

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

CRIMINAL WRIT PETITION NO. 5284 OF 2022

Rama Arvind Katarnaware

... Petitioner

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Amit Katarnaware, Adv. for the Petitioner.

Mr. Y. M. Nakhwa, APP for the State/Respondent.

**CORAM : SUNIL B. SHUKRE &
ABHAY S. WAGHWASE, JJ**

DATED : MARCH 20, 2023

PC. :

1. Heard the learned Counsel for the petitioner and the learned APP for the State/Respondent No. 1.

2. By this petition, the petitioner has made the following prayers :-

“a. This Hon’ble Court may pass a writ of Mandamus to the concern Police Authority to take legal action against the respondents, according to the procedure established by law with respect to the complaints dated 22/11/2022, 23/11/2022 & 25/11/2022.

b. This Hon’ble Court may direct the Kurla Police Authority to restore and produce the CCTV footage of entire Kurla Police Station Premises dated 22/11/2022 with respect to application dated 22/11/2022 with Annexure-B.”

3. The reason for making such prayers in this petition is that, the petitioner considers certain statements made in the public addresses, given by Respondent Nos. 2 & 3, to be disrespectful to the dead

persons, who were political figures in Indian Society and who were held in high esteem by members of the Society in general and by the members of the Scheduled Castes and the Scheduled Tribes, in particular.

4. In support of the case put forward by the petitioner for issuing necessary directions to the police, learned Counsel for the petitioner has invited our attention to the complaint made by the petitioner to the Commissioner of Police, Mumbai and the Deputy Commissioner of Police, Zone-V, Mahim, Mumbai in this regard, which starts from page 20 (Annexure-D) in the proceedings. We are of the opinion that the statements allegedly made by Respondent Nos. 2 & 3 and which are considered to be objectionable by the petitioner, do not *prima-facie* constitute any offence, much less the offence punishable under Section 3(1)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. These statements, which are reproduced in the complaint (Annexure-D), are as follows :-

“शिवाजी तो पुराणे युग की बात हे. आब मै आता हू उत्तर देने के लीये देखीये जो उन्होंने कहने का प्रयास किया की सावरकर जी ने माफी मांगी है तो माफीनामे की जो बात है वो तो उस ज़माने मै बोहोत से लोग एक प्रेसक्राईब फॉर्मट पे बाहर निकलने के लीये माफी मांगते थे छत्रपती शिवजी ने ५ बार पत्र लिखा था औरंगजेब को तो उसका मतलब क्या शपथ तो नहीं ली ना ब्रिटिश संविधान की बताइये २ सितम्बर १९४६ को अंतरिम सरकार के. कल्पना करो की सावित्रीबाई के सदी १० साल मै करदी गई और ऊनके पति १३ साल के थे अब जब कल्पना करो २ लडके-लडकिया मुलगा-मुलगी क्या करते होंगे शादी करने के बाद क्या सोचते होंगे तो एक प्रकार से वो कालखंड हम केवल मूर्ती के आगे प्रणाम करते है वाहा फूल चढादे उतना नहीं बलकी थोड़ा इतिहास को पढ़णे का इतिहास को पढ़कर के इतिहास से सिखनेका भी आऊसर है. लोगो से केहता हू महाराष्ट्र मै की भाई महाराष्ट्र मै विशेष करके मुंबई ठाणे यहा है गुजरातीयो को निकाल दो और राजस्थानियों को निकाल

दो तो तुम्हारे यहा कोई पैसे बचेगा ही नहीं ये राजधानी जो है जो केहलाती है आर्थिक राजधानी आर्थिक राजधानी कहलायेगी नहीं.”

6. An in depth consideration of the referred statements would tell us that they are in the nature of the analysis of history and the lessons to be learnt from the history. They also show the intention of the speaker, which is that atleast in the present times, we should learn from the history and also realize the consequences of following certain traditions and what may happen perhaps for the worst, if those traditions are followed. These statements primarily reflect the perception and opinion of speaker about those figures with an intention to persuade the audience, to whom they have been expressed, to think over and act in a way which is good for Society. The intention behind the statements appears to be of enlightenment of the Society for its betterment, as perceived by the speaker. These statements, therefore, cannot be seen, by any stretch of imagination, to be disrespectful to any great person, held in high esteem by the members of the Society in general and by the members of the Scheduled Castes and the Scheduled Tribes in particular.

7. In view of above, the statements, which were made, do not *prima-facie* constitute any offence punishable under the Atrocities Act or any other criminal law.

8. Learned Counsel for the petitioner submits that Respondent Nos. 2 & 3 are highly powerful and influential authorities, when he calls them to be “highly political” and Respondent No. 2, being Governor and Respondent No. 3, being the Member of Parliament, enjoy the immunity under Article 161 of the Constitution of India,

1949 and therefore, according to the learned Counsel for petitioner, it is only a Constitutional Court like this, which can issue appropriate directions for registration of the offences and monitor the progress of investigation.

9. In so far as the powers of this Court are concerned, there can be no second opinion. This Court in exercise of its extraordinary power under Article 226 of the Constitution of India, can certainly issue the directions for upholding the cause of justice and this also includes registration of the FIR and if necessary, for monitoring the investigation. But, the question is as to whether or not such a power be invoked by the petitioner here? and this question we answer as in the negative. The reason being that, we do not see *prima-facie* constitution of any of the alleged offences on the basis of the alleged objectionable statements, a detailed discussion about which is already made by us in the earlier paragraphs.

10. Accordingly, the petition stands dismissed.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]