

(2006) 08 BOM CK 0067

In the Bombay High Court

Case No : Criminal Application No. 90 of 2006

Bhalchandra Shelke and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 482

Protection of Civil Rights Act, 1955 — Section 7, 7(1)

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1)

Citation : (2006) 6 MhLj 209

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : V.D. Gunale, for the Appellant; P.M. Shinde, Assistant Public
Prosecutor and A.A. Mukhedkar, for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—Heard learned Counsel for the parties.

2. By this application, the applicants seek to quash and set aside the F.I.R. bearing No. 3049/2004 registered with M.I.D.C. Police Station, Latur on the report lodged by respondent No. 3, who is original complainant, to the extent of offence punishable u/s 7(1)(d) of Protection of Civil Rights Act (for the sake of brevity Civil Rights Act) and u/s 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity Atrocities Act).

3. To State in brief the complainant/respondent No. 3 lodged a report at the Police Station on 29-12-2005 at about 3-45 p.m. about an incident which had occurred on 28-12-2005 at about 8 p.m. In the report, he alleged that he belongs to Mahar community which is a Scheduled Caste. He is Sarpanch of Grampanchayat Harangul (Bk.). On 28-12-2005 at about 8 p.m. meeting of Gramsabha was being held at Vithal Mandir. Some members of Grampanchayat, Up-Sarpanch, Gramsevak and other people of the village were present. According

to the complainant, when the meeting was in progress, the present applicants began to create obstruction in the meeting. When the complainant requested them to keep silence, they insulted him in the name of caste, abused and physically man-handled and also threatened to kill. Up-Sarpanch and other persons who were present intervened and thereafter, the applicants left the spot. At the bottom of the first information report, there was a note that caste certificate was annexed. It was also mentioned that the complainant is "Mahar" to the knowledge of the accused persons and the accused persons belong to Reddy (Yellam) caste. On the basis of this report, the aforesaid offence came to be registered by the Police.

4. The applicants relying on certain authorities of this Court contended that in the body of the report, the complainant had not stated that the accused persons do not belong to Scheduled Caste or Scheduled Tribe and therefore, the offence under the Atrocities Act or under Civil Rights Act could not be registered nor investigation could be initiated. It is contended that in view of this, the Police Officer committed error in registration of the offence and therefore, the F.I.R. to the extent of the offences punishable under the Civil Rights Act and Atrocities Act, are liable to be quashed and set aside.

5. Mr. Gunale, learned Counsel for the applicants placed reliance upon *Manohar Kulkarni and Another Vs. State of Maharashtra and Others*, wherein reliance was placed on a Division Bench authority of this Court in Criminal Writ Petition No. 49 of 200], *Anant Vasantlal Sambre v. State of Maharashtra and Ors.* as well as *Bai " Laxmibai w/o Nivratti Poul and Ors. v. State of Maharashtra* 2001 ALL MR (Cri.) 219. Out of these three cases *Bai " Laxmibai v. State of Maharashtra* was first authority delivered in November, 2000 by learned Single Judge. In that case caste of the complainant was nowhere disclosed in the F.I.R. though, it was mentioned by the Police Officer in the format of the F.I.R. u/s 154, Criminal Procedure Code. The learned Single Judge observed that it was not known on that basis the Police Officer had noted the caste of the complainant in the formant, though the complainant himself had not stated the caste in the body of the F.I.R. The learned Single Judge observed as follows in para 9:

9. The Apex Court in *Manoj alias Bhau and Ors. v. State of Mali.* (1994) 4 SCC 268 : 1999 ALL MR (Cri) 1683 has observed that F.I.R. is not an encyclopaedia of events but at the same time it is held that what is required to be stated therein is basic prosecution case. Unless the F.I.R. discloses the basic requirement of law which can enable the police authorities to initiate investigation by considering the allegations to be in the nature of cognizable one, the applicants are certainly justified in making grievance about initiation of investigation on the basis of F.I.R. which does not disclose such information which can empower the police to investigate in terms of provisions contained in Chapter XII of Criminal Procedure Code. The F.I.R., in the case in hand, being not disclosing the basic ingredients of Section 3 or 7 of the above Statutes, there was absolutely no case for the police authorities to initiate investigation under Chapter XII of Criminal Procedure Code.

In view of this, it is clear that if the complainant does not state his caste in the complaint, the basic ingredients required for the purpose of registration of the offence under the Atrocities Act and for initiation of investigation for the said offence are not available and therefore, the Police Officer cannot register the offence and investigate for the offence under the Atrocities Act or Civil Rights Act. This view was also taken in *Anant Vasantlal Sambre v. State of Maharashtra* by the Division Bench in its judgment dated 20-4-2001. In the present case caste of the complainant is mentioned in the beginning of the report and at the bottom there is a note that the caste certificate is also annexed therewith. In the present matter we are more concerned with the caste of the accused. The Division Bench observed as follows in para 6 of its judgment:

6. The report, which is filed by the petitioner at the Police Station, mentions that the petitioner belongs to Hindu Khatik Caste, which is a Scheduled Caste. However, in the report, it is nowhere mentioned that the person against whom the complaint is made, viz. Shri Kailash Gorntyal, does not belong to Scheduled Caste or Scheduled Tribe. The opening words of Section 3 of the said Act are like this:

whoever, not being a member of Scheduled Caste or Scheduled Tribe.

So, it is a precondition that person committing the alleged offence must not be belonging to Scheduled Caste or Scheduled Tribe. In the report filed at the Police Station, there ought to have been some averment indicating that Shri Kailash Gorntyal does not belong to Scheduled Caste or Scheduled Tribe. In the absence of such averments, or any other material before the Police Station Officer for coming to the conclusion that the accused named in the said report does not belong to Scheduled Caste or Scheduled Tribe, the offence u/s 3 of the said Act cannot be registered. So, even if in this matter, there is the reference that the petitioner belongs to Scheduled Caste, as there is no reference that the accused does not belong to Scheduled Caste or Scheduled Tribe, the report itself is not complete and, in such circumstances, if the Police Station Officer has not taken any further steps, he cannot be blamed. At the most, the Police Station Officer could have directed the informant to give some material before him to show that the accused does not belong to Scheduled Caste or Scheduled Tribe. If that had been before the police station officer, then there could have been ground for the police station officer to register the offence as being cognisable u/s 3(x) of the said Act. As the basic requirement is not fulfilled in this complaint lodged before the Police Station, the police cannot be blamed for not registering the crime. So, in such circumstances, the relief sought for by the petitioner cannot be given.

(emphasis supplied)

6. This authority was also referred to by the learned Single Judge in *Manohar Kulkarni* (supra) and relying on the same, the learned Single Judge observed as follows:

11. In my view, after the passing of the aforesaid two judgments, holding that

there can be no registration of a crime under the Atrocities Act, or investigation as regards the said crime, if the caste of the complainant and/or the accused is not contained in the body of the F.I.R., all investigations and further Court proceedings on the basis of such investigations, cannot be maintained in law. Such First Information reports and Court proceedings on the basis of crimes registered on the basis of such First Information Reports will, therefore, have to be quashed and set aside.

There is no dispute that if it is not disclosed in the F.I.R. that the accused is not a member of the Scheduled Caste or Scheduled Tribe, the offence under the Atrocities Act cannot be registered nor the investigation can be commenced. However, question is if in the body of the F.I.R. caste of the accused is not mentioned but later on the complainant makes a statements or provides other material to show that the accused does not belong to the Scheduled Caste or Scheduled Tribe, whether the Police Officer can register the offence and investigate the same under the Atrocities Act. In fact, the Division Bench in *Anant Sambre* (supra) has observed as follows in para 7 of the said judgment.

7. However, we would like to make it clear that the petitioner may bring sufficient material before the concerned Police Station Officer to make out his case on the basis of report filed on 15-1-2001 and in that case, the concerned police station officer should take appropriate steps as per the Code of Criminal Procedure.

From the portion of para 6 referred earlier to which emphasis is supplied and para 7 *Anant Sambre* (supra) are read together, it becomes clear that even though in the body of the F.I.R., the complainant has failed to specifically mention that the accused does not belong to the Scheduled Caste or Scheduled Tribe, still he may bring sufficient material before the concerned Police Officer to make out his case under the Atrocities Act and to commence investigation for the same. For this, the complainant could make a statement before the Police Officer about the caste of the accused or he could produce certain documents and if the Police Officer finds that material sufficient to come to prima facie conclusion that the accused does not belong to Scheduled Caste or Scheduled Tribe, he may register the offence under the Atrocities Act or Civil Rights Act and investigate the offence, provided other ingredients of such offence are made out.

7. In the present case the original first information report lodged by the complainant was typed. At the bottom of the report, there is a typed note that caste certificate is annexed. In the same note in handwriting it is mentioned that the complainant belongs to Mahar caste and the accused belongs to Reddy (Yellam) caste. It is nobody's case that Reddy or Yellam is a Scheduled Caste. In fact, in ground No. VI of the present application, the applicants have clearly admitted that they belong to other Backward category. They do not say that they belong to Scheduled Caste or Scheduled Tribe. In my opinion, even though, the complainant had not stated in the typed body of the report but had added caste of the accused at the bottom of the report in his handwriting, still that was sufficient material for the Police Officer to register offence under the Atrocities

Act because in the body of the report it was clearly stated that the accused had abused and insulted the complainant in the name of the caste. Therefore, in my opinion, at this stage, it is difficult to find any fault with the registration of the offence under the Atrocities Act or Civil Rights Act. Mr. Gunale, learned Counsel for the applicants contended that there was sufficient delay in lodging the report and the report has been lodged falsely because of the political reasons. Whether the report is true or false and whether it was result of political rivalry are the issues which can be sorted out and decided only at the time of the trial and not while dealing with Application u/s 482, Criminal Procedure Code.

8. For the aforesaid reasons, the application stands rejected. Rule discharged.