



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 94 OF 2023

Dharmishtha w/o Vinodkumar Bafna,
Age: 46 years, Occu. : Household,
R/o: Vaibhav Nagar,
Nalawa Road, Nandurbar,
Tq. and Dist. Nandurbar.

... Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Upanagar Police Station,
Tq. Nandurbar, District Nandurbar.

2. Devidas Khandu Nerkar,
Age 49 years, Occu. Business,
R/o Plot No.1, Roopam Nagar,
Nandurbar.

... Respondents

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Mr. P. D. Bachate, Advocate h/f Mr. Rahul R. Raghuwanshi and Mr.
A. D. Khot, Advocates for the Appellant.

Mr. N. D. Batule, APP for Respondent No.1-State.

Mr. N. L. Choudhari, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.01.2024

Pronounced on : 16.01.2024

JUDGMENT :

1. In the instant appeal, following prayers are raised :

A) The Criminal Appeal may kindly be allowed.

B) The Hon'ble High Court may kindly quash and set
aside the impugned order dated 21/07/2022 passed

by the Ld. Sessions Judge, Nandurbar below Exhibit – 19 in Special (Atro.) Case No. 21/2019 and thereby allow the application filed by the applicant below Exhibit – 19 U/s. 227 of the Criminal Procedure Code to Discharge the applicant from Special (Atro.) Case No. 21/2019.

- C) Pending hearing and final disposal of this Criminal Appeal, the Ld. Sessions Judge, Nandurbar be directed not to frame charge against the applicant.
- D) Any other suitable and equitable relief may kindly be granted in favour of applicant in the interest of justice.

2. Learned counsel for the appellant would submit that crime was registered against the appellant at Upanagar Police Station by respondent no. 2 Devidas Khandu Nerkar alleging commission of offence punishable under Sections 3(1)(f)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [Atrocities Act] and Sections 406, 420, 506 r/w 34 of the Indian Penal Code [IPC]. He would point out that there were financial transactions between complainant and husband of appellant. That, complainant had executed sale deed in favour of present respondent with regard to a landed property on 08.08.2017. A copy of the same is also placed on record. However, after completion of said

transaction, appellant further executed sale deed in favour of one Narendra Jain (Burad) and this further resulted into filing of special civil suite praying for cancellation of sale deed dated 08.08.2017 with prayers for specific performance of contract. Thus, it is submitted that transaction between complainant and appellant was apparently civil in nature and dispute also was primarily civil in nature. However, getting annoyed by the institution of civil proceedings, false and frivolous complaint came to be lodged against appellant alleging commission of offence punishable under the provisions of Atrocities Act and provisions of the penal code like Sections 406, 420, 506 r/w 34 of IPC. That, this court has already extended relief of anticipatory bail. That, after investigation charge sheet came to be filed. As there was no material coming out in offence, present appellant invoked proceedings under Section 227 of the Code of Criminal Procedure [Cr.P.C.], but learned Sessions Judge Nandurbar passed order on 21.07.2022 rejecting the application and hence instant appeal.

3. It is further emphasized that complaint is motivated, more particularly in view of pending civil dispute. That, none of the ingredients of penal sections like Sections 406, 420 or even 506 of IPC were available. That, there is apparently misuse of process of law by leveling false allegations of commission of offence under the

Atrocities Act. That, all such crucial aspects ought to have been considered by learned Sessions Judge but it failed to do so and unnecessarily appellant is made to face criminal proceedings even without any crime was committed. Resultantly he seeks grant of above relief.

4. Learned counsel for the appellant seeks reliance on the decisions in *Dilip Kaur and Others v. Jagnar Singh and Another* [(2019) 14 SCC 696]; *Randheer Singh v. The State of U.P. and Others* [Criminal Appeal No. 932 of 2021 with connected matter decided by the Hon'ble Apex Court on 02.09.2021]; *Ajay Pattanaik @ Ajaya Kumar Pattanayak and Another v. State of Odisha and Another* [CRLMC No. 2636 of 2021 decided by the High Court of Orissa at Cuttack on 01.03.2023] and *Paramjeet Batra v. State of Uttarakhand and others* [(2013) 11 SCC 673]

5. In answer to above, learned APP pointed out that serious offence of atrocity has been committed. Complaint has been lodged promptly. Though attempt has been made to give it a colour of civil dispute, apparently investigation revealed commission of offence under Sections 406 and 420 of IPC. That, there is commission of offence of atrocity in public view. There is intentional insult on the

basis of caste. Therefore, learned Sessions Judge, Nandurbar has rightly rejected the proceedings filed under Section 227 of Cr.P.C.

6. Supporting the order of learned Sessions Judge and resisting the present proceedings, learned counsel for respondent no.2-complainant would submit that though there was civil transaction, there was cheating even when agreement was executed. Fraud has been played against the complainant. As the same was questioned, in presence of public, there was insult and humiliation with reference to caste. That, there is ample evidence upon investigation of crime and hence it is prayed that present appeal, having no merits, be dismissed.

7. After considering the above submissions advanced by each of the side, it seems that there is transaction of sale of immovable property. There is no dispute to that extent between the parties. However, what is of concern is that after agreement with complainant, clandestine transaction has been entered into by present appellant with third party i.e. even before conclusion of contract between complainant and appellant. No doubt civil proceedings are instituted and same are pending, but on *prima facie* going through the FIR dated 29.01.2019 filed by respondent no.2 Devidas, it transpires that on 20.01.2019 around 1.00 p.m. Vinodkumar Bafna

and his wife i.e. present appellant came to the office of respondent which was situated in Indira Gandhi complex, Nandurbar. After abusing for instituting proceedings, it is alleged that when complainant went to give understanding by coming out of his office, at that time there was said to be utterance thereby humiliating on caste basis. Utterance is attributed to both, Vinodkumar and present appellant i.e. his wife. FIR further shows that again on 29.01.2019 around 12.00 noon, Vinodkumar again entered the office of respondent-complainant and hurled abuses on caste basis and therefore, on same day respondent-complainant seems to have approached police who appears to have entertained the complaint and registered crime for above sections.

8. *Prima facie* going through the chargesheet, the persons named to be present along with complainant during alleged utterance of caste abuse are examined as witnesses. Therefore there is material for criminal proceedings. *Prima facie* offence is made out though there is history of civil proceedings.

9. At this stage it is merely to be seen whether case for discharge has at all been made out. In the considered opinion of this Court, on going through the entire charge sheet, *prima facie* there seems to be

commission of offence under both, Atrocities Act as well as penal sections. It cannot be hence said that there is no case to be proceeded against appellant.

10. I have gone through the citations relied by learned counsel for the appellant. In the case of ***Dilip Kaur*** (supra) crime was registered only for commission of offence under Sections 420, 425, 405 and 406 of IPC and in that case when Hon'ble Apex Court was convinced about non-availability of necessary ingredients, relief was granted by exercising power under Section 482 of Cr.P.C. Here it is not so. Here, *prima facie* material is available suggesting clandestine transaction by appellant even before conclusion of contract entered into with respondent-complainant and moreover, there are abuses with reference to caste in public view.

In the second ruling of ***Randheer Singh*** (supra) also there was exercise of power under Section 482 of Cr.P.C. by the Hon'ble Apex Court on noticing that no criminal offence was made out on reading the FIR.

Likewise in the case of ***Ajay Pattanaik*** (supra) the facts were distinct and the High Court of Orissa at Cuttack on finding that there

was no intentional insult to humiliate victim, granted the relief as prayed.

In the last case relied i.e. ***Paramjeet Batra*** (supra) also, there were accusations of commission of offence under Sections 406, 420, 467, 468, 471, 447 and 448 r/w 34 of IPC and there was no allegation of serious offence under the Atrocities Act and hence the relief was granted. Here, at the cost of repetition, there is *prima facie* material in the charge sheet.

11. Hence, necessary ingredients for attracting said charges are *prima facie* available and hence there is no merit in the appeal. Resultantly, I proceed to pass the following order:

ORDER

The criminal appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]