



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.983 OF 2023

Karuna D/o Ashok Sharma
@ Karuna W/o. Dhananjay Mundhe ... **APPLICANT**

VERSUS

1. The State of Maharashtra
through City Police Station,
Parli Vaijinath, Tq. Parali Vaijinathh,
Dist. Beed.
2. Vishakha w/o Ravikant Ghadge ... **RESPONDENTS**

...
Advocate for Applicant : Mr. S.R. Andhale i/b. Mr. K.A. Khole
A.P.P. for respondent/State : Mr. G.A. Kulkarni
Advocate for respondent No.2 : Mr. S.S. Thombre
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Reserved on : 15.02.2024
Pronounced on : 01.03.2024**

JUDGMENT (PER : MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties the matter is heard finally at the stage of admission.

2. This is an application under Section 482 of the Code of Criminal Procedure, seeking quashment of crime bearing FIR No.142/2021 registered with City Police Station, Parli Vaijinath, District Beed on 05.09.2021 as well as the subsequent charge-sheet No.49/2022 and the Special Case No.57/2022, for the offences punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal

Code and Section 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the Atrocities Act).

3. The sum and substance of the allegations, as can be discerned from the charge-sheet, can be summarized as under :

- i. The respondent No.2 lodged the FIR on 05.09.2021 stating that she belongs to 'Mahar' Scheduled Tribe. She works as the Taluka Coordinator of Mahila Arthik Vikas Mahamandal. On that day at about 13:30 hours, she along with her friends Rachana Ashok Vhawale, Deepmala Sanjay Sonkamble, Baby Chotumiya Tamboli and latter's daughter Guddi Chotumiya Tamboli had gone to Vajinath Mandir for Darshan.
- ii. A woman and a man present near the steps of the temple were loudly casting some aspiration against sitting minister Dhananjay Mundhe and declaring the resolve to ruin his political career without which she will not leave the place. The woman also hurled abuses.
- iii. Hearing that the respondent No.2 tried to retort the woman and the man stating that Shri Mundhe was a saviour of 'Mahar' and 'Mang' communities and not to utter insulting words against him.
- iv. The woman then started asserting that the informant and other persons assembled there were of inferior communities like 'Mahar', 'Mang' and 'Muslim' and had gathered there by receiving money. She also asserted that these persons belonging to 'Mahar' and 'Mang'

had no stature and hurled abuses in filthy language.

- v. The respondent No.2 then alleges that when she inquired as to who that woman hurling abuses was, one Hrushikesh Umaji Rathod told them that it was the applicant and the other accused. The respondent No.2 then alleged that when she asked the applicant as to why she was hurling abuses the applicant caught hold the hand of Baby Chotumiya Tamboli and pushed her to the ground due to which Baby sustained injury to the right hand. The other accused Arun then with a view to kill Guddu Chotumiya Tamboli assaulted her with a knife and she sustained injury on the abdominal region. It is then alleged that the respondent No.2 and her companion were pushed, pulled and abused on caste lines.

4. It appears that the crime was registered soon after the FIR was lodged, statements of the respondent No.2 and some other witnesses were also recorded under Section 164 of the Code of Criminal Procedure. The injured were referred for medical examination and in due course the charge-sheet was filed.

5. Learned advocate for the applicant would submit that the applicant is in fact a legally wedded wife of Shri Mundhe who is a member of the Legislative Assembly and Minister . The couple has a son who is aged 15 years and a daughter aged 14 years, however, he has performed a second marriage and several disputes are going on,

matrimonial and civil, between the applicant and Shri Mundhe. He would submit that the crime has been registered as out of such dispute and the applicant has been falsely implicated.

6. The learned advocate would submit that the applicant with the co-accused had gone to the temple and were peacefully sitting on the stairs after Darshan. The respondent No.2 who is an employee of of Mahila Arthik Vikas Mahamandal which was under the portfolio assigned to Mr. Mundhe, lodged a false report and could manage to get the crime registered. In fact, sensing some danger the applicant had even applied to the police for police protection but was slapped with a notice under Section 149 of the Code of Criminal Procedure.

7. The learned advocate for the applicant would submit that accepting the allegations in the FIR and the statements of the witnesses it is apparent that the applicant was not knowing either the respondent No.2 or the witnesses much less the caste to which they belong. Therefore, there was no question of applicant having some intention to insult and assault them or to hurl abuses on caste line. He would submit that it is only the intentional insult which has been made punishable under the Atrocities Act. He would place reliance on the decisions in the matter of **Hitesh Verma V/s. The State of Uttarakhand and Anr.; 2020 AIR(SC) 5584**, **Gajanan Narayan Makne Vs. State of Maharashtra and Ors.; 2023 DGLS (Bom.) 714** and **Mohammad Wajid and Anr. Vs. State of Uttar Pradesh and Ors.; AIR 2023 SC 3784**.

8. The learned advocate for the applicant would then submit that even according to the prosecution the incident had taken place on the spur of moment without there being any premeditation. Even the applicant and other accused were not knowing any of the witnesses or the respondent No.2. It is only after the respondent No.2 tried to intervene and retort after the applicant allegedly hurled some abuses against Shri Mundhe the incident is alleged to have occurred. In the absence of any premeditation, when in the process of some verbal altercation, as alleged by the prosecution, the other accused had taken out the knife and assaulted Guddu Chotumiya Tamboli, the applicant cannot be attributed with the allegations of sharing any common intention much less sufficient enough to attribute her with an intention to kill Guddu. It was an act expressly and exclusively attributed to the other accused. There was not even any abetment. If that be so the applicant could not have been roped in for the offence of section 307 of the Indian Penal Code by resorting to Section 34 of the Indian Penal Code.

9. The learned advocate for the applicant submitted a copy of the death certificate of the other accused Arun Dattatray More and would submit that he having died on 07.06.2022, it would be abuse of the process of the law to allow the prosecution to go on against the applicant. In respect of the offence punishable under Section 307 of the Indian Penal Code was attributable to him and he being no more, the crime and the criminal case at least could be quashed to the extent of the applicant

to the extent of section 307 read with 34 of the Indian Penal Code.

10. Per contra, the learned APP and the learned advocate for the respondent No.2 would vehemently oppose the application. They would submit that this is not a fit case to quash the crime and the criminal case. Already the investigation is over and charge-sheet has been filed. Matter is awaiting trial before the Special Court. There are statements of witnesses recorded under Section 164 of the Code of Criminal Procedure. Even if the applicant was not knowing the respondent No.2, going by the version of the prosecution, when the respondent No.2 tried to retort having overheard the utterances against Shri Mundhe and asserted that he was the saviour and a God for the persons belonging to 'Mahar' and 'Mang' communities, that the applicant could get the knowledge and hurl abuses on caste lines. Therefore, even if she was earlier not knowing the caste to which the respondent No.2 belonged, she could get that knowledge when the incident occurred and then hurled abuses obviously with intent to insult the respondent No.2. The incident having occurred in a public view, the prosecution cannot be stalled at this juncture.

11. We have heard considered the submission of both the sides and perused the papers.

12. Obviously, there could be no dispute about the fact that the applicant was not knowing either the respondent No.2 or her colleagues - witnesses who were present at the spot. However, admittedly the applicant and the other accused were very well present at the scene as

has been admitted even in the application.

13. It is trite that the accused must have knowledge about the caste to which the victim belongs and makes some utterances on caste lines with intention to insult the latter, in order to attract the provisions of Atrocities Act. However, when the version in the FIR and the statements of the witnesses expressly mention that during the course of altercation the applicant derived the knowledge about the caste of the respondent No.2, thereafter, she has been alleged to have hurled abuses on caste lines.

14. However, there is a material variance in the statements of prime witnesses recorded under Section 161 of the Code of Criminal Procedure and their statements recorded under Section 164 of the Code of Criminal Procedure. Though initially they seem to have corroborated the version in the FIR and the supplementary statement of the respondent No.2, in the statements under Section 164 of the Code of Criminal Procedure recorded before the Judicial Magistrate First Class they have changed the version. For that matter even the respondent No.2 has mellowed down when her statement was recorded under Section 164 of the Code of Criminal Procedure. Unlike what was stated in the FIR, in her statement under Section 164, she has merely stated that after the applicant started hurling abuses against Shri Mundhe and she objected to it, thereafter, the applicant having said by addressing the respondent No.2 that these people belonging to 'Mahar', 'Mang' and 'Muslim'

communities would sell for Rs.200/- and thereafter the applicant is stated to have declared her resolve to end the political career of Shri. Mundhe.

15. Similar is the version of the witnesses recorded under Section 164 of the Code of Criminal Procedure. Hrushikesh Umaji Rathod, Deepmala Sanjay Sonkamble, Rachana Ashok Vhawale and Guddu Chotumiya Tamboli in their statements under Section 164 have not attributed the applicant with any allegations about hurling abuses on caste lines much less addressed to the respondent No.2, that too with an intention to insult her.

16. Hrushikesh Umaji Rathod has merely stated that when he had gone to the Temple for Darshan a quarrel was happening between the applicant and the respondent No.2 and few women from his locality, a person accompanying the applicant assaulted a lady and the applicant abused the respondent No.2. Whereas, Deepmala Sanjay Sonkamble in her statement under Section 164 has in fact denied to be aware about anything. She has stated that the lady at the Vajinath Temple was hurling abuses and calling names to Shri Mundhe and his wife Jayshree. She merely stood by the side and nothing has happened thereafter. Rachana Ashok Vhawale in her statement has corroborated the version of the respondent No.2 but only to the extent of attributing utterances to the applicant that persons from 'Mahar' and 'Mang' community would follow by receiving Rs.200/-. So far as Guddu Chotumiya Tamboli is concerned

who is stated to have sustained injury with a knife which is attributed to the other accused has not at all stated about any altercation even between the applicant and the respondent No.2. She merely stated that a woman and a man were hurling abuses, when she questioned them as to why they were hurling abuses a crowd had gathered and thereafter someone caused injury to her mother with a knife on hand and she was assaulted with a knife on the stomach. She thereafter approached the police station who sent her to the Government Hospital.

17. If such is the quality of material collected by the Investigating Officer, we are of the firm view that the circumstances about which there is also no consistent and precise version much less attributing several necessary ingredients for constituting the offences punishable under Atrocities Act, it would be sheer abuse of the process of law if the applicant is made to face the prosecution for the offences punishable under that Act.

18. These statements of not only the respondent No.2 but the other prime witnesses who have been named in the FIR have not come out with any version precisely making out all the necessary ingredients for constituting the offences under the Atrocities Act. This is a fit case to quash the crime and criminal case even to that extent.

19. As far as the offence punishable under Section 307 is concerned, as has been cursorily observed herein above, there was no

premeditation. The incident had taken place on the spur of moment. If after some verbal exchanges between the applicant and the respondent No.2 the other accused had taken out a knife and allegedly assaulted Guddu with intention to kill her, in our considered view the offence punishable under Section 307 of the Indian Penal Code would get attracted only to the extent of other accused and not the respondent. Therefore, since the other accused is no more, it would again be the abuse of process to make the applicant face the ongoing prosecution even for Section 307 of the Indian Penal Code.

20. This leaves us with the other sections of the Indian Penal Code like 323, 504 and 506. The applicant is alleged to have caught hold Baby with hand and pushed her to ground and even has been attributed with hurling abuses even for which, in our considered view it would not be appropriate to leave the applicant to face the trial.

21. True it is that there are several other witnesses whose statements have been recorded under Section 161 but not under Section 164 of the Code of Criminal Procedure like Baby Chotumiya Tamboli, Pathan Aminabi Pathan Aslam, Yasmeen Siraj Ali, Pranita Amol Shinde and Sangita Ram Kale, who all have given uniform version on the lines of the allegations in the FIR. However, neither the respondent No.2 or any of the other witnesses in their statements recorded under Section 164 of the Code of Criminal Procedure have attributed specific abuses hurled by

the applicant or she and the co-accused having threatened any of them. The abuses were allegedly being hurled by the applicant by calling names to Shri Mundhe and were not addressed to the respondent No.2 or any of these witnesses. If this is the quality of material on the basis of which a final report has been submitted in the form of charge-sheet leading to registration of the crime, even the ingredients of offences punishable under Sections 323, 504 and 506 of the Indian Penal Code cannot be discussed.

22. Though the applicant is alleged to have caught hold hand of Baby Chotumiya Tamboli and pushed her to ground and she having sustained some injury to the hand, none of the witnesses whose statements have been recorded under Section 164 of the Code of Criminal Procedure have stated about any such incident. There is no injury certificate of Baby and consequently, in our considered view it would again be an abuse of the process of law to make the applicant face the prosecution.

23. Interestingly, statement of Baby could have been recorded under Section 164 of the Code of Criminal Procedure, when such statements have been recorded of her daughter Guddu and other witnesses. As is mentioned herein above, though the FIR and the statement of Baby recorded under Section 161 mention about the applicant having caught hold Baby with hand and pushed her to ground

and she having sustained some injury to the hand, neither respondent No.2 nor has Guddu in their statements recorded under Section 164 of the Code of Criminal Procedure have corroborated this fact. Rather Guddu has stated about someone having assaulted her mother on the right hand with a knife.

24. In view of such a state of affairs, in our considered view, it is a case squarely covered by the guidelines laid down in the matter of **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426.**

25. The Application is allowed. The crime bearing FIR No.142/2021 registered with City Police Station Parli Vaijinath, District Beed on 05.09.2021 as well as the subsequent charge-sheet No.49/2022 and the Special Case No.57/2022 for the offences punishable under Sections 307, 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are quashed and set aside.

26. Rule is made absolute accordingly.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE