

(2022) 07 BOM CK 0044

In the Bombay High Court

Case No : Criminal Application No. 3289 Of 2019

Ayyub

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 226
Indian Penal Code, 1860 — Section 21, 307, 323, 324, 325, 341, 353, 504, 506
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 482
Companies Act, 1956 — Section 617
Prevention Of Corruption Act, 1988 — Section 2(c)

Citation : (2022) 07 BOM CK 0044

Hon'ble Judges : C. V. Bhadang, J; Bharat P. Deshpande, J

Bench : Division Bench

Advocate : R.S. Deshmukh, Priya Gondhalekar, Devarg R. Deshmukh, M. M. Nerlikar, S. V. Dixit

Final Decision : Dismissed

Judgement

Bharat P. Deshpande, J

1. Rule. Rule made returnable forthwith. Heard, finally by consent of parties.
2. Present application is filed seeking for quashing of FIR vide Crime No. 120/2019 dated 07.07.2019 registered at Deoni Police Station, Taluka Deoni, District Latur and consequent charge-sheet filed bearing Final Report No.14/2020 (Regular Criminal Case No.16/2020) pending before the learned Judicial Magistrate First Class, Deoni.
3. Applicant is a lawyer, practicing at Sessions Court, Udgir. The Informant, who is teaching in a College, lodged a complaint at Deoni Police Station dated 07.07.2019 vide Crime No. 120/2019 for the offences punishable under Sections 353, 323, 504, 506 of the Indian Penal Code, 1860.
4. In nutshell, it is claimed by the Informant that on 03.07.2019, he was

proceedings towards the classroom at around 2:15 pm. for holding a period of 12th standard, he was wrongfully restrained by the Applicant and others, questioned as to why the Applicant is obstructing giving information under the Right to Information Act (RTI for short). It is alleged that the Applicant threatened the Informant with dire consequences and had a scuffle with him and obstructed him from performing his duty as a 'public servant'.

5. The Informant appeared and filed his affidavit-in-reply refuting allegations made in the application. He claimed that he was restrained by the present Applicant from discharging his public duty and threatened with dire consequences as well as caused injury, and hence he immediately lodged FIR with the concerned Police Station on 03.07.2019. However since Applicant is practicing Advocate, Police did not register a crime immediately. The crime was registered against the Applicant only on 07.07.2019 and then investigation proceeded, which culminated in filing of the charge-sheet.

6. Learned Senior Counsel Shri. Deshmukh appearing for the Applicant, strenuously urged that complaint filed against the Applicant, is false, fabricated and with malice as the nephew of Informant is married to the younger sister of the Applicant in the year 2017 and after period of two months from their marriage, there were allegations about cruelty, ill-treatment, harassment by the in-laws, due to which, younger sister of the Applicant started residing with her parents.

7. Learned Senior Counsel then urged that ingredients of Section 353 of IPC are not at all made out in the present matter and said provision has been pressed into operation only with an intention to put the Applicant behind bar and to defame him in a false and malicious prosecution, due to the dispute between the younger sister of Applicant and nephew of the Informant. Applicant filed various applications under RTI, calling for the information which is the reason for filing false complaint against him by Informant. Learned Senior Counsel then submitted that except Section 353 of IPC, other Sections of IPC such as Sections 323, 504, 506 of IPC are all non-cognizable offences and therefore, there was no question of registering FIR against the Applicant and to conduct investigation, if any.

8. Learned Senior Counsel then pointed out that belated complaint has been lodged by Informant only to counter the complaint filed by the Applicant before the concerned Police Station and instead of registering complaint of Applicant, Police machinery registered a complaint of Informant and started investigation. He then submitted that the Applicant was forced to approach the learned Magistrate by filing Criminal Miscellaneous Application No. 68/2019 under Section 156(3) of Cr.P.C. Only after the order passed by the learned Magistrate dated 20.09.2019, FIR No. 173/2019 came to be registered at Deoni Police Station against Informant for the offences punishable under Sections 307, 324, 325, 323, 341, 504 and 506 of IPC.

9. The learned Senior Counsel Mr. Deshmukh then invited attention of this Court to the complaint lodged by the Applicant dated 03.07.2019 with the concerned Police Station, to buttress his argument that infact Informant pressed the neck of the Applicant and tried to kill him.

10. The learned Senior Counsel Mr. Deshmukh then pointed out the order passed by the learned Additional Sessions Judge, Udgir dated 22.08.2019 in Criminal Miscellaneous Application (Bail) No. 113/2019, wherein it has been observed in Paragraph No.5, that there is a reasonable doubt about the occurrence of said incident and there is also doubt as to whether Informant is a 'public servant' as defined under Section 21 of IPC. This order was passed in the Anticipatory Bail Application filed by the present Applicant in Crime No. 120/2019, which crime is under challenge in this application.

11. The learned Senior Counsel then pointed out medical case papers produced from page no. 76 onwards claiming therein that Applicant suffered blunt trauma to the neck on 03.07.2019 and there were multiple injuries, which resulted in serious injuries requiring Applicant to take treatment in a General Hospital at Latur. With this backdrop, the learned Senior Counsel submitted that there is no case made out for invoking Section 353 of IPC and since there is a delay in lodging complaint, the FIR lodged by Informant and consequent charge-sheet filed against the present Applicant, is clearly an abuse of process of law and therefore needs to be quashed and set aside. In this respect, he placed reliance on the case of State of Haryana and Others Vs. Choudhari Bhajanlal and Others AIR 1992 SC 604.

12. The learned APP appearing for the State strongly opposed the application on the premise that complaint lodged by the Informant prima-facie shows ingredients of cognizable offence and therefore the Police Inspector of the concerned Police Station was right in registering the FIR. He then submitted that presence of the Applicant at the spot of alleged incident, is admitted by the Applicant himself, wherein he lodged complaint against the Informant, which was registered in another crime upon the direction given by the Magistrate under Section 156(3) of Cr.P.C. He then submitted that this Court should not go into the evidence at this stage as there is a complaint and counter complaint with regard to the alleged incident and investigation in one matter is complete, wherein charge-sheet is filed against the present Applicant, whereas investigation in another offence registered at the instance of the present Applicant is in progress.

13. Learned Counsel appearing for the Informant strenuously urged that there is no delay in filing FIR as complaint to that effect was filed at the Police Station on the very day of the incident i.e. 03.07.2019. He invited attention of this Court to page no. 132, which shows the endorsement of the Police Inspector of Deoni Police Station, Dist. Latur, which shows that the complaint was received on 03.07.2019 itself.

14. Learned Counsel for Informant then pointed out that only because Applicant

is a practicing Advocate, there was pressure on the Police machinery, not to register offence against him. However, FIR was registered only on 07.07.2019 for which, the Informant was not at all responsible for the so called delay. He then submitted that the Informant is a High School Teacher, which is a Government Aided School and Informant was proceeding to attend a Class of 12th Standard, Science Stream, in order to teach students, who was prevented by the Applicant and therefore Section 353 of IPC has been rightly invoked.

15. First of all, it is necessary to consider, whether the Informant is a public servant under Section 21 of IPC and if so he was prevented from performing his duty.

16. We have considered relevant submissions and after giving anxious consideration to the points raised by the respective learned Counsel, it is necessary to look into the settled proposition of law laid down by the Hon'ble Apex Court in the case of Chaudhari Bhajanlal and Others (supra).

17. Keeping in mind above proposition laid down by the Hon'ble Apex Court a Police Officer is duty bound to register a crime, when complaint discloses ingredients of cognizable offence. It is clear that there is no option with the Police Officer, except to register the offence, when he is satisfied that complaint shows or the information is disclosing commission of a cognizable offence.

18. Upon perusal of the complaint lodged by Informant dated 03.07.2019, which is at page no. 122, it clearly shows that Informant claimed that he is a Professor in Pandit Jawaharlal Nehru Vidyalaya, Togari, Dist. Udgir, and that the Applicant obstructed him, abused, assaulted and prevented him from performing his duties.

19. The learned Senior Counsel Shri. Deshmukh submitted that Informant is not a Professor and that he is only an Assistant Teacher, which information is received by the Applicant under the R.T.I. and therefore Informant has falsely claimed that he is a Professor.

20. At the outset, it is not at all in dispute that there is no post of Professor or Lecturer as the case may be in a Higher Secondary School. The only post, which is available is that of a Teacher or Assistant Teacher in a Higher Secondary School. Be that as it may, it is not in dispute that the Informant is having a teaching job in Pandit Jawaharlal Nehru Vidyalaya, Togari, Tq. Udgir, Dist. Latur. Therefore, we are not inclined to look into the aspect of incorrect disclosure of the post, which Informant is holding in the said School as fact remains that he is admittedly teaching the subject in the said School and therefore is a employee of the said School.

21. Since Informant claimed that he is a Teacher in a Government Aided School, and was prevented from discharging his public duties as a Teacher, in his complaint, Section 353 of IPC was invoked by the Investigating Agency against the present Applicant.

22. The learned Counsel appearing for the Informant as well as learned APP

submitted that Informant is a public servant and comes within the definition of Section 21 of IPC and more specifically clause

12 which provides that :

Section 21 : "Public servant".-The words "public servant" denote a person falling under any of the descriptions hereinafter following namely:-Second-----

Third-----

Twelfth--Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956. Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

23. In the case of State of Maharashtra and others Vs. Brijlal Sadasukh Modani, AIR 2016 Supreme Court 377; the Hon'ble Apex Court observed that the Respondent/Brijlal retired from the employment of Janata Sehkari Bank Ltd., Osmanabad. While in service, he received a notice signed by the Deputy Superintendent of Police, Anti Corruption Bureau, Osmanabad requiring him to give details of the property acquired by him. In response, Brijlal replied that the provisions of Prevention of Corruption Act, 1988, was not applicable to him. After his superannuation, he received two letters from the same investigating authority to attend an enquiry so that his statement could be recorded in respect of his properties and expenditure. Brijlal preferred Criminal Writ Petition before the High Court of Bombay, Bench at Aurangabad. Raising the submission that he was not a public servant as defined under sub-section (c) of Section 2 of 1988 Act and he cannot by any means of interpretation of Section 21 of IPC be treated as such. In this respect, the Hon'ble Apex Court observed in Paragraph Nos. 20, which reads as under;

20. As we notice, the High Court has really been swayed by the concept of Article

12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-state society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term 'aid' has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of 'public servant'. The concept in entirety has to be understood in the backdrop of corruption. In Shri Ram Singh (supra), this Court had to say this:-

"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence— shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

24. In the case of State of Ajmer Vs. Shivji Lal AIR 1959 Supreme Court 847, the Hon'ble Apex Court considered as to whether accused is a public servant under Section 21 of IPC and observed in Paragraph No.4, as under:

4. The question whether the accused is a public servant under s. 21 of the Indian Penal Code depends upon the interpretation of the last part of the Ninth clause of that section, which is in these terms:- , "..... every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

The Judicial Commissioner seems to have overlooked this part of the Ninth clause, for he says that it had not been shown that it was the duty of the accused to take, receive, keep or expend any property on behalf of the Government so that he may come under the Ninth clause of s. 21. This only refers to the earlier part of the Ninth clause and the last part which we have set out above does not seem to have been considered at all. This very question came up for consideration in this Court in G. A. Monterio v. The State of Ajmer (1) and it was laid down that the true (1) [1956] S.C.R. 682. test in order to determine whether a person is an officer of the Government, is: (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty.' It is not disputed in this case that the accused was in the service of Government and was being paid by Government. It cannot also, in our opinion, be doubted that he was entrusted with the performance of a public duty inasmuch as he was a teacher in a school maintained by Government and it was part of his public duty to teach boys. In these circumstances the

Judicial Commissioner was in error in holding that the accused was not a public servant within the meaning of the Ninth clause of s. 21.

25. Returning back to the facts of the matter in hand, record shows that the school, in which Informant is a Teacher, is a Government Aided School and thus prima-facie Informant comes within the purview of a public servant as observed by the Apex Court in the above two decisions.

26. This observation is necessary since the learned Senior Counsel invited attention to the observations in order passed by the learned Additional Sessions Judge, while granting bail to the present Applicant. Thus, for this limited purpose, we venture into this aspect for considering the ingredients of Section 353 of IPC.

27. We make it clear that above observations are only on prima-facie ground and the Investigating Agency or trial Court shall not be influenced by such observation, while dealing with the matter on merits.

28. Once it is observed that there is disclosure made in the complaint filed by Informant showing commission of cognizable offence, there is no other option with the In-charge of the Police Station to register the crime and to investigate the matter.

29. As rightly pointed out by the learned Counsel for Informant, that Applicant himself admitted his presence in the school premises and he lodged complaint against the Informant and thereafter approached the learned Magistrate under Section 156(3) of Cr.P.C. as his complaint was not registered by the concerned Police Station.

30. At the outset, it is not required to look into the evidence collected by the Investigating Agency. However, one thing needs to be observed that FIR and charge-sheet, nowhere shows that it is an attempt on the part of Informant to counter the complaint lodged by the Applicant. It also cannot be said that the contents of FIR and the charge-sheet, are on the mala fide grounds and only to pressurize the Applicant. In fact, the Applicant himself admitted his presence at the School ground on 03.07.2019 between 02:00 to 02:30 pm. when he was called by the Principal in connection with his application filed under R.T.I. The complaint lodged by the Applicant against the Informant, further proved that some incident had taken place. Thus, at this stage, there is no material to establish that the FIR lodged by the Informant is bogus and with mala fide intention.

31. The Hon'ble Apex Court in the case of Bhajanlal (supra) further observed in Paragraph Nos. 108 and 109. 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 extraordinary 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 FIR 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.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

32. The learned Senior Counsel for Applicant submitted that the Applicant's case

is coming within the purview of Clause No. 4, 5 and 7 of Paragraph No. 108 quoted above.

33. First of all it is clear from the record that FIR lodged by Informant being a public servant do constitute a cognizable offence and therefore it was incumbent upon the Officer In-charge of the Police Station to register the FIR. Thus, at this stage it cannot be claimed that FIR does not disclose commission of cognizable offence as tried to be projected.

34. Record further shows that complaint/FIR lodged by Informant cannot be considered so absurd or inherently improbable on the basis of which no prudent person can ever reach just conclusion that there is sufficient ground for proceeding against the accused. The investigation carried out by the Police Authority shows statements of eye-witnesses, which prima-facie corroborate the contents of the complaint. We make this observation only for the limited purpose of deciding the present application.

35. The next contention is with regard to Clause No. 7, that 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. At this stage, we may observe that dispute between a younger sister of the Applicant and the nephew of the Informant in connection with their marriage has no connection, whatsoever with the present alleged incident. There is nothing on record to show that Informant was in inimical terms with the Applicant prior to the present complaint. A possibility of having a matrimonial disputes between the relations of the concerned party and filing of application under RTI, is only a ground raised in the present petition in order to challenge the FIR and consequently the charge-sheet under Section 482 of Cr.P.C.

36. In the case of Sushil Suri Vs. Central Bureau of Investigation and another, 2011(3) Mh LJ (Cri) 580 SC, the Hon'ble Apex Court has observed that inherent powers under Section 482 of Cr.P.C. needs to be sparingly and rarely invoked and only in a matter, wherein it is observed by the (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. The Court would be justified in invoking its inherent jurisdiction, where the allegations made in the complaint or charge-sheet, as the case may be taken to their face value and accepted in their entirety do not constitute the offence.

37. The matter in hand clearly goes to show that Applicant was very much present in the School premises and he met Informant in the School ground and there are witnesses, whose statements are recorded by the Investigating Agency, which show prima-facie that some incident occurred between the Applicant and the Informant. Thus, at this stage it cannot be stated that complaint filed by Informant, is a mala fide, bogus, false complaint. Similarly invoking provision of Section 353 of IPC by the Investigating Agency is on the basis of the duty

performed by the Informant as a Teacher in a Government Aided School. He was proceeding to attend 12th Standard Science class in order to teach students, which prima-facie considered as performing a public duty.

Therefore, considering the overall aspect of the matter, we are not inclined to accept the contentions raised by the Applicant in his petition. We therefore, declined to exercise the inherent jurisdiction under Section 482 of Cr.P.C., so as to interfere with the FIR and the charge-sheet filed against the Applicant by the concerned Police Authority.

38. Having said so, the application deserves to be rejected and accordingly the same stands rejected.