

school initiated disciplinary action against Respondent No.2 for certain indiscipline as stated above.

12) The text of the F.I.R. indicates that since 2006 Respondent No.2 was objecting for the additional work which was not part of his duties, therefore the Applicants got annoyed and started abusing him on caste. But the complaint dated 10th March, 2011 of Respondent No.2 is surprisingly silent about such abuse on his caste and causing him to clean dog shit. In the complaint dated 22nd June, 2011 addressed to Applicant No.2, for the first time Respondent No.1 alleged that he was caused to clean dog shit, i.e. just before initiation of the departmental enquiry.

13) There is one letter dated 7th May, 2011 by the Education Officer, which was in response to the complaint of Respondent No.2, whereby he was advised to lodge a complaint to the Police about the alleged atrocity caused to him by Applicant No.2. Thereafter, 3 complaints (Exh.-‘E’ colly-dated 28.06.2011, 04.12.2012 and 11.12.2012) were addressed by Applicant No.2 to Igatpuri Police Station whereby she informed the Police that since the illegal demands of Respondent No.2 are not fulfilled, he is threatening to file a complaint of atrocity against her. There is one complaint dated 7th January, 2013 which was filed with Igatpuri Police Station by Applicant No.2 (Exh.-‘F’). Pursuant to this complaint, a Non-cognizable offence No.13/2013 was registered against Respondent No.2, under Sections

504 and 506 of the Indian Penal Code, for abusing and rushing on the person of Applicant No.2 to assault her. On the same day, Respondent No.2 sent a complaint by RPAD to the same Police Station alleging that Applicant No.2 abused him on caste, threatened to remove him from service and rushed on his person to assault (Exh.-‘E’). But nowhere in this complaint Respondent No.2 alleged that, Applicant No.2 abused him that “you are of lower caste” and “he was told to clean dog shit”. Thereafter, Respondent No.2 did not lodge a prompt F.I.R. but on 25th January, 2013. Similarly, even though the same atrocity was continued since after 2006, it was not complained against immediately or till 22nd June, 2011.

14) Be that as it may, in the impugned F.I.R. Respondent No.2 did not mention exactly when and where the Petitioners abused him on caste and in whose presence. Whether, both the Petitioners abused him so at the same time and place, or at different times and places. Thus, the allegations that, the Petitioners were abusing Respondent No.2 on caste are in general and very vague. Hence, not sufficient to make out the alleged offences.

15) Thus, the above facts and circumstances sufficiently indicate that, since the demand of monetary benefits made by Respondent No.2 was not accepted, he started behaving in an undisciplined manner, complained to various Public Authorities against the Applicants and disputed with them. And when Applicant No.2 filed the complaint on 7th January, 2013, he also

filed the belated impugned F.I.R. and booked the Applicants for the offences stated therein. Thus, said F.I.R. is nothing but manifestly frivolous and vexatious or instituted with the ulterior motive for wreaking vengeance

16) In the case of *Iqbal alias Bala and Othrs .vs. State of U.P. and Othrs.*, reported in 2023 SCC Online SC 949, the Apex Court held that, *“Whenever an accused comes before the Court invoking either the inherent powers under Section 428 of Cr.P.C. or extraordinary jurisdiction under Article 226 of the Constitution to get the F.I.R. 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 F.I.R. 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 F.I.R./complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the F.I.R./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 Cr.P.C. 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.”.

17) On taking overall view of the case in hand, we are of the view that, the abovesaid observation are clearly applicable herein.

18) In view thereof, the impugned F.I.R. bearing C.R. No.II-3/13, registered with Igatpuri Police Station, Nashik on 25th January, 2013, for the Offences Punishable under Sections 3 (1) (viii) & (x) of the SC & The ST (Prevention of Atrocities) Act, 1989 read with Sections 352, 504 and 506 of the Indian Penal Code is liable to be quashed. During pendency of this Application, Respondent No.1 filed the Final Report/Charge, pursuant to which R.C.C. No.204 of 2014 has been registered against the Applicants. As held above, the F.I.R. is to be quashed. As such, there is no point in continuation of the said criminal case, hence the said case is also required to

be quashed. Accordingly, the impugned F.I.R. bearing C.R. No.II-3/13 and R.C.C. No.204 of 2014 registered against the Applicants, now pending in the Court of Judicial Magistrate, First Class, Igatpuri, District Nashik are quashed and set aside.

19) Criminal Application No.118 of 2013 is allowed in the above terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)