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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4044 OF 2019

1. Ranjit Balbhim Todkari,
Age 29 years, Occ. Agri.,
R/o. Apsinga, Tq. Tuljapur
Dist. Osmanabad.
2. Parmeshwar Sitaram Rathod,
Age 40 years, Occ. Agri,
R/o. As above.
3. Aappa @ Digambar S/o Bhaskar Joshi,
Age 29 years, Occ. Agri.
R/o. Apsinga, Tq. Tuljapur,
Dist. Osmanabad.

.. Applicants

VERSUS

1. The State of Maharashtra
(Through the Police Station
Tuljapur, Dist. Osmanabad)
2. Vandana Devidas Maske,
Age 35 years, Occ. Agri.
R/o. Apsinga, Tq. Tuljapur,
Dist. Osmanabad.

.. Respondents.

Mr. G.J. Kore, Advocate for applicants,
Mr. A.M. Phule, APP for respondent No.1
Mr. S.S. Nande, Advocate for respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 2nd SEPTEMBER, 2024.

JUDGMENT [Per S.G. Chapalgaonkar, J] :-

1. The applicants/accused in Crime No. 335 of 2019 dated 25.9.2019 registered with police station, Tuljapur, for the offences punishable under Sections 354, 323, 447, 504 r/w. 34 of IPC and Section 3(1)(w)(I)(II) of SC and ST (Prevention of Atrocities) Act, 2019, have approached this court under Section 482 of the Code of Criminal Procedure, for quashing of FIR and consequential proceeding in Special Case No. 109 of 2020 pending before the learned Sessions Judge, Osmanabad.

2. Respondent No.2 herein informed police station that on 26.9.2019 while she was working in field Survey No. 101, Kamtha, accused Parmeshwar Rathod, Ranjit Todkari and Appa Bhaskar Joshi, arrived on the spot. They reprimanded her saying “ए मांगटीने माझ्या शेतातुन बाहेर जा”. Thereafter, accused Parmeshwar pressed her chest with an ill intention and outraged her modesty. The other accused persons instigated him. On arrival of her father and sister, accused persons fled away. The aforesaid information was reduced into writing and transformed into FIR for aforesaid offences.

3. After investigation, charge sheet has been filed against accused persons for the offences punishable under Sections 354, 323, 447, 504 r/w 34 of IPC and Section 3(1)(w)(I)(II) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”).

4. Mr. G.J. Kore, learned advocate appearing for the applicants would submit that the complaint is lodged with malafide intention.

Although the incident alleged is dated 13.9.2019, FIR has been lodged on 25.9.2019, after inordinate delay of 12 days. He would submit that applicant Nos. 1 and 2 have purchased the suit land from father/brother of informant under registered sale deeds. The informant is the consenting party to the said sale deed. Applicant Nos. 1 and 2 are put into possession. The informant raised the dispute of boundaries. Therefore, applicants had applied to the TILR, Tuljapur for measurement of the suit land and fixing the boundaries. However, on the date fixed for measurement, informant and her family members obstructed the TILR. Consequently, Panchanama to that effect was drawn. The applicants were threatened by family members of the informant that they would lodge false case under the Atrocities Act. The applicants had, therefore, reported the incident to the police vide application dated 23.6.2018. Similar threats were given to the applicants, hence, again they made application dated 27.2.2019. On 13.9.2019, the applicants have submitted one more application regarding the threats received from the family of the informant regarding filing of false cases for offences under Atrocities Act.

4. He would submit that previously, the informant had adopted similar *modes operandi* and filed false cases against one Bakhtawar Sayyad, who had purchased land from the family of the informant. The applicants have already instituted R.C.S. No. 11 of 2019 and 20 of 2019 for fixation and demarcation of boundaries and perpetual injunction against the informant and her family members. He would, therefore, urge that the informant is taking disadvantage of the caste and lodged absolutely false cases against the applicants with an intention to pressurize them and get advance in the civil dispute.

5. Per contra, the learned advocate for the informant – respondent No.2 submits that the averments in the FIR are sufficient to make out the offences as alleged. Immediately after the incident dated 13.9.2019, the informant had approached the police station. However, cognizance of her complaint was not taken. He invites attention of this court to the application tendered by respondent no.2, which appears to have been received on 17.9.2019 by the concerned police station, regarding incident dated 13.9.2019 containing allegations against the applicants. He would, therefore, submit that the delay in lodging the FIR is inconsequential.

6. Mr. A.M. Phule, learned A.P.P. points out that after due investigation, charge sheet has been filed, which contains the statements of witnesses in support of averments made in the FIR. He would therefore submit that in such a case, trial needs to proceed. Falsity of allegations cannot be a ground to quash the proceeding under inherent powers of this Court.

7. We have considered the submissions advanced by learned advocates for the respective parties. Pertinently, the report of incident dated 13.9.2019 appears to have been culminated into FIR on 26.9.2019. It is true that prior to registration of the offence, written information in respect of the incident was tendered by the informant to the police station and same has been acknowledged on 17.9.2019. It appears that on 16.9.2019 the applicant Nos. 1 and 2 had also lodged the report with Superintendent of Police station at Tuljapur informing that informant and her family members were disturbing their peaceful possession over the suit land and also threatened them to lodge complaints against them under the Atrocities Act. It appears that even prior to such incident, the

applicants had received threats from respondent No.2 and her family members, which were duly reported by them to the police station. Pertinently, a civil dispute is pending between the parties over the agricultural land. Applicant No.1 has instituted R.C.S. No. 11 of 2019 in respect of the suit property against the family members of the informant. Same is pending.

8. In this background, it would be necessary to examine, as to whether the contents of the FIR or charge sheet are sufficient to make out any case against the applicants for prosecution for the offences alleged. The scrutiny of FIR would depict that allegations about abuses on caste are general and vague in nature. No specifications have been given as to who has actually uttered the abuses over caste. From the contents of FIR it cannot be perceived that the abuses were uttered with ill-intention to humiliate or insult the first informant on her caste within a public view. The *mens rea* to hurl the castiest abuses within a public view to humiliate or insult cannot be gathered so as to make out any offence under Section 3(1)(r)(s) of the Atrocities Act.

9. So far as the offence under Section 354 of the IPC is concerned, it can be observed that in application dated 14.9.2019 tendered by the first informant with the police station (received on 17.9.2019) a totally different version of the incident has been given. Apparently, allegation to make out the offence of outraging modesty is concerned, informant has employed an improved version in the FIR.

10. Although this court is not expected to enter into deeper inquiry as regards to the contents of FIR, in the background that there is a chequered history of litigation between the parties, it is inevitable for this court to enter into at least superficial inquiry as regards to the

contents of FIR.

11. At this stage, reference can be made to the guidelines laid down by the Honourable Supreme Court of India in the matter of ***“State of Haryana vs. Ch. Bhajanlal and others”*** reported in AIR 1992 S.C. 604,

Particularly, in para. 108, which reads thus :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of 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 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.*

12. Clause No.7 of the aforesaid guidelines refers that where criminal proceeding is manifestly attended with malafide 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, the power under Section 226 of the Constitution of India and inherent powers under Section 482 of the Code can be invoked.

13. In the present case, on admitted facts, following circumstances are surfacing. Firstly, there is a chequered history of civil

dispute between the parties. Civil suit is filed by the applicants seeking decree of perpetual injunction in respect of the suit property purchased by them under registered sale deed, wherein, the informant is one of the consenting party. The applicants have lodged several reports to police much prior to the date of registration of present FIR indicating that they have been consistently threatened of lodging complaints by informant's family under Atrocities Act or the Penal Code. Secondly, similar *modus operandi* has been adopted by first informant in respect of the other purchasers of land and similar type of complaints are filed against them. Thirdly, the FIR has been belatedly registered. In present case, prior to registration of offence, the applicants have made applications to the police authorities stipulating threats received by them regarding lodging the FIR under the Atrocities Act. Narration of the incident as reported by the first informant in her application dated 14.9.2019 (received on 17.9.2019) is altogether different than the contents of FIR on material particulars constituting the offence.

14. The incident is alleged to have taken place in the private land, which is apparently purchased by the applicants from family members of the informant under registered sale deed and therefore, their names have been mutated in the revenue records. Except the family members of the informant, no other witness is cited in the charge sheet. Apparently, offence has not taken place in public view. The allegations regarding abuses on castes are general and vague in nature, without material particulars. The *mens rea* to hurl casteist abuses in public view to humiliate or insult the first informant cannot be gathered, to direct the offence punishable under Section 3(1)(r)(s). Although allegations against the applicant No.2 regarding outraging modesty to constitute

offence under Section 3(1)(w)(i)(ii) of the Atrocities Act, 1989 are employed in FIR, such allegations are inconsistent with narration of incident by first informant in application dated 14.9.2019. The first informant has adopted similar *modus operandi* against other purchasers of land from her family and appears to have constantly misusing the provision of Atrocities Act as instrument to wreak vengeance.

15. Taking into consideration the aforesaid circumstances, we are convinced that this is a fit case, wherein we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure for preventing abuse of process of law. Hence, we pass the following order :-

ORDER

- (1) The application is allowed.
- (2) The FIR vide crime No. 335 of 2019 dated 25.9.2019 registered with Police Station Tuljapur, Taluka Tuljapur, Dist. Osmanabad under Sections 354, 323, 447, 504 r/w. 34 of IPC and under Section 3(1)(w)(I) and (II) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) is hereby quashed and set aside.
- (3) The Charge sheet No. 128 of 2020 dated 20.5.2020, same is numbered as Special Case No. 109 of 2020 pending before Special Court/ District and Sessions Court, Osmannabad, is hereby quashed and set aside.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-