

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4469 OF 2019

Mr. Milind Narayan Patil

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Umesh H. Pawar Adv for the Petitioner.

Mr. K.V. Saste, APP for the State/Respondent

Mr. Ramji T. Kotali Adv for Respondent No.2/ complainant.

CORAM	:	SUNIL B. SHUKRE AND M.M. SATHAYE, JJ.
RESERVED ON	:	10th APRIL, 2023.
PRONOUNCED ON	:	19th APRIL, 2023.

: JUDGMENT (PER : M. M. SATHAYE, J.):

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent No.1/State. Learned Counsel for Respondent No.2/Original Complainant waives service. Taken up for final hearing by consent. Pursuant to notice issued, Respondent No.2/Original Complainant has appeared and filed reply.

2. By this Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure 1973,

(“CrPC” for short) the Petitioner is praying to quash and set aside the FIR having C.R. No. 296 of 2019 registered with Bharti Vidyapith Police Station, Pune and consequent criminal proceedings bearing Special Case No. 487 of 2020 pending before the Court of Learned District Judge-16 and Additional Session Judge at Pune, for offences punishable under Sections 323, 504, 506 of Indian Penal Code, 1860 (for short “IPC”) and Section 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”).

3. It is the case of the Petitioner that the alleged crime registered against him and consequent criminal proceedings is the result of dispute between erstwhile office bearer and next office bearer of the managing committee of a housing society being Gurudev Datta Co-operative Housing Society, Bharati Vihar, Katraj Pune. It is further the case of the Petitioner that the allegations in the FIR as well as statements recorded during the course of investigations, does not warrant continuation of Trial against him and if allowed, will be an abuse of process of law, in the facts of this case.

4. Heard learned Counsel for the Petitioner & Respondent No.2 /complainant and learned APP for the Respondent No.1/State. With the assistance of Learned Counsels, we have gone through the impugned FIR lodged at the midnight between 5th April, 2019 and 6th April, 2019 and the statements recorded during the course of investigation.

5. In the impugned FIR, it is alleged that on the date of incident i.e. 31st March, 2019, a housing society meeting was in progress when Petitioner who was Chairman of the Society Committee at the relevant time and one Mrs. Jayshree Pol who was Secretary of the Society Committee were present alongwith Respondent No. 2 and other persons. It is further alleged that at the relevant time at about 9.00 P.M. Respondent No. 2 was addressing about water shortage problem being faced in his house, when the Petitioner openly said that Respondent No. 2 is of lower caste and has no level to reside in the society and insulted Respondent No.2 in front of the society members. It is also alleged by Respondent No. 2 that thereafter Petitioner along with one Mr. Tushar Balasaheb

Nivangune assaulted Respondent No.2 with fist and kick blows and threatened him with dire consequences. It is alleged that the Petitioner has done these acts with full knowledge of caste of the Respondent No. 2.

6. The alleged incident is stated to have happened at 9:00 P.M. on 31st March, 2019 and the FIR is registered at the midnight between the 5th April, 2019 and 6th April, 2019. Learned Counsel for the Petitioner has invited our attention to the record which shows what has transpired in the interregnum. It is seen from the record that there is a station diary entry taken on 1st April, 2019 at 7:29 A.M. in the morning where it is reported that Respondent No. 2 had visited the Police Station alleging that the Petitioner and one Mr.Tushar Balasaheb Nivangune had beaten him and had abused him with casteist slur, but while his statement was being recorded, he suddenly said that he does not want to file any complaint and he said that he will consult his relatives and other persons and would come next morning. Saying so, Respondent No.2 left the Police Station along with one Mr. Sunil Pawar.

7. Record further shows that on the same day i.e. 1st April, 2019 at 09.00 P.M. night, at the instance of Respondent No.2 an N.C. case was filed against the Petitioner alleging that the Petitioner has beaten Respondent No. 2 during a society meeting on 31st March, 2019 at 09.00 P.M. From the copy of the N.C. it appears that there is no mention of caste related insults and Respondent No. 2 had initially included names of Petitioner and Mr. Tushar Balasaheb Nivangune as the opponents but the name Mr. Nivangune was scored out later on and only name of Petitioner was continued. Thereafter, it appears that on 02nd April, 2019 the Respondent No.2 has written a letter cum complaint to Sr. Police Inspector of concerned police station, alleging that during the society meeting on 31st March 2019, the Petitioner & Mr. Nivangune have insulted Respondent No. 2 with casteist slur and has beaten him with kick-blows. Then ultimately, after 5 days from the alleged incident, it appears that in the midnight between the 5th April, 2019 and 6th April, 2019 the Respondent No. 2 has finally filed the impugned FIR as it stands today.

8. Learned Counsel for the Petitioner argued that the present dispute has some history in the form of Section 83 inquiry under the Maharashtra Co-Operative Societies Act, 1960, in respect of misuse of society funds (including sinking fund) utilized during lift modernization when the Respondent No. 2 was Secretary and ultimately action has been initiated against Respondent No.2 as office bearer of the society during the period of 2012 to 2014 when he was the Secretary. Ld. Counsel for the Petitioner invited our attention to the inquiry report dated 27th February, 2019 and the order dated 14th March, 2019 initiating inquiry and appointment of inquiry officer under Section 88 of the Maharashtra Co-Operative Societies Act, 1960, which is placed on record. He further invited our attention to the Schedule-A of the inquiry order giving details of inquiry in which the financial loss to the society is stated to be about 1 Crore and odd rupees. Learned Counsel for the Petitioner contended that in order to pressurize the subsequent society committee (Petitioner being Chairman) not to give statement against the Respondent No. 2, the Respondent No. 2 has within just 2 weeks from the date of inquiry order, at the March-ending Society meeting,

used his caste as a tool to make false allegations against the Petitioner who was chairman at the relevant time.

9. From the aforesaid facts and circumstances, especially the sequence in which Respondent No. 2 has acted after the alleged incident, speaks volumes. First he went to the police station in the morning after incident, alleging a case but back-tracked, clearly expressing that he will consult family and other persons and will come back. Then he went back to the police station that night and got only N.C. registered without any allegations about the casteist slur. Then on the next day he wrote a letter to the Senior P.I. of the police station again reverting back to the version of beating as well as caste based insult. Then finally after waiting for 3 more days (total 5 days after incident) he ultimately lodged the impugned FIR. This clearly establishes that the last stated version by Respondent No. 2 i.e impugned FIR is an afterthought and it does not reflect the true depiction of events which prompted him to go to the police station. Any man of ordinary prudence, if assaulted / beaten with fist & kick blows and abused with casteist slurs openly in the society meeting, will straight-away go to the police station and lodge a

complaint. But Respondent No. 2, apparently has changed his versions time to time and has filed impugned FIR as a well-thought-over decision. Having found so, we are constrained to hold that the Petitioner cannot be permitted to be prosecuted any further on the basis of such afterthought allegations made in a sweeping manner. It may not be out of place to mention here that even the impugned FIR, taken at its face value, does not *per se* show that the Petitioner uttered any particular caste while allegedly insulting Respondent No.2.

10. Learned APP has taken us through statements recorded during the investigation in which it is found that there are statements and counter statements supporting both sides. Some witnesses have supported the Petitioner/accused stating that the FIR and the subsequent proceedings are part of well-thought-of plan whereas some witnesses have supported the case of the Respondent No.2/Complainant. Taking these statements and counter statements at their face value, lends credence to a conclusion that with such material, making the Petitioner face trial will be an exercise in futility.

11. The aforesaid facts and circumstances will have to be coupled with clear record available about the Respondent No. 2 being erstwhile officer bearer of the housing society against whom inquiry under Section 88 of the MCS Act for causing loss to the society funds is initiated. Record further shows that the Petitioner is the subsequent office bearer, who was facing demand from the members in the meeting about re-audit of the society's funds during the period when Respondent No. 2 was in charge of the affairs. In the light of such record, the dispute and the allegations made by Respondent No. 2 clearly appear to be maliciously instituted with an ulterior motive.

12. In that view of the matter, in our considered opinion, this is a fit case to quash the impugned FIR and the consequent criminal case, as falling in one of the exceptions given in the case of **State of Haryana Vs. Bhajan Lal & Ors. [1992 Supp (1) SCC 335]**.

13. In the net result, the impugned FIR having C.R. No. 296 of 2019 registered with Bharti Vidyapith Police Station, Pune and consequent criminal proceedings bearing Special Case No. 487 of

2020 pending before the Court of Learned District Judge-16 and Additional Session Judge at Pune, for offences punishable under Sections 323, 504, 506 of Indian Penal Code, 1860 and Section 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is quashed and set aside. The Petition is allowed and Rule is made absolute in aforesaid terms. No order as to cost.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)