



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3546 OF 2019**

Satish S/o Shivling Thenge,
Age: 45 yrs. Occu. Agri. & Police Patil,
R/o. Waregaon, Tq. Phulambri,
Dist. Aurangabad.

..Applicant
(Org. Accused)

Versus

1. The State of Maharashtra
Through Police Station Officer
Phulambri Police Station
Tq. Phulambri, Dist. Aurangabad.

2. Vinod S/o Uttam Kasare,
Age: 25 yrs. Occu. Service,
R/o. Railgaon, Tq. Phulambri,
Dist. Aurangabad.

..Respondent
(Resp. No.2 Org. Complainant)

...

Mr. V. P. Latange, Advocate for the Applicant.
Mr. V. K. Kotecha, APP for Respondent No.1.
Mr. R. R. Dhaykar and Mr. P. N. Sonpethkar (absent), Advocate for
Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 03rd SEPTEMBER, 2024.**

ORDER (Per S. G. Chapalgaonkar, J):-

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.205/2019 dated 21.09.2019 registered with Phulambri Police Station, Dist. Aurangabad for offences punishable under Sections 143, 147, 149, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act, 1989') as well as charge-sheet / final report no.22/2020 dated 18.02.2020 and the consequential criminal

proceeding in Special Case No.136/2020 pending before District Judge-2 / Additional Sessions Judge, Aurangabad.

2. The respondent no.2 (informant) lodged report dated 21.09.2019 alleging that on 30.08.2019 his friends Santosh @ Samadhan Sudhakar Jadhav and Akash Prabhakar Bhalerao had been to Kingaon. The Santosh gave him mobile call informing that accused Shubham Namekar, Chetan Sonawane, Kayyab and other 10 to 12 persons have raised assault on them and abused them on caste. In order to save themselves they went to a teacher, however, he did not allow them to enter his gate. They gave call to Phulambri Police Station so also to informant. In response, informant rushed to spot and narrated incident to Police Patil-Satish Thenge (applicant), however, he asked informant's caste and used abusive words referring to caste against informant owing to previous dispute. Police Patil took photographs on mobile phone and extended threats to informant of dire consequences. When the informant and other victims were riding motorcycles towards Police Station, the Police Patil intercepted them and hit stone on their motorcycle. The informant further narrates incidence dated 01.09.2019, which may not be relevant for the purpose of present application.

3. On the basis of aforesaid information, Crime No.205/2019 came to be registered with Phulambri Police Station, Dist. Aurangabad against in all six accused persons including applicant. The investigation progressed and charge-sheet no.22/2020 dated 18.02.2020 has been filed in Special Court at Aurangabad against accused persons.

4. Mr. Latange, learned Advocate appearing for the applicant submits that applicant has been falsely implicated in aforesaid

crime. The applicant has been appointed as Police Patil of village Waregaon on 22.06.2016. On receipt of telephonic message from Police Constable Pravin Gaikwad, applicant visited village Kingaon to gather information about quarrel and consequential dispute going on amongst villagers. Since the post of Police Patil at village Kingaon is vacant, applicant was assigned aforesaid duty. The applicant on his visit to the spot took out photographs of on going quarrel and forwarded the same to Police Constable Pravin Gaikwad and reported the nuisance created in village. Mr. Latange would further submit that although incident is dated 30.08.2019, the FIR has been lodged on 21.09.2019. The inordinate delay in lodging FIR is not explained anywhere. He would further submit that since applicant has been appointed as Police Patil, owing to previous rivalry with informant false allegations are made against applicant with intention to unseat him from the post of Police Patil. He would further submit that no offence can be made out against the applicant even accepting the contents of FIR and charge-sheet as true and correct.

5. Per contra, Mr. Kotecha, learned APP strongly opposes the prayer in the application contending that the contents of FIR shows commission of offence. On completion of investigation, charge-sheet has been filed, which depicts role of applicant in incident. He would, therefore, urge that matter needs trial and does not require cognizance under inherent powers of this Court under Section 482 of the Criminal Procedure Code.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely considered the contents of FIR and charge-sheet. Perusal of allegations in the FIR shows that applicant is Police Patil. The informant reported incident to him. It is alleged that applicant

asked about caste of informant and then abused him on caste. It is further alleged that applicant had intercepted the motorcycle of informant and pelted stones. Except aforesaid two lines of allegations in the FIR, no specifications are given as to the abuses on caste. There is no reference of caste of the informant in narration of incident. From the contents of FIR it is discernible that applicant was not aware about caste of informant. In such contingency, it is difficult that applicant would raise abuses referring to caste of informant. Further, allegation is made that applicant had intercepted motorcycle and pelted stones on motorcycle. Pertinently, in entire charge-sheet there is no material to show that motorcycle was damaged owing to pelting of stones. Perusal of statement of witnesses in the charge-sheet shows that none of the witness supports version in the FIR as regards to the allegation of abuses on caste. Although witness Akash Bhalerao and Santosh @ Samadhan Sudhakar Jadhav states that their motorcycle was intercepted by Police Patil (applicant), they say that attempt was made to hit the stone. However, there are no allegations that actual stone was hit or pelted on motorcycle.

7. It is pertinent to note here that applicant is Police Patil. The statement of witness Pravin Gaikwad-Police Constable, Phulambri Police Station is recorded during the course of investigation. He states that information regarding commotion in the village Kingaon was received. Consequently, he had instructed the applicant to visit spot and report about matter to the Police Station. Eventually, applicant visited the spot and forwarded his report alongwith photographs as regards situation on spot of incident. If aforesaid statement is considered alongwith contents of FIR and statement of other witnesses, it is clear that applicant had visited the spot in pursuance to assignment of duty and on

reaching spot, he snapped photographs depicting scenario on the spot.

8. Apparently, there are allegations in the FIR that applicant has abused on caste. However, in absence of particulars of such abuses or reference as to the caste and intention of accused to humiliate or undermine victim belonging to Scheduled Caste and Scheduled Tribe, no case can be made out to make out any offence. The necessary ingredients of offences charged against applicant are absent. So far as offence punishable under Sections 143, 147, 149, 323, 504 and 506 are concerned, there are no specific allegations against applicant to attract ingredients of aforesaid sections. It is pertinent to note here that incident dated 30.08.2019 has been reported on 21.09.2019. The FIR sans explanation for inordinate delay. At this stage, reference can be given to the observation of Supreme Court in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹, which reads as under:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do

¹ AIR 1992 SC 604.

not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Applying aforesaid guidelines in the facts of present case, it is evident that no case can be made out for the offences charged against the applicant on the basis of contents of FIR as well as charge-sheet. The allegations against the applicant regarding abuses on caste are omnibus, vague and bereft to constitute offence under Sections 3(1)(r), 3(1)(s) of the Atrocities Act, 1989 or any other offences under Indian Penal Code. There is every room to believe that applicant has been falsely implicated in aforesaid

crime only because he forwarded true and correct information alongwith photographs to the Police Station against acts of first informant and his companions. In that view of the matter, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed.
- b. FIR in Crime No.205/2019 dated 21.09.2019 registered with Phulambri Police Station, Dist. Aurangabad for offences punishable under Sections 143, 147, 149, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as charge-sheet/final report no.22/2020 dated 18.02.2020 and the consequential criminal proceeding in Special Case No.136/2020 pending before District Judge-2 / Additional Sessions Judge, Aurangabad is hereby quashed and set aside.
- c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE