

(2019) 08 BOM CK 0075

In the Bombay High Court

Case No : Criminal Application No. 2213 Of 2018

Bharat

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 354A, 504

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(iv)(v), 3(1)(r)(s), 3(1)(w)(i)(r)

Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 08 BOM CK 0075

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : P.N. Mule, S.A. Ambad, D.R. Kale, V.C. Patil, Ashtekar

Final Decision : Allowed

Judgement

K.K. Sonawane, J

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of both sides.

2. The applicant-original accused No. 1 preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside criminal proceeding of Special Case No. 15 of 2018 initiated pursuant to First Information Report ("FIR") bearing Crime No. 93 of 2018 registered under Sections 354-A, 504 of Indian Penal Code ("IPC") and Sections 3(2)(iv)(v), 3(1) (r)(s), 3(1)(w)(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Bhada Police Station, Taluka Ausa, District Latur.

3. The prosecution case in short compass is that, the applicant is the Headmaster attached to Zilla Parishd, High School at Bhada, Taluka Ausa, District Latur. The first informant-respondent No. 2 was also the Assistant Teacher in the School of

applicant. It has been alleged that the conduct and demeanour of respondent No. 2 while discharging her duty as an Assistant Teacher was not proper. There were allegations about her insubordinate behaviour. She used to come late on duty in the School, not teaching the students in proper manner. She always kept herself busy on her cell phone. She was not paying attention for checking the homework of the students. The School Committee of Zilla Parishad High School, Bhada, gave understanding to the respondent No. 2 by taking entry of the same in the General Proceeding Book dated 28-08-2017. There were complaints that the respondent No. 2/first informant asked the students of III standard to bring Rs. 350/-for the school uniform, the actual cost of which was Rs.200/-. The respondent No. 2 committed mischief of misappropriation of Rs. 150/-recovered from each student of III standard. The respondent No. 2 tendered apology for the same and thereafter, she was directed to return the excess amount charged from the students. Despite the directions, the respondent No. 2 did not comply with the same. There was Criminal complaint bearing STC No. 2616 of 2015 filed by the parents of student under section 138 of the Negotiable Instruments Act for recovery of amount misappropriated by the respondent No.2. It has been contended that since beginning the serveral notices dated 28-06-2017, 14-07-2017, 24-07-2017, 14-09-2017, 16-12-2017, 21-12-2017 were issued to the complainant/respondent No. 2 to afford her an opportunity for improvement. But there was no change in her behaviour. She used to give threats of dire consequences to all including present applicant. Eventually, the applicant-Headmaster moved complaint of respondent No. 2 to the Education Officer, Zilla Parishad, Latur, for action against respondent No. 2. Accordingly, in response to show cause notice issued by Education Officer, Zilla Parishad, Latur, the respondent No. 2 filed the reply on 18-06-2018 and conceded her guilt. She has also furnished undertaking to improve her conduct and demeanour while discharging the duty. She has also tendered apology for the same in her reply. The applicant produced extracts of all relevant documents on record for perusal. However, on 12-07-2018, the first informant/respondent No. 2 herein approached to the Bhada Police Station, District Latur and filed the report that on 20-06-2018, in the noon hours when she had been to the office of Headmaster in the school to put her signature on Muster Roll, that time the applicant caught hold her hand and used obscene language. The respondent No. 2 cast allegation of sexual harassment against the applicant-Headmaster of the School.

4. Pursuant to FIR, Police of Bhada Police Station, District Latur registered the Crime No. 93 of 2018 registered under Sections 354-A, 504 of Indian Penal Code ("IPC") and Sections 3(2)(iv)(v), 3(1)(r)(s), 3(1)(w)(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and set the penal law in motion. The IO recorded statements of witnesses acquainted with the facts of the matter. He collected the relevant documents and after completion of investigation, IO filed the charge-sheet against applicant bearing Special Case No. 15 of 2018, which is pending before the learned Special Judge, at Latur.

5. Learned counsel for applicant-original accused vehemently submits that the

applicant - accused is innocent of the charges pitted against him. He has not committed any crime as alleged by the respondent No. 2. but, he has been falsely implicated in this case. According to learned counsel, the applicant is the 56/57 years old person, completed the stint of 25/26 years in the education field, without any stigma to his service career. He has also received the Award as "Adarsh Shikshak" from the Government of Maharashtra. The applicant is highly qualified person, discharging his duty as an Head Master in proper manner. But, the respondent No.2, taking umbrage of departmental action initiated by the applicant-Headmaster against her, filed the present FIR to embroil the applicant in this false case. The learned counsel also gave much more emphasis on the circumstances that the respondent No.2 on 18-06-2018 filed the reply to the show cause notice issued by the Education Officer, Zilla Parishad, Latur. Thereafter, immediately within 2-3 days, she made allegation of sexual harassment by the applicant on 20-06-2018. Moreover, the present FIR lodged on 12-07-2018, after efflux of 22 days of the alleged incident occurred on 20-06-2018. Learned counsel submits that the delay in FIR is fatal to the prosecution case. According to learned counsel, the alleged criminal proceeding is nothing but an abuse of process of law.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions propounded on behalf of applicant and submit that the allegations made in the FIR prima facie constitute the offence against the applicant. It cannot be said that the alleged FIR is misuse of provisions of law. The applicant attempted to molest the respondent No. 2 sexually. Therefore, it would unjust and improper to set aside and quash the proceeding by exercising of powers under section 482 of the Cr.P.C.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record. It is not in dispute that at the relevant time the applicant was the Headmaster of the Zilla Parishad School, Bhada, District Latur and the complainant/respondent No. 2 was also employed as Assistant Teacher in the same School. The documents produced on record prima facie demonstrate that there was departmental action against the respondent No. 2 for dereliction of duty as an Assistant Teacher. There were notices issued to the respondent No. 2 for which she tendered apology by giving undertaking of improvement while discharging her official work, etc. It is to be noted that prior to two days of alleged incident of sexual harassment of the respondent No. 2 on the part of applicant-Headmaster, she had filed reply to the show cause notice issued to her by the Education Officer, Zilla Parishad, Latur. She admitted her guilt and also tendered apology in the reply. But, thereafter, she filed the alleged FIR within 2-3 days of the reply to Education Officer.

8. It is strange to appreciate that the respondent No. 2 did not lodged the FIR spontaneously at the earliest after occurrence of alleged incident. But, she approached to the Police at belated stage, after efflux of near about 22 days and

caste the allegation of sexual harassment against applicant. These circumstances smacks something fishy. It is to be appreciated that if really the alleged incident had taken place, the respondent No.2 would have lodged FIR at the earliest to the Police. It is preposterous and incomprehensible that she would maintain silence for 22 days in regard to occurrence of such heinous crime committed with her in the school at her work place.

9. It is the settled rule of law that, the FIR is the extremely vital and valuable piece of evidence and on account of delay, the report not only gets bereft of the advantage of spontaneity, but the danger creeps in of introduction of coloured version or concocted story as a result of deliberation and consultation. Therefore, the inordinate delay of 22 days to file FIR prima facie devastated the gravity of allegations nurtured against applicant in this case. In addition, the departmental fight between the respondent No.2 and the present applicant prima facie constrain this Court to appreciate the trustworthiness of allegation with suspicion. The minute scrutiny of entire factual aspects as well as relevant documents produced on record reflects that it would not possible to persuade ourselves to favour the complainant-respondent No.2 in this matter. The circumstances on record shows that the impugned FIR appears to have been lodged by the respondent No. 2 maliciously with purported motivation to wreak vengeance against applicant-Headmaster. The impugned FIR seems to be product of vindictive nature, fabricated and baseless one with malafide to embroil the applicant in this case. Obviously, the present FIR would spoil the entire service career of applicant. It would also tarnish his reputation etc. We are of the opinion that the alleged criminal proceeding instituted against the applicant is an abuse of process of law. It came to be filed maliciously with an ulterior motive to spite the applicant-Headmaster owing to her private and personal grudge and rancour. There are least chances of conviction of the accused in this case. We find prima facie that the entire allegations made against applicant would not stand to the test of scrutiny by the judicial mind during the course of detail trial.

10. It is worth to mention that the Honourable Apex Court in the case of Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandrojirao Angre and others, reported in AIR 1988 SC 709, categorically elucidated in paragraph No. 7, as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even

though it may be at a preliminary stage."

11. The Honourable Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others reported in MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC) held that "where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR". Moreover, if the allegations in the FIR against the petitioners are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against petitioners, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

12. In the light of aforesaid expositions of law, in the matter in hand, it would be unjust and improper to allow the prosecution to proceed against present applicant. It would be an futile efforts and would cause injustice to him if he is compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against applicant deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Application is allowed.
- ii. The original proceeding of Special Case No. 15 of 2018 initiated pursuant to First Information Report bearing Crime No. 93 of 2018 registered under Sections 354-A, 504 of Indian Penal Code ("IPC") and Sections 3(2)(iv)(v), 3(1)(r) (s), 3(1)(w)(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, with Bhada Police Station, Taluka Ausa, District Latur, against the present applicant is ordered to be quashed and set aside.
- iii. Rule is made absolute in terms of prayer clauses "C and C-1".
- iv. Criminal Application is disposed of in above terms.
- v. No order as to costs.