



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.412/2021

VINODKUMAR VRUNDAVANDAS
KANNABAR

..APPELLANT

VS.

SUDHAKAR S. SURADKAR & ANR.

..RESPONDENTS

Adv. M. G. Shukla for the appellant.

Complainant-respondent no.1 in person.

Mr. Anil S. Kamble, Spl. P.P. for the respondent no.2 - State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 24, 2024.

ORAL ORDER :

1. Heard learned counsel for the appellant, respondent no.1 party in person and learned Special Public Prosecutor appearing for the respondent no.2.

2. The challenge in this appeal is to the order dated 10/2/2021 passed by the Special Court in SC/ST Case No. 1080/2020 issuing process for offences punishable under Section 3(1)(viii) (ix), Section 3(1) (p) and (q) and Section 3 (2) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short) in connection with the complaint made by the

respondent no.1.

3. The allegation of the complainant is that the appellant filed a false and frivolous complaint against the respondent no.1-complainant who belongs to the Scheduled Caste category for the offences under Sections 327, 379, 387 of the Indian Penal Code (hereafter 'IPC' for short) punishable with imprisonment for seven years and also for the offence under Section 500 of the IPC before the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai. The said complaint was filed by the appellant against the respondent no.1 on 5/2/2007 under the aforesaid sections. The Metropolitan Magistrate Court proceeded with the complaint lodged against the respondent no.1. The respondent had to face trial for the offence punishable under Section 500 of the IPC before the Metropolitan Magistrate. At the stage of recording of evidence, the Magistrate dismissed the complaint as neither the complainant nor the accused was present on 11/4/2014.

4. Based on these facts, the First Information Report (FIR) was lodged against the appellant by the respondent no.1. It is alleged by the respondent no.1 that the complaint filed by

the appellant was false, frivolous and vexatious and has caused great annoyance to the respondent no.1 who is a member of the Scheduled Caste which constitutes offence under the Atrocities Act. Upon investigation, a "C" Summary report dated 14/2/2015 was filed by the investigating officer. The 18th Court, Girgaon, rejected the said summary report by an order dated 1/9/2015. The appellant received the notice dated 16/11/2015 from the respondent no.2 directing him to join re-investigation of the FIR No.46/2014. The appellant had filed a Writ Petition bearing No.4980/2015 for quashing the said FIR. The investigating officer submitted before this Court that he intended to file a "C" Summary report even after further investigation and hence writ petition was disposed of by an order dated 15/1/2019.

5. Accordingly, Miscellaneous Application No.218/2019 was filed before the Special Court by the respondent no.2 where "C" Summary report was filed. The Special Court issued notice to the original complainant i.e. the respondent no.1 herein for say on the "C" Summary report. By an order dated 2/3/2020, the Special Court rejected the "C" Summary report filed by the investigating officer and directed that

cognizance of the offences under Section 3(1)(viii) and (ix) along with Section 3(2)(ii) of the Atrocities Act can be taken. It would be pertinent to re-produce the relevant observations of the Special Court in the order dated 2/3/2020 as the same may have some bearing on the issue.

“4. The allegations in the case are that, Mr. Vinod Kanabar complained against the present informant and another accused alleging offences punishable under Section 327, 379, 387 and 500 of IPC. The Learned Magistrate issued process only for the offence punishable under Section 500 of IPC. Dismissal of complaint for the offences punishable under Section 327, 379 387 of IPC was challenged by Mr. Vinod Kanabar in Revision No. 133/2008 which came to be rejected. During the evidence Mr. Kanabar tried to lead evidence for the offences punishable under Sections 327, 379 and 387. However, the Court did not allow him to do so. He again preferred Revision 862/2012 which came to be dismissed. After recording part evidence Mr. Kanabar moved an application that due to advanced age of the informant he does not intend to proceed against him. However, the complaint was dismissed on 11.04.2014 due to absence of Mr. Kanabar. Hence, the informant lodged report with Dr. D. B. Marg Police Station which was registered as Crime No. 46/2014. After investigation “C” Summary was filed. However, Learned Metropolitan Magistrate directed further investigation. One of the Investigating Officers prepared the charge- sheet. Meanwhile Mr. Kanabar filed Writ Petition No. 4980/2015. During its pendency the present Investigating Officer made a statement before the Hon'ble High Court that “C” Summary would be filed. Consequently, the “C” Summary is filed which is challenged by the informant.

5. In the course of submissions the Investigating Officer submitted that he will investigate the matter further, if this Court directs the same. However, Ld. SPP and the informant submitted that this will be second time the Court would be directing the Investigating Officer to carry on further investigation. There is sufficient material on record to take cognizance of offences & proceed against the accused and therefore without directing further investigation, this Court shall take cognizance of the offences.

6. Coming to the grounds on which “C” Summary is filed, what appears is that the bone of contention is that there was neither any knowledge nor intention on the part of the proposed

accused to harass the informant he being a member of Scheduled Caste. The offences alleged in the F.I.R. are the offences punishable under Section 3 (1) (p) (q) and 3 (2) (ii) of the Act of 1989. Out of these Sections clause (p) and (q) of Sub Section 1 of Section 3 of the Act of 1989 do not require either knowledge or intention on the part of accused to commit such crime.

7. Therefore, the ground put forward by the Investigating Officer is not acceptable. So far as the offence punishable under Section 3 (1) (p) and (q) are concerned which correspondent to old provisions of Section 3 (1) (viii) and (ix).

8. It is also to be noted that one of the Investigating Officers had prepared a charge-sheet. However, thereafter a "C" Summary is being filed. Since the knowledge or intention on the part of accused to commit crime for offence punishable under Sections 3 (1) (viii) and (ix) is not require the "C" Summary report cannot be accepted.

9. Perusal of complaint and the documents filed along with it reveal that there is sufficient material to take cognizance of the offence punishable under Sections 3 (1) (viii) and (ix) i.e. Section 3 (1) (p) and (q) of the Act of 1989 as well as Section 3 (2) (ii) of the Act of 1989. Therefore, instead of accepting the report and instead of directing further investigation it will be appropriate to take cognizance of offences alleged. At the same time considering earlier rounds of litigation & other circumstances, an enquiry under Section 202 of CrPC is warranted. Hence, following order:

ORDER

1. Misc. Application No. 218/2019 is rejected.
2. The cognizance of offences punishable under Section 3 (1) (viii) & (ix) and Section 3 (2) (ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is taken.
3. Complainant to remain present for recording his statement under Section 200 of CrPC.
4. Complaint dated 01.08.2014 is treated as complaint.
5. Office to register a complaint case on the strength of complaint dated 01.08.2014."

6. It is, thus, seen that the Special Judge took cognizance of the offences and the respondent no.1 – complainant was

directed to remain present for recording his statement under Section 200 of the Code of Criminal Procedure. The complaint dated 1/8/2014 is treated as complaint. The Special Judge directed the office to register a complaint case on the strength of complaint dated 1/8/2014.

7. The Special Judge recorded the verification of the complainant on 2/2/2021 which reads thus :

“2. On 05/02/2007, accused had filed private complaint against me and one Jigna Vohra u/s 327, 379,387 and 500 of IPC. Said complaint was false and malititious hence it is dismissed. In said complaint case, learned Metropolitan Magistrate has issued process against me u/s 500 of IPC only. Accused had filed revision against said order of issue process. Said revision was dismissed. Hence, the order of Magistrate has reached finality and order passed in revision was not challenged by accused.

3. Thereafter, learned Metropolitan Magistrate court issued summons against me. I appeared in the matter. Evidence was recorded in said case and accused tried to give against me evidence for the offence u/s 327,379 and 387 of IPC. Complaint is dismissed by Learned Metropolitan Magistrate by Judgment, again accused filed revision against Judgment of learned MM. Said revision also dismissed. While the trial was going on before learned MM, accused filed application before learned Metropolitan Magistrate that accused was not intending to proceed further in said matter. I had filed my say to said application of accused and informed that I was intending to prosecute accused for instituting false complaint before learned Metropolitan Magistrate. I had cross examined accused in said case. Thereafter, matter was fixed for cross examination of another accused, as nobody was present on behalf of complainant in the matter, hence learned Metropolitan Magistrate by passing order u/s 256 of CrPC dismissed complaint and acquitted me and another accused from that case. Said order passed by learned Metropolitan Magistrate is not challenged by accused. Hence, due to filing of said complaint of accused I have suffered physically, mentally and economically. Therefore I have sent my written complaint to police on 01/08/2014 thereafter police registered FIR and filed 'C' summary. Thereafter, I had filed protest petition to 'C' summary,

learned Metropolitan Magistrate directed police for further investigation. Thereafter, police conducted further investigation, chargesheet was prepared, meantime accused was informed by police. Hence accused immediately approached to Honourable High Court and obtained stay to filing of the chargesheet in the court. Meanwhile, Investigation Officer got retired and new Investigation Officer without conducting any investigation informed Honourable High Court that he was going to file 'C' summary report and accordingly filed 'C' summary report before this Court and this court has passed order dated 02/03/2020 and on 02/03/2020 this court has passed order for taking cognizance against accused of the offence punishable u/s 3(1) (viii) (ix) and section 3 (2) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and court has adjourned the matter for recording verification. Contents of my complaint sent to police on 01/08/2014 are correct. Hence, this statement is given by me for verification of my complaint as ordered by this Court on 02/03/2020."

8. Thereafter, by the impugned order learned Special Judge issued process in the matter. The impugned order dated 10/2/2021 issuing process reads thus:-

ORDER FOR ISSUE PROCESS

Vide order dated 02/03/2020, my learned predecessor has observed that Investigation Officer of this case had submitted before my learned predecessor that he will investigate matter further and my learned predecessor has also directed for the same, however informant submitted that it will be second round of direction to Investigation Officer to carry out further investigation. My learned predecessor has also observed that "on perusal of complaint and the documents filed along with it revealed that there is sufficient material to take cognizance of the offence punishable u/s. 3(1)(viii) and (ix) i.e. section 3(1)(p) and (q) of the Act of 1989 as well as section 3(2) (ii) of the Act of 1989. Therefore, instead of accepting the report and instead of directing further investigation, it will be appropriate to take cognizance of the aforesaid order".

On 02/02/2021, this court has recorded verification of complainant as per the order dated 02/03/2020 passed by my learned predecessor. On perusal of complaint and documents annexed to the complaint, it becomes clear that complainant has made out prima-facie case to proceed against accused hence issue process against accused Vinodkumar Vrundavandas Kannabar residing at 128/130,

Walkeshwar Road, vaidya mahal, Mumbai-400006 for the offence punishable u/s 3(1)(viii)(ix) i.e. section 3(1)(p) and (q) and section 3(2)(ii) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. Learned counsel for the appellant submitted that there was no justification for the Special Judge to have issued process against the appellant having regard to the fact that the allegations in the complaint do not satisfy the ingredients constituting the offences alleged. It is submitted that the complaint which is filed, is vindictive in nature and only with a view to harass the appellant. Learned counsel submitted that the allegations in the complaint are false, frivolous and based on misconception of facts. It is submitted that the allegations in the FIR/complaint even if taken to be true do not fulfill the ingredients of the offences levelled against the appellant. Learned counsel submitted that even prior to filing of the present complaint, the complainant had filed the complaint against the appellant on the same set of facts which was set aside by an order dated 14/3/2012. It is submitted that a "C" Summary was filed on 7/2/2015 in respect of the FIR No.305/2013 and therefore, on the same set of facts, the present complaint on which the impugned order was passed and process has

been issued ought not to have been entertained. It is, thus, submitted that the appellant had already faced a similar trial before the Sessions Court for the offence punishable under Sections 3(1)(viii) and 3(1)(ix) of the Atrocities Act on a complaint filed by the respondent no.1. The appellant was acquitted from all the charges by an order dated 5/5/2015 passed by the Special Court. Another FIR was lodged being No.305/2013 on same set of facts and "C" Summary was filed in the said complaint too which clearly indicates that the respondent no.1-complainant is filing complaint after complaint to somehow or the other implicate the appellant.

10. It is further submitted that the impugned order is not a reasoned order. Reliance is placed on the decision of the Supreme Court in **Lalankumar Singh & Ors. vs. State of Maharashtra**¹ to support the case of the appellant that there are absolutely no reasons in the impugned order while coming to the conclusion that there is a prima facie case made out against the accused and therefore it is submitted that the impugned order is liable to be set aside.

11. The respondent no.1 appearing in person and learned

¹ 2022 LiveLaw (SC) 833.

APP supported the impugned order. It is submitted that the reading of the complaint which is duly verified reveals that all the ingredients constituting the offence alleged are made out and therefore, the Special Court was justified in coming to the conclusion that a prima facie case is made out.

12. I have carefully perused the complaint, verification statement and the materials on record. It is pertinent to note that by an order dated 2/3/2020, the Special Judge had, for the reasons mentioned therein, which order is reproduced hereinabove, found that the "C" Summary cannot be accepted. The Special Judge further observed that perusal of complaint and the documents filed along with it reveal that there is sufficient material to take cognizance of the case and in such circumstances was of the opinion that an enquiry under Section 202 of the Code of Criminal Procedure is warranted. Thus, the reasons mentioned in the order, the cognizance of the offence was taken. Perusal of the verification of the complainant would reveal that the complaint which was filed by the appellant against the respondent no.1 under Sections 327, 379 and 387 of the IPC was dismissed by the Metropolitan Magistrate

by passing an order under Section 256 of the Code of Criminal Procedure whereby the present respondent no.1-complainant and another accused came to be acquitted. The said order has not been challenged by the appellant. It is averred by the respondent no.1 that due to filing of the said complaint, the respondent no.1 suffered physically, mentally and economically. The respondent no.1 orally submitted that the time of filing of the complaint by the appellant, he had already retired as Inspector General of Police in January 2002. The respondent no.1 belongs to the Scheduled Caste.

13. Suffice it to mention that after the complaint made by the appellant came to be dismissed, the appellant filed written complaint to police on 1/8/2014 which pursuant to the registration of the FIR resulted in filing of the “C” Summary by the investigating officer. At this stage, it is important to bear in mind the observations made in the decision of this Court in Criminal Revision Application No.469/2009 dated 26/4/2010. The observations of this Court which are relevant read thus:-

“5. While considering similar matters, viz., Criminal Application No.1899 of 2008 (Mr.Kamlakar Ratnakar Shenoy V. State of

Maharashtra & Anr.) along with connected matter, I have held that whenever the Legislature intended that so as to constitute an offence, an act should be done with knowledge, intention or on the ground that the person against whom the offence is made belongs to Scheduled Caste or Scheduled Tribe, the Legislature has specifically provided for the same. It has been emphatically held in the aforesaid case that insofar as the offence punishable under section 3(1)(ix) is concerned, only three ingredients are provided by the statute:

- (i) the accused who does not belong to Scheduled Caste or Scheduled Tribe gives any false or frivolous information to any public servant;
- (ii) by giving such false or frivolous information, causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe; and
- iii) that the person to whom an injury or annoyance is caused should be a person who is a member of a Scheduled Caste or Scheduled Tribe.

It has been specifically held that it is not necessary that such an offence has to be committed on the ground that the person against whom the offence is committed belongs to Scheduled Caste or with knowledge that such person belongs to Scheduled Caste or Scheduled Tribe or with intention that he belongs to Scheduled Caste or Scheduled Tribe.

6. Admittedly, in the present case, the applicant does not belong to Scheduled Caste or Scheduled Tribe. The complainant belongs to Scheduled Caste or Scheduled Tribe. An information was given by the present applicant by filing a criminal complaint due to which the criminal Court was set in motion and which complaint has been found by this Court to be a frivolous one. As such, I find that all ingredients to constitute an offence have been made out.

7. Insofar as the judgement of the Andhra Pradesh High Court is concerned, in the said case, the Andhra Pradesh High Court was concerned with the offences under section 3(2)(v) of the said Act. It can be seen that the said provision specifically provides that it has to be committed against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to a Scheduled Caste or a Scheduled Tribe. The same is the view taken by me in the aforesaid case where the Legislature intended that the intention or ground has to be an ingredient of the

offence and the Legislature has specifically provided for the same.

8. In that view of the matter, the reliance placed on the said judgment of the Andhra Pradesh High Court, in my view, is of no assistance to the case of the present applicant. The Revision Application is, therefore, found to be without any merit and as such, is dismissed.”

14. It is, thus, seen that in the present case the respondent no.1 belongs to the Scheduled Caste. The appellant does not belong to the Scheduled Caste had filed a complaint against the respondent no.1 which was dismissed. It is alleged that such a complaint filed was false, frivolous, vexatious and has caused annoyance to the respondent no.1 who belongs to the Scheduled Caste.

15. According to learned counsel for the appellant, the order dated 2/3/2020 taking cognizance cannot be the basis for issuing process. It is submitted that the verification statement of the complainant is relevant.

16. Reading of the impugned order would demonstrate that the trial Court on perusal of the complaint and the documents annexed to the complaint was of the opinion that the complainant had made out a prima facie case to proceed against the accused. Though the reference is made by the trial Court to the order dated 2/3/2020, the same is

not the basis for issuance of the process but for noticing the fact that the Special Judge recorded verification of the complainant as per the order dated 2/3/2020 passed by his Predecessor. I do not find any substance in the contention of learned counsel for the appellant that the order dated 2/3/2020 taking cognizance was the basis for issuance of process.

17. A useful reference needs to be made to the observations of this Court in **Lalankumar Singh** (supra). In paragraphs 28, 29 and 30 has observed thus :-

"28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of **Sunil Bharti Mittal vs. Central Bureau of Investigation**, which reads thus

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a *prima facie* case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of

process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

29. A similar view has been taken by this Court in the case of **Ashoke Mal Bafna (supra)**.

30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."

18. Having perused the decision of this Court in Criminal Revision Application No.469/2009 aforementioned and also having perused the complaint and the verification of the complainant, I am of the opinion that the order passed by the Special Court does not call for any interference. The order cannot be said to be an unreasoned order. Their Lordships in **Lalankumar Singh** (supra) held that the order issuing process need not contain detailed reasons. The

Special Court, in my opinion, has applied its mind and the order does indicate that the Special Court was satisfied that there was sufficient ground for proceeding in the case.

19. On the basis of the allegations in the complaint and verification statement, in my opinion, the Magistrate did not commit any error in forming an opinion that there is sufficient basis for proceeding against the appellant. The objections raised by the appellant can always be raised and dealt with by way of an appropriate application at the appropriate stage. I, therefore, do not find any merit in this appeal.

20. The appeal is dismissed.

(M. S. KARNIK, J.)