



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

CRIMINAL APPLICATION [APL] NO. 777/2023.

Rahul Dattatraya Wankhade,
Aged 46 years, Occupation -
Service, resident of c/o. Sandeep
Ramdas Makode, Vishnu Nagar,
Near Narayan Nagar, Navsari,
Amravati, Tq. And District
Amravati.

... Applicant.

-Versus-

1.State of Maharashtra
through PSO Police Station,
Chandur Bazar, District Amravati.

2.Pravin Vasudeo Manohare,
Aged 44 years, Occupation -Labour,
resident of Priyadarshini Colony,
Shirajgaon Band, Tq. Chandur Bazar,
District Amravati.

... Non-applicants.

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Shri V.B. Bhise, Advocate for the Applicant.
Shri S.S. Doifode, Addl.P.P. for Non-applicant No.1.
Shri P.S. Raut, Advocate for Non-applicant No.2.
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CORAM : NITIN W. SAMBRE AND

VALMIKI SA MENEZES, JJ.

DATE : SEPTEMBER 11, 2023.

ORAL JUDGMENT (PER NITIN W. SAMBRE, J) :

The petitioner, a teacher by profession has approached this Court under Section 482 of the Criminal Procedure Code seeking quashing of charge sheet No.73/2003 arising out of First Information Report No.185/2023, registered with non-applicant no.1 – Police Station for the offence punishable under Section 305 of the Indian Penal Code read with Section 3[2][5], 3[2][vii], 3[1][r][s], 3[1][Za] of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act” for the sake of brevity).

2. The facts necessary for deciding the present application are as under :

The complainant – Pravin, father of the deceased Kartikesh, lodged a complaint alleging that his son, aged about 13 years, committed suicide on 27.02.2023 by hanging. The complainant alleged that the applicant, a teacher, based on his caste, not only ill-treated him, but, also at times humiliated. Offence bearing Crime No.185/2023 came to be registered on 06.03.2023 against the applicant. After investigation, since sufficient evidence was noticed to charge-sheet the applicant, the applicant came to be chargesheeted and is facing the prosecution before the designated Court under the provisions of the Prevention of Atrocities

Act.

3. In the aforesaid complaint which was lodged on 06.03.2023, specific allegations of the complainant are his son was not allowed to attend the classes, at times he was punished as he belonged to Scheduled caste. Such criminal act of the applicant has prompted his son to commit suicide.

4. After the young boy has lost his life, the police authorities have thoroughly investigated the offence and chargesheeted the applicant for an offence punishable under Section 305 of the Indian Penal Code and also under the provisions of the Atrocities Act.

5. Contentions of the learned Counsel for the applicant Shri Bhise are, the prosecution against the applicant is liable to be quashed and set aside for want of satisfaction of necessary ingredients of the offence under Section 305 of the Indian Penal Code and also under the Atrocities Act. According to him, false and stale instance viz. 6 months old is relied on for registration of the offence, as can be inferred from the contents of the complainant. Shri Bhise would take us through the contents of the first information report and other material available on record so as to assert that the prosecution against the applicant, which is based on vague and non-specific attribution, cannot result in conviction

of the applicant. The learned Counsel would further urge that the case of the prosecution does not withstand the test/ingredients of provisions of Section 107 of the Indian Penal Code read with Section 305. According to him not only motive/ criminal intention is absent, but, also element of abetment cannot be inferred against the applicant. He would rely on certain judgments of this Court, so also the Apex Court to substantiate his case.

6. Shri Raut, learned Counsel appearing for the complainant would oppose the prayer. Mr. Raut took us through the statements of witnesses namely the complainant – Pravin, father of the deceased, Mangala – mother of the deceased, Godabai – grandmother of the deceased, Pohokar and Girhe, teachers of the deceased who are working with the applicant, Ingle – Headmaster of the school. According to him, the aforesaid statements recorded under Section 161 of the Criminal Procedure Code, are required to be appreciated at its face value so as to infer that necessary ingredients of offence are satisfied. Further contention, which are endorsed by the learned Addl.P.P. Shri Doifode, are this Court cannot appreciate the evidence at this stage.

7. Based on above, it is claimed that the application is liable to be rejected.

8. We have appreciated the aforesaid submissions. We are

sensitive to the fact that a young boy Kartikesh, aged about 13 years has lost his life, because of suicide by hanging on 27.02.2023. The post-mortem report specifically points out the cause of death as 'Asphyxia' due to hanging. In this background, the complainant Pravin has narrated in the complaint that in the month of October, 2022 i.e. during Diwali time, the deceased was ill-treated by the fellow students. As such he lodged a complaint with the school teacher namely Pohokar. Accordingly, the deceased was shifted to the class of which the applicant was class teacher, however, it is claimed that the applicant has not permitted the deceased to attend the classes.

9. It is also claimed that, the complainant approached Shri Pohokar, a teacher, because of whose intervention the applicant has permitted the deceased to attend his classes. It is further claimed by the complainant that the applicant since was directed against his wish to permit the deceased to attend the classes, he started ill-treating the deceased, at times unnecessarily punished, humiliated him etc. as he belonged to the backward class.

10. The allegations to the aforesaid can be noticed from the contents of the complaint. Similarly, statements of witness Mangala - mother of the deceased, Godabai – grandmother of the deceased speaks of the similar allegation.

11. All the aforesaid three witnesses are related to the deceased. In view of the law laid down by the Apex Court in the matter of *Swaran Singh .vrs. State of Punjab*, reported in (2008) 8 SCC 435, for inferring an offence under the provisions of Atrocities Act, the statements of relatives and friends who are cited as witnesses cannot be taken into account. Relevant observations made by the Apex Court are as under :-

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 [by calling him a “chamar”] when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in a public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also even if the remark is made inside a building, but, some members of the public are there [not merely relatives or friends], then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality [or other local body] or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

All these witness are narrating hearsay version which is not confirmed by independent witness or source. As such the statements to the extent of aforesaid three witnesses, who are relatives of the deceased, cannot be considered so as to infer the commission of offence by the applicant under the provisions of the Atrocities Act.

12. The investigating officer thereafter recorded statements of Shri Pohokar, Shri Girhe, who are teachers, so also Shri Ingle, headmaster of the school where the deceased was taking education. These witnesses who were directly dealing with the deceased student and his father, have not supported the case of the prosecution.

As far as the headmaster Kailash Ingle is concerned, he has specifically stated about 4 sanctioned sections of class 8th. For want of sufficient number of teachers, the students were adjusted in 3 sections. Accordingly, the deceased was allotted to the section conducted by the applicant. He has also stated that no grievance by the complainant Pravin at any time before was brought to the attention of the headmaster about the applicant not permitting the deceased to attend the classes.

13. Similarly Vinod Girhe, a teacher, has specifically stated about a incident that the deceased brought Rs.2000/- from his home, out of

which Rs.1500/- was given to a student namely Rohit Bahekar. It appears that after the said incident was exposed, complainant was summoned in the School. The applicant and other staff brought the said conduct of deceased to the notice of complainant on which issue some differences cropped-up. Said incident came to be inferred from the statement of Shri Kishor Pohokar, who is also working as a teacher. All these three witnesses have not implicated the applicant in commission of the offence. This angle was neither investigated nor found mentioned in the complaint of Pravin. As such, it has to be inferred that complainant has suppressed said information from the investigating agency. Said incident can also be said to have caused impact on the psychology of the victim, as above conduct was against the wishes of his parents which has exposed him in the school.

14. The statement of independent witnesses who were studying with the deceased were also recorded. All these witnesses, who are students, have not supported the case of the prosecution, thereby implicating applicant in the commission of the offence in question. Rather, all the student witnesses have supported the case of the applicant, as the applicant along with Maths teacher has counselled the victim. It is also brought on record that deceased was indisciplined in the school.

15. We are sensitive to the position of law, that this Court is not permitted to appreciate the evidence at this stage of the matter, as per the law laid down by the Apex Court in the case of ***Dhruvaram Murlidhar Sonar .vrs. State of Maharashtra*** reported in ***Manu/SC/1518/2018***, particularly paragraph no.13. Keeping in mind the said principles, without appreciation of the material collected during the course of investigation, this Court can consider the case against the applicant as was investigated by the investigating agency as it is. This exactly is the exercise we have carried out while deciding the present matter.

16. In the aforesaid background, if we look into the case of the prosecution against the applicant who is termed as 'Abettor' under Section 108 of the Indian Penal Code and Section 107, which defines abetment of a thing, there is no evidence except the accusation of the complainant to infer that the applicant directly or indirectly instigated the deceased to commit an act of suicide or has engaged any other person and hatched a conspiracy to drive the deceased to commit suicide. There is no wilful misrepresentation or criminal act on the part of the applicant to infer that the applicant can be said to have abetted the offence in question. Apart from above, the applicant being a teacher cannot be said to have intention, motive or *mens rea* to commit offence by instigating a student of 13 years of age to commit suicide just

because victim was belonging to Backward Class. The alleged act of applicant of making the deceased to follow the discipline cannot be said to be amounting to commission of the alleged offence. Such act by itself cannot be stretched to mean or infer that the applicant had an intention to commit the offence of abetment of suicide. The act of applicant along with other teachers of disciplining a student by counselling cannot lead to drawing an inference of criminal intention to drive a student to commit suicide.

17. The fact that before the incident of suicide, the deceased was having differences with other students, thereafter he having brought an amount of Rs.2000/- from his home, part of which was shared with one of the student, which event has exposed him in the school, can also be said to be collectively responsible for the extreme decision taken by the deceased. The deceased might be hypersensitive to ordinary petulance and in such eventuality blame of abetment cannot be passed to the applicant. As such in absence of there being any criminal act on the part of the applicant to instigate or aid in commission of the act of suicide by the deceased, the applicant cannot be said to be responsible or involved in the offence of causing abetment of committing suicide. To substantiate the aforesaid view, reliance can be placed on the decision of Apex Court on the judgment in the matter of ***M. Mohan .vrs. State represented by the Deputy Superintendent of Police*** reported in

(2011) 3 SCC 626, particularly paragraph nos. 44 and 45.

18. Apart from above, the Division Bench of this Court in the matter of *Dr.Mrs. Seema Ajay Bhoosreddy .vrs. The State of Maharashtra*, reported in *2011 All MR (Cri) 3326*, has already held that it is necessary for the prosecution to at least prima facie establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. The facts in the said case are somewhat similar to the case in hand. As such it cannot be said that the prosecution case, even if taken to be true at its face value, satisfies the very ingredients of the offence punishable under Sections 305, 306 read with Section 107 of the Indian Penal Code.

19. Once it is noticed that the ingredients of the aforesaid sections are not satisfied, the sequel is pari materia provisions under the Atrocities Act invoked by the prosecution, so as to make the offence punishable thereunder also can not be said to have been satisfied. The fact remains that the entire incident narrated by the complainant in the first information report is based on stale instance of October, 2022, whereafter the deceased continued to attend the classes. Vague, general and non-specific allegations against the applicant in the statements of all the three witnesses namely Pravin, Mangala and Godabai can not be said to be satisfying the ingredients of the offence. In this view of the matter,

we are of the view that the prosecution case against the applicant cannot be said to be sustainable.

20. As far as the offence under the provisions of the Atrocities Act is concerned, Section 3[2][v] provides for punishment of life if for such an offence under the Indian Penal Code punishment is prescribed for 10 years. We have already observed herein above, that the applicant cannot be an abettor within the meaning of the provisions of Section 108 of the Indian Penal Code, and that being so, he cannot be said to have abetted the offence within the meaning of Section 107 read with Section 305 of the Indian Penal Code. As such, the offence under the said provision cannot be said to be attracted.

21. Apart from above, once it is inferred that the applicant cannot be held liable to have committed an offence punishable under Section 305 of the Indian Penal Code, the offence under Section 3[2][vii] of the Atrocities Act cannot be inferred against him. Similarly, it cannot be said that the applicant, in absence of any specific instance, has committed an offence punishable under the said provision. The complainant has not mentioned any specific instances, nor in any of the material collected specific allegations could be noticed to infer the attraction of the provisions of the Atrocities Act. There is no material to infer that the deceased any time before was humiliated by the

applicant based on his caste. Not a single instance, but, for omnibus, general, non-specific allegations could be noticed. Even otherwise also, the applicant cannot be said to have denied entry to the deceased in the classes. Temporary impediment, if any, was only based on administrative reasons i.e. shortage of teaching staff, i.e. non-availability of sufficient number of teachers for conducting the lessons in all the four sections, including the one in which the deceased was studying. As such it cannot be said that the applicant is involved in the offence punishable under Section 3[1][Za] of the Atrocities Act.

22. The Apex Court in the matter of *Inder Mohan Goswami .vs. State of Uttaranchal* reported in (2007) 12 SCC 1, has observed that the powers under Section 482 of the Code of Criminal Procedure can be exercised to give effect to an order under the Code, to prevent abuse of the process of Court and to otherwise secure ends of justice. It has also observed that for the advancement of cause for justice, the powers under Section 482 of the Code of Criminal Procedure can be exercised, however, such powers are required to be exercised sparingly, carefully and with caution. Similarly in the matter of *State of Haryana .vs. Bhajanlal* reported in 1992 Supp [1] SCC 335, the Apex Court has given illustrative examples in which the powers for quashing can be exercised.

23. The fact remains that in the case at hand, in absence of there being any intention on the part of the applicant to abet the offence of suicide, the prosecution is initiated against the applicant, which cannot be taken to its logical end for aforesaid reasons. In case if the prosecution is continued against the applicant, the same will be causing hardship to him, particularly in absence of there being any intention, motive on his part. As such, in the light of the law laid down by the Apex Court in case of *Inder Mohan Goswami .vrs. State of Uttaranchal* and *State of Haryana .vrs. Bhajan Lal, cited supra*, this is a fit case where this Court should exercise the inherent powers for the cause of advancement of justice.

24. Accordingly, Criminal Application stands allowed in terms of prayer clause (B).

(VALMIKI SA MENEZES, J.) (NITIN W. SAMBRE, J.)