

(2011) 12 BOM CK 0072

In the Bombay High Court

Case No : Criminal Writ Petition No. 572 of 2011

Anil Agrawal

APPELLANT

Vs

The State of Maharashtra and Rajendra Meshram

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2012) BomCR(Cri) 100

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : A.A. Kathane, for the Appellant; P.V. Bhoyar, Additional Public Prosecutor for respondent no. 1 and Mr. Anup Dhore, for respondent no. 2., for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith, and is heard finally by consent of parties.

2. By this writ petition, the petitioner challenges following things:-

[a] The registration of offence in Crime No. 3006/2011 u/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as the Act, for short].

[b] The order passed by Fifth Ad Hoc Additional Sessions Judge, Nagpur, in Special Criminal Case [SC ST Act] No. 31 of 2011 passed below Exh.11 on 12th October, 2011 refusing to discharge the accused person.

3. The petitioner had earlier preferred Criminal Application No. 468 of 2011 before this Court and challenged the registration of First Information Report, and had prayed for quashing. On 8th September, 2011, this Court had heard said Criminal Application No. 468 of 2011 and dismissed the same as withdrawn with

liberty to avail alternate remedies as are available in law.

4. On completion of investigation, the charge- sheet has been filed. The Special Criminal Case [SC ST (PA) Act] No. 31 of 2011 is commenced. Petitioner had then applied for discharge. The copy of application for discharge is not placed on record.

5. The grounds, which were put forward on facts and law, have to be gathered from oral submissions and contents of the petition. Those are summarized as follows:-

[a] Petitioner is a builder and complainant is purchaser of a flat from the petitioner.

[b] There exists a dispute between the complainant and the accused relating to dues recoverable by the accused from the complainant and certain unjust and wrong demands made by the complainant.

[c] Complainant wants to avoid his civil liability and push ahead his unjust demands, and he is using the device of publicity, bad propoganda and the false and vexatious FIR against petitioner for advancing his cause.

[d] Petitioner had lodged a report with police, which was registered N.C. No. 54/11, and followed thereby the Firing relation to offence, subject matter, was lodged by the respondent.

[e] The complainant has lodged a report as a counter-blast to the petitioners FIR.

[f] The imputations constituting ingredients of offence u/s 3(1)(x) of the Act were not incorporated in FIR lodged on 27th January, 2011.

[g] The complainant has given another written report on 29th January, 2011. In this subsequently lodged [second or supplementary complaint], the complainant has stated that he was labouring under the belief that the imputations relating to the commission of offence under the Act, were incorporated in first report. Having realized that those allegations were not incorporated, now he is giving a detailed complaint.

[h] Statement of complainant was recorded by police. In the statement, he had reiterated his version contained in subsequent, i.e., written complaint. By these allegations, the description of commission of offence u/s 3(1)(x) of the SC ST (PA) Act is found, and FIR is registered accordingly.

[I] Learned Trial Court seemed to be opposed to discharge, on the ground that the trial had commenced. The fact of commencement of charge shallot operate as a bar in law for considering such application at any stage.

[j] In the present case, the intimation, which is liable to be treated factually and legally as FIR, was given by the complainant on 27th January, 2011.

[k] There cannot be more than one Firs for one offence.

6. In support of his submissions, learned Adv., for the petitioner has placed reliance on following reported judgments:-

[1] Babura Hari Pawar Vs. State of Maharashtra[1987 Cri. L.J. 584].

Proposition :

The accused can apply for discharge at any stage of trial. Commencement of trial is no bar for making and consideration of an application for discharge.

[2] State of Haryana and others Vs. Ch. Bhajan Lal and others, .

Proposition :

Station Officer has a duty to register a cognizable offence when it is disclosed in the information laid before him. He can, if a doubt/suspicion arises as to commission of offence, he has to subjectively satisfy himself as to sufficient ground of entering on investigation. Any deeper probe prior to investigation is not contemplated. If description of offence is made, it constitutes adequate mandate to proceed to investigate. If it is shown or made out that the FIR is actuated with malades etc., the FIR is liable to be quashed to prevent the abuse of process of law.

[3] T.T. Antony Vs. State of Kerala and Others, .

Proposition :

For one incident forming description of an offence, there can be only one FIR. Any further statements or information constituting information of another act out of or part of same incident describing another offence would constitute a statement u/s 161 of Criminal Procedure Code, but not a fresh FIR. Any such additional information may, even if received after a final report, can lead to further investigation and another report u/s 173 of Criminal Procedure Code can be given.

7. After considering the facts, submissions, the matter in issue, the impugned order and the precedents cited at bar, what is seen is that the learned Special Judge :

[a] Has considered and examined the request of petitioner for discharge on merits.

[b] Has not declined to entertain the request for discharge on the ground that the trial has commenced.

[c] Has observed that what the accused is contending as a ground for discharge is what his defences are.

8. As is seen from what this Court has summarized in the foregoing Paragraph Nos. 5 and 6, is that, thrust of the applicants submission as a ground for quashing is:-

The background of strained relations and rivalry, the false hood of the complaint and it being actuated with maladies.

9. After considering entire material on record and submissions, this Court is satisfied that the observation contained in the impugned order that accused is exerting to set up his defense as a ground for discharge is worth endorsement by concurrence.

10. Existence of prior dispute and rivalry between the parties cannot per se constitute a ground for discharge, since it would amount to accepting the plea of not guilty or innocence? raised by the accused, before the complainant proves his case.

11. A plea that the complaint is false and indicative cannot be judged without trial. On facts of this case, it is extremely onerous to adjudicate on summary look that FIR is vexatious and to put a full point to the investigation and trial by concluding on surmise that no offence, whatsoever, is committed by relying on Test No. 7 laid down in Para no. 108 in Bhajanlal? s case [supra].

12. The test prescribed in Item No. 7 contained in Para No. 108 of Bhajanlal? s case [supra] is a yardstick of easy as citation. It is utmost difficult and scary to apply.

13. While availing said test [Item No. 7 in Para 108 of Bhajanlal? s Judgment (supra)], a petitioner has to walk on a sleek and tight rope. It is not an easy job to walk on it. It is more difficult the job for the Judge to apply said yardstick without being guided by objectively examining the FIR or investigation papers and even material surfacing after some stages in the trial.

14. While scrutinizing any case for quashing an FIR by applying the test contained in Item No. 7 aforesaid, adjudge of this Court is required to make a choice between letting the trial proceed, or by endorsing on certificate of innocence without trial on a bare look after or the case diary or the charge-sheet, the evidences regards rivalry or enmity etc., as may have been averred and brought forward by the accused, and on a bare look thereon and without a trial of case.

15. Be it that it is a case where admittedly to the prosecution there is ? no I material, whatsoever, on record. Then it would be a case liable to be described as one where admittedly prosecution has no evidence in hands to continue to prosecute and that the FIR is actuated with motives which fit in said test No. 7.

16. There is a vast difference in barely saying that the complaint is false and vexatious, propelled on enmity, rivalry, by way of counter-blast etc., in comparison with basing such ground for quashing on some evidence of unimpeccable evidentiary worth emerging without enquiry or investigation, akin to the weight and worth of a public document attached with a binding presumption of value to be taken and read as ? proved.

17. Before quashing FIR, a Judge cannot be driven or carried away emotionally based on submission that the FIR would not essentially lead to a charge-sheet and a trial, and being false, is bound to vex the accused by trial, without being propelled by indisputable facts supported by equally indisputable worth of evidence of material which answers the test No. 7 objectively.

18. Thus, what a judge is required to believe and accept is that the FIR is based on falsehood, enmity or any ill-motive of a degree of worth of binding nature.

19. The question, which arises for determination at the stage of reaching the decision that a complaint is false and vexatious, is need of having at hand such material or evidence of conclusive and un-impeccable character, nature and texture that even upon full trial, no other conclusion can ever emerge.

20. Next point, which arises before this Court, is who below the sky has conferred on this Court that supersensory power [divine or godly as a common god-fearing man may word it] to gauge and judge that the FIR is false, vexatious, untrue, sherry as a counter-blast and actuated due to malice and enmity etc. before completing the trial.

21. All that can be considered for own guidance is that eventually it could be considered possible to have facts and material on hand which may withstand the tests indicated in the foregoing pares and possibility to rely upon such material to be able to quash the FIR. However, the objectivity as a basic rule cannot be parted at any cost to be immune from the blame of being subjective.

22. It has to be remembered that words of Hong blaspheme Court in Para No. 108 of Baja All s case as regards points narrated therein read as follows:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter Xian of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

[Quoted from Para No. 108 at page 629 of State of Haryana and others Vs. Ch. Bhajan Lal and others,]

23. It cannot be forgotten that the justice cannot be brought in peril for certifying presumption of innocence of the accused without trial. Presumption of innocence is available rather imperative in the trial, but not before or without trial.

24. If need arises, the accused can be compensated or dealt with in Criminal

Law, if he so chooses, and if it is ultimately found that he was wrongfully tried and vexed. The accused is equipped with remedies there to in law.

However, if justice is put to peril by closing doors of Criminal Law and Administration of Justice by quashing FIR, the injury, which would be caused to Administration of Justice in Criminal Law, can never be restituted by any means and measures, whatsoever.

25. Putting justice to peril would bring immense damage to very process of justice which cannot be undone by any measure of compensation. Law would be shown to be destitute, and rendered so at the hands of Courts alone. It is well known that law and Courts do not do wrong to anyone and this rule needs to be observed here.

26. The enmity and rivalry are not available as a time shield against prosecution.

27. In the case on hand, at least a conclusion that the FIR is actuated with mala fides and has no essence of offence would amount to pre-judging the plea of accused and endorsing it to be true before trial and that too basing it on an unproved version of the accused.

28. Therefore, this Court chooses the course of permitting the trial, and lets the FIR to proceed than to quash it.

29. Therefore, no grounds are made out, whatsoever, for indulgence. Rule is discharged.