



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

CRIMINAL APPLICATION NO. 661 OF 2020

1. Amit s/o Gangadhar Jibhkate, aged about 35 years, Occ. Business, R/o Gandhi Ward Post Kondha Kosra, Dist. Bhandara.
2. Rupwant s/o Nagorao Jubhkate, aged about 35 years, Occ. Business, r/o Gandhi Ward Post Kondha Kosra, Dist Bhandara.
3. Prajit s/o Dnyaneshwar Borkar, Aged about 25 years, Occ. Private, R/o Post Kondha, Dist. Bhandara.
4. Arun s/o Ramkrushna Singade, Aged about 40 years, Occ. Private, R/o Post Kondha, Dist. Bhandara.

... APPLICANTS

VERSUS

1. The State of Maharashtra, through Police Station Officer, Police Station Adyal, Dist. Bhandara.
2. Shri Nepal Sajjan Meshram, aged about 34 years, Occ. Safai Kamgar, R/o Village Bhawad, Tq. Pauni, Dist. Bhandara.

... NON-APPLICANTS.

Shri P.J. Mehta, Advocate for the applicants.

Shri N.B. Jawade, Addl.P.P. for the State.

Smt. Naina Dhoke, Advocate h/f Shri Mahesh Rai, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.

DATED : 19.10.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The Charge-sheet arising out of Crime No.160 of 2020 registered with the Adyal Police Station, District Bhandara for the offence punishable under Sections 323, 332, 353, 504, 506 read with Section 34 of the Indian Penal Code, Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the SC and ST Act), gave rise to the accused to approach this Court for invoking inherent powers for quashing of the charge-sheet.

3. The Informant Nepal Meshram was working on contract basis as a Sweeper with Bank of India ('the Bank'), Kondha Branch, District Bhandara. 10 days preceding to the occurrence, applicant no.1 Amit Jibhkate went to the Bank during recess. The informant asked him to wait, however the applicant no.1 argued and entered into the Bank.

4. It is the informant's contention that on 31.07.2020, in the recess, he went to the nearby fruit stall. Around 2.15 p.m., all applicants arrived at the fruit stall and raised quarrel with the informant. It is alleged that applicant no.1 Amit slapped to the informant and abused him in filthy language. Applicant No.1 Amit also abused the informant in the name of his caste. The informant was also slapped by applicant no.2 Rupwant Jubhkate. Some bank officials arrived at the place to resolve the quarrel. At that time, the applicants also assaulted the Bank Officer namely Rakesh Kumbhare, and therefore, the report.

5. The learned Counsel appearing for the applicants has assailed the tenability of the prosecution on various grounds. Initially, it is argued that the provisions of Section 353 and 332 of the IPC would not attract. It is submitted that the informant was not a public servants. The incident, even if accepted to be true, does not discloses that at the relevant time, the informant was exercising his duty as a public servant to whom there was assault and resistance. It is apparent that the place of occurrence is on the public road at a nearby fruit stall. In the recess, the informant had been to the fruit stall for buying fruits. Therefore, by any stretch of imagination, it cannot be said that while the informant was performed his official duty, he was either assaulted or caused hurt.

Therefore, the submission in that regard about non-applicability of the provisions of Sections 353 and 332 of the IPC is well acceptable.

6. It is argued that applicant nos.3 and 4 equally belongs to the member of Scheduled Caste, and therefore, the provisions under the SC and ST Act could not have been invoked against them. Bare perusal of Section 3 of the SC and ST Act postulates that the provisions would apply against the person, who are not being a member of the Scheduled Caste or Scheduled Tribe. Caste certificates of applicant nos. 3 and 4 are also tendered on the record. The said position is not disputed by learned Addl. PP, and therefore, prosecution against applicant nos. 3 and 4 under the provisions of the SC and ST Act, is not maintainable.

7. Learned Counsel for the applicants would submit that as per the police report, applicant no.1 has merely mentioned the caste name of the informant, which cannot be construed as an offence. In support of said contention, reliance is placed on the decision of this Court in case of *Dr. Narendra s/o Bhojram Patil and anr. vs. State of Maharashtra 2010 ALL MR (Cri) 38*. We have been taken through the certain observations made by this Court in paragraph 20, however those observations were made in relation to Section 7(1)(d) of the

Protection of Civil Rights Act, 1955. Thus, being different facts, they will not assist the applicant in any manner.

8. The learned counsel for the applicants has submitted that in order to constitute the offence under Section 3(1)(r) and 3(1)(s) of the SC and ST Act, the occurrence must be within the public view. It is submitted that there was no independent witness to the occurrence and therefore, prosecution fails on said mandatory requirement. In this regard, the learned Addl. P.P. took us through the statement of the fruit stall owner Lokhande. He has specifically stated that in his presence, applicant no.1 abused the informant in the name of caste. In this regard, the learned Counsel for the applicants would submit that witness Lokhande is not an independent one as he also belongs to the Scheduled Caste. To support the said contention, reliance is placed on the decision of the Gujarat High Court in case of ***State of Gujarat vs. Bachubhai Ranabhai Bharwad and ors.*** 2012 SCC OnLine Guj 1414.

9. Bare perusal of statutory requirement, it reveals that presence of one independent witness is the only requirement of the law. Whether he is independent or partisan, is a matter of trial, which cannot be assessed at this stage. Our attention has also been attracted towards the decision of this Court in case of ***Balu B. Galande vs. State***

of Maharashtra and anr. 2006 SCC OnLine Bom 1598, which also speaks about requirement of one independent witness. Since the occurrence took place on the public road at the fruit stall, it was obviously within the public view. The statement of the fruit stall owner, *prima facie*, postulates that the utterances were within the public view. Learned Addl. P.P. also took us through the statement of the Bank Officer Rakesh Kumbhare, who has also corroborated the applicants' version.

10. Considering the entire material, it reveals that the specific allegations of the assault were against applicant no.1 Amit and applicant no.2 Rupwant. As regards to rest of the applicants, besides their presence, there is nothing against them. Moreover, the provisions of the SC and ST Act, cannot be invoked against them. As regards to the applicability of Section 353 and 332 of the IPC the learned Counsel for the applicants by placing reliance on the decision of the Supreme Court in case of *Ishwar Pratp Singh and ors. vs. State of Uttar Pradesh and anr. (2018) 13 SCC 612* would submit that quashing of charge-sheet in part, is permissible.

11. In view of the above, there is *prima facie* material against applicant nos.1 and 2 except the offences punishable under Sections

353 and 332 of the IPC. As regards to the applicant nos.3 and 4, even if prosecution case is accepted, it does not make out a *prima facie* case. In view of that, the application is partly allowed.

12. We hereby quash and set aside the charge-sheet arising out of Crime No.160 of 2020 registered with the Adyal Police Station, District Bhandara for the offence punishable under Sections 323, 332, 353, 504, 506 read with Section 34 of the Indian Penal Code, Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, as regards to the applicant nos. 3 and 4 only.

13. We also set aside the tenability of the invocation of the provisions of Section 353 and 332 of the IPC against applicant nos.1 and 2. The trial shall proceed against them for rest of the offences, in accordance with law.

14. The application stands disposed of in the above terms.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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