



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 33 OF 2023

- | | | |
|---|---|----------------|
| 1. Om S/o Mahadeo Vaidhya
aged about 24 years, Occ. Student,
R/o. Plot No.462-A, Professor Colony,
Hanuman Nagar, Nagpur | } | ... Petitioner |
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Versus

- | | | |
|--|---|-----------------|
| 1. State of Maharashtra,
Through PS Officer, Ajni, Nagpur.

2. Dean, Government Medical College &
Hospital, Nagpur | } | ... Respondents |
|--|---|-----------------|

WITH

CRIMINAL APPLICATION (APL) NO. 134 OF 2023

- | | | |
|--|---|---------------|
| Piyush S/o Premchand Neharkar
Aged about : 23 years, Occ.: Student,
R/o. Room No.202, Sidhant Tower,
IT Park, Nagpur. | } | ... Applicant |
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Versus

- | | | |
|--|---|--------------------|
| 1. State of Maharashtra,
Through P.S.O. Police Station, Ajni,
Nagpur.

2. Dean, Government Medical College,
Nagpur. | } | ... Non-applicants |
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WITH

CRIMINAL WRIT PETITION NO. 34 OF 2023

- | | | |
|--|---|-----------------|
| 1. Shriganesh S/o Omprakash Nilwarn,
Aged about 22 years, Occ. Student

2. Shivprasad S/o Narayan Kute
Aged about 23 years, Occ. Student

All R/o Plot No.462-A, Professor Colony, | } | ... Petitioners |
|--|---|-----------------|

Hanuman Nagar, Nagpur.

Versus

- | | | |
|---|---|-----------------|
| 1. State of Maharashtra,
Through PS Officer, Ajni, Nagpur. | } | ... Respondents |
| 2. Dean, Government Medical College &
Hospital, Nagpur | | |

AND

CRIMINAL APPLICATION (APL) NO. 38 OF 2023

- | | | |
|---|---|----------------|
| 1. Dr. Shubham S/o Gangadhar Mahajan
Aged about 24 years, Occ.: Intern at GMC,
Nagpur.
R/o. Plot No.26, Shiv Nagar,
Ramtek - 441106 | } | ... Applicants |
| 2. Dr. Sachin s/o Sureshrao Bhosale
Aged about 24 years, Occ. Intern at GMC
Nagpur,
R/o. Daulatpur, Nanded – 431731 | | |

Versus

- | | | |
|---|---|--------------------|
| 1. State of Maharashtra,
Through Police Station Officer,
Police Station Ajni, Nagpur. | } | ... Non-applicants |
| 2. Akhil S/o Bhagwan Giradkar
Aged about 32 years
Occ. Assistant Professor GMC Nagpur,

R/o. Plot No.141 Paavan Bhoomi,
Wardha Road, Nagpur. | | |
| 3. Datta S/o Mohan Band
Aged about 21 years, Occ. Student,
R/o. Boys Hostel No.5 Room No.16,
Govt. Medical College, Nagpur. | | |

Mr. Akshay Sudame, Advocate for petitioner in WP Nos.33/2023 & 34/2023.

Mr. Prakash D. Meghe, Advocate for applicant in APL No.134/2023.

Mr. Vivek R. Thote, Advocate for applicants in APL No.38/2023.

Mr. Nitin Rode, APP for respondent Nos.1 & 2 in both Writ Petitions and Criminal Applications.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.
DATE : 23.08.2023.

ORAL JUDGMENT: (PER: Valmiki Sa Menezes, J)

Rule/Admit. Rule/Notice of admission made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

(2) By these four Writ Petitions/Criminal Applications, the petitioners, who are accused in FIR/Crime No.0797/2022, seek to quash that FIR. The petitioners have invoked this Court's jurisdiction under Article 226 of the Constitution of India and/or inherent powers under Section 482 of the Code of Criminal Procedure, 1973, seeking quashment of the FIR on the ground that there was no offence worth investigating, nor was any offence made out on a plain reading of the complaint on the basis of which the FIR could be registered by Ajni Police Station, Nagpur City, for the offence punishable under Sections 143, 147, 149, 323, 504, 506 and 34 of the Indian Penal Code, 1860

and under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999.

(3) The short facts that have led to the filing of these petitions are under :

(a) The petitioners have completed MBBS Degree Course at the Government Medical College, Nagpur, for short (GMC) and are presently undergoing their one year compulsory internship. During the period of their internship, the GMC received an e-mail from the Anti-Ragging Help Line, on 28.11.2022, stating that a complaint of ragging from a student of that institution had been received, requesting the institution to identify and counsel the victim, and take appropriate action against the students who are seen in the video attached to the e-mail. The e-mail alleged that one Dr. Om Vaidhya was seen slapping a 2021 batch junior and accordingly, action be taken. The video was alleged to have been taken on 08.05.2022.

(b) Accordingly, the Anti-Ragging Committee (ARC) of the GMC met on 29.11.2022 when the victim was summoned and his identify ascertained. Without hearing the six students (petitioners)

and their version in defence, the ARC held them guilty. According to the report of the ARC, the petitioners having been held guilty of the acts of ragging, were imposed a punishment of suspension from the internship program, expulsion from the hostel and prohibition for entering the campus of the institution.

On that same day, i.e. 29.11.2022, the head of the institution filed a complaint before the Ajni Police Station, Nagpur City, under its letter dated 29.11.2022, the report of the ARC being its basis.

(c) It transpires from the records of the ARC and of the institution, that after the ARC submitted its report, the victim addressed a Communication dated 30.11.2022 to the Dean of the GMC, wherein he has stated that what happened during the incident was friendly banter during a college get-together and there was no ragging involved in the incident, at the behest of the petitioners. Similarly, the victims statement was endorsed by 107 students, who submitted various representations to the Dean, claiming that they were present when the alleged incident occurred and that there was no ragging but the incident was one of friendly joking during a get-together. A request was made at the behest of the students to recall

the order of expulsion, however, after elaborate discussion, the ARC concluded that it could not recall its order of expulsion.

(d) The six students who are petitioners before us challenged the order of expulsion dated 29.11.2022 before this Court in three Writ Petitions bearing No.7965/2022, 7979/2022 and 7982/2022, which were disposed of by judgment dated 05.01.2023, recording at para 8 therein, the subsequent developments of the victim and 107 students submitting their representation and pass the following order:-

“12. Rather than taking a final call in writ jurisdiction, we find it appropriate to refer the entire matter to the ARC of the GMC which shall revisit the issue and take an appropriate decision on the basis of all relevant considerations including the withdrawal of the complaint by the alleged victim, representation submitted by 107 students and doctrine of proportionality. We have implicit trust in the ARC and the Dean that a balance view shall be taken keeping the interest of the students as well as larger interest of the institution in mind.

13. Till the ARC or the Dean takes an appropriate decision after hearing the students concerned, the punitive order shall stand stayed with a rider that as undertaken that the petitioners shall not enter the hostel.”

(e) Thereafter, the ARC met on 09.01.2023, and in line with directions of the judgment of this Court dated 05.01.2023, considered the statements of the victim and of the 107 students who were present at the time the alleged incident took place and decided to revoke the suspension of internship of the six petitioners, but retained the decision of expulsion of the students from the hostel. This Communication was sent to the petitioners on 16.01.2023, and the matter rested there.

However, the complaint made to the Ajni Police Station on the basis of the earlier decision dated 29.11.2022 of the ARC was not withdrawn, pursuant to the fresh decision, which has modified the earlier one, and the impugned FIR came to be registered 01.12.2022 against the six petitioners. The same is sought to be quashed on grounds raised in the petitions.

(4) We have heard Mr. Akshay Sudame, Mr. Vivek Thote and Mr. Prakash D. Meghe, learned counsel for the four sets of petitioners, and Mr. Rode, learned APP for the Respondent Nos.1 & 2/State in both Writ Petitions and Criminal Applications.

The learned APP has produced before us the entire file from the GMC which constitutes the materials on the basis of which the complaint was originally made on 29.11.2022.

(5) The FIR has been launched for investigation of offences allegedly committed under Sections 143, 147, 149, 323, 504, 506 and 34 of the Indian Penal Code, 1860 and under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999. Sections 143, 147 and 149 of the Indian Penal Code deals with offences of unlawful assembly and rioting. Essentially these offences require the accused to gather together and when force or violence is used by such unlawful assembly, they could be said to commit acts of rioting.

Section 323 of the Indian Penal Code requires the accused to have voluntarily caused hurt or commit an act likely to cause grievous hurt to the victim, while Section 504 and 506 essentially, requires an act of intentionally insulting a person or to cause a breach of public peace or of a nature which criminally intimidates the victim.

(6) The complaint filed by the GMC appears to be in pursuance of the provisions of Section 4 of the Maharashtra

Prohibition of Ragging Act, 1999, (for short 'Ragging Act'). For the purpose of better understanding of the various provisions of the Ragging Act, we have reproduced the same herein below :

“Section 2 – In this Act, unless the context otherwise requires -

(a)

(b)

(c) “ragging” means display of disorderly conduct, doing of any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution and includes -

(i) teasing, abusing, threatening or playing practical jokes on, or causing hurt to, such student; or

(ii) asking a student to do any act or perform something which such student will not, in the ordinary course, willingly do.

Section 4-Penalty for ragging - Whoever directly or indirectly commits, participates in, abets or propagates ragging within or outside any educational institution shall, on conviction, be punished with imprisonment for a term which may extend to two years and shall also be liable to a fine which may extend to ten thousand rupees.

Section 6 - Suspension of student - (1) Whenever any student or, as the case may be, the parent or guardian, or a

teacher of an educational institution complains, in writing, of ragging to the head of the educational institution, the head of that educational institution shall, without prejudice to the foregoing provisions, within seven days of the receipt of the complaint, enquire into the matter mentioned in the complaint and if, prima facie, it is found true, suspend the student who is accused of the offence, and shall, immediately forward the complaint to the Police Station having jurisdiction over the area in which the educational institution is situated, for further action.

(2) Where, on enquiry by the head of the educational institution, it is proved that there is no substance, prima facie, in the complaint received under sub-section (1), he shall intimate the fact, in writing, to the complainant.

(3) The decision of the head for the educational institution that the student has indulged in ragging under sub-section (1), shall be final.”

(7) Under Section 6 of the Ragging Act whenever a student or parent/guardian or teacher complains to the head of the institution about such act, the head of the institution shall enquire into the matter and suspend the student who is accused of the offence, and forward the complaint of the student or parent/guardian or teacher as the case may be to the Police Station having jurisdiction. Under Sub-Section (2) of the Section 6, after enquiry is held and if it is proved

that there was no substance in the complaint, the fact shall be intimated to the complainant.

(8) Thus, the scheme of Section 6 requires a complaint to be made to the institution by any one of these three, the concerned student or parent/guardian or teacher. In the present case, there was no complaint by any of these three, much less by the victim who was allegedly ragged. Infact, the first inquiry conducted does not appear to have been on the basis of the statement of the alleged victim, who has later on by his letter dated 30.11.2022 specifically stated that the incident was one where no ragging was committed, but what happened was purely in gest and by way of friendly bantering. So also, the 107 signed statements of student which are part of the record of the ARC from 30.11.2022 onwards, also support the alleged victims stand.

(9) It appears therefore, from the record that the FIR was lodged on the basis of the report dated 29.11.2022 of the ARC without a single statement being recorded of the victim or any witnesses of the incident, which if done, at the relevant time may have resulted in the ARC concluding that there was no substance in the

allegations in terms of Sub-Section (2) of Section 6 of the Ragging Act. In any event, its initial report and action of 29.11.2022 has since been recalled pursuant to this Court's judgment dated 05.01.2023 and on inquiry, there appears to be acceptance of the version of the victim, and of the 107 students who have given signed statements before the ARC. Thus, there appears to be no material, much less a complaint by the victim, his parent/guardian or any teacher, in terms of Section 6 of the Ragging Act, to proceed in the matter or launch an investigation.

(10) Consequently, we are of the considered opinion that this is a fit case to quash FIR in Crime No.0797/2022, registered with Ajni Police Station, Nagpur City, for the offence punishable under Sections 143, 147, 149, 323, 504, 506 and 34 of the Indian Penal Code, 1860 and under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999, which we accordingly do. There are no offences made out in any record of the ARC or any statements of the victim or any of the concerned persons under Section 6 of the Ragging Act, 1999, which allege an offence under the above provisions. Hence, the following order:

ORDER

Rule is made absolute in Writ Petition Nos.33/2023, 34/2023 and Criminal Application (APL) Nos.38/2023, 134/2023 is allowed in the following terms:

FIR in Crime No.0797/2022, registered with Ajni Police Station, Nagpur City, for the offence punishable under Sections 143, 147, 149, 323, 504, 506 and 34 of the Indian Penal Code, 1860 and under Section 4 of the Maharashtra Prohibition of Ragging Act, 1999, shall stands quashed. No costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity