

(2009) 11 BOM CK 0077

In the Bombay High Court

Case No : Criminal Application No. 1689 of 2007

Dr. Narendra Patil and Dr. Asmita

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 197, 482

Penal Code, 1860 (IPC) — Section 34, 353, 379, 506

Protection of Civil Rights Act, 1955 — Section 5, 7, 7(1)

Citation : (2010) CriLJ 2762 : (2010) 2 Crimes 159 : (2011) 6 RCR(Criminal) 2149

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : M.P. Khajanchi, for the Appellant; S.S. Doifode, APP, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This application takes exception to the First Information Report No. 3001/2006 registered by Police Station Officer, Police Station, Armori, Tahsil-Armori, District-Gadchiroli and consequent proceeding in Criminal Case No. 9 of 2006 pending before the learned Judicial Magistrate First Class, Armori, which arise out of Chargesheet No. 22/2006 dated 24th February, 2006 filed by the non-applicant against the applicants for the offences punishable under Sections 5 and 7(1)(d) of the Protection of Civil Rights Act, 1955 and Section 506 read with Section 34 of the Indian Penal Code.

2. The facts of the case are as under:

The applicants are husband and wife and both are serving as Livestock Development Officers at villages Koregaon (Rangi) and Inzewari respectively. On 11-10-2005 the applicant No. 2 was on duty at the hospital at Inzewari till 11.00 a.m. and after that she left the hospital to attend a meeting of Prabhag Samitee at village Thanegaon. At about 12.00 noon Shri Devidas Barsagade accompanied

by three persons as named in the application, forcibly entered the hospital at Inzewari and tried to take photographs, which act was objected to by the staff of the hospital. On being objected, the said persons manhandled the staff and ransacked the hospital by taking away two saline bottles and documents and using abusive language and giving threats to the staff.

3. On 15-10-2006 the said incident was narrated by the staff and Sarpanch of the village to the applicant No. 2 when she returned to the hospital. The applicant No. 2, therefore, lodged a report with Police Station Armori, which registered offences under Sections 353, 379, 506 read with Section 34 of the Indian Penal Code against Devidas Barsagade and his three companions. Even a chargesheet has been filed in respect of the said incident against those persons before the Judicial Magistrate First Class, Armori and a case is registered as Criminal Case No. 12 of 2006.

4. It is further case of the applicants that lodging of a report with police and consequent prosecution launched against Devidas Barsagade and his three accomplices in respect of the incident or ransacking the hospital infuriated the said Devidas Barsagade, who as a counter-blast to the complaint filed by the applicant No. 2, lodged written complaint with police against the applicants on 17-10-2006. The police registered the offences against the applicants punishable under Sections 5 and 7(1)(d) of the Protection of Civil Rights Act, 1955 and Section 506 read with Section 34 of the Indian Penal Code and has filed a chargesheet. Hence, this application filed by the applicants to quash the First Information Report and further proceedings based upon the said First Information Report.

5. The learned Advocate appearing for the applicants submitted that the charges leveled against the applicants are totally false, concocted and baseless and the acts complained of in the First Information Report attributed to the applicants are in direct connection with the official duties of the applicants as it is stated in the said First Information Report by the complainant Devidas Barsagade that a buffalo belonging to one Shri Sudhakar Bankar was taken to the hospital for treatment. Therefore, learned Advocate for the applicants submits that having regard to provisions of Section 197 of the Criminal Procedure Code, the Judicial Magistrate First Class could not have even taken cognizance of the offences alleged to have been committed by the Public Servants in discharge of their official duty without obtaining a sanction from the competent authority. The requirement of having a sanction for prosecuting a public servant is a sine quo non. Despite this clear position, Judicial Magistrate First Class has proceeded to maintain the prosecution.

6. The learned Advocate appearing for the applicants further submitted that the First Information Report does not mention the caste of the complainant and/or that of the accused. Therefore, crime itself could not have been registered under the Protection of Civil Rights Act, 1955. It is further submitted that the allegations made in the complaint, even if accepted to be true in the entirety, do

not prima facie constitute any offence, as alleged, and do not make out any case instituted against the applicants. It is further submitted that the proceedings against the applicants with malafide cause harm to the applicants by lodging the First Information Report after thought and belated report dated 17th October, 2005 that too as a counter-blast to the applicants' report dated 15th October, 2005. It is further submitted that no factual foundation is laid in the complaint and the ingredients of offences alleged against the applicants are not made out.

7. The learned Advocate appearing for the applicants submits that, though the alleged offence took place on 12-10-2005, an application was given on 17-10-2005 by the complainant. The First Information Report is lodged on 4th January, 2006. Therefore, in respectful submission of the learned Advocate appearing for the applicants that the lodging belated First Information Report alone is sufficient to quash the First Information Report as well as proceedings based thereon. The learned Advocate appearing for the applicants further submitted that the incident in question has not taken place, however just to counter-blast the report lodged by the applicant No. 2, the false complaint was filed by the complainant.

8. The learned Advocate invited my attention to Section 5 of The Protection of Civil Rights Act, 1955 and submitted that, since the hospital in question is for the animals and there is no question of not admitting any person or persons in the hospital, on the ground of untouchability. Therefore, the learned Advocate submits that Section 5 is inserted without application of mind by the Police Officer.

9. The learned Advocate for the applicants further invited my attention to Section 7(1)(d) of the Protection of Civil Rights Act, 1955 and submitted that mere utterance of any word on caste could not attract the provisions of Section 7(1)(d) of the said Act. The learned Advocate in support of his contention placed reliance on the case of Laxman Jayaram Shant v. The State of Maharashtra reported in 1980 Bom.C.R. 609 and more particularly in paragraphs 8 and 9 of the said Judgment observed that

mere abuses in its very nature, may insult or may attempt to insult the person, but unless the said insult or attempt to insult is somehow or the other connected with the preaching or practice or untouchability, it cannot be said that accused has committed an offence under clause(d) of Sub-section (1) of Section 7 of the Act.

It is further observed that

it is necessary to read those words used in the contest and the background and one cannot take those words out of context and say that they deal with the Mahar caste and thereof they are on the ground of "untouchability".

10. The learned Advocate for the applicants further invited my attention in the case of Phul Singh Vs. State of Madhya Pradesh, and more particularly para 7 of

the said judgment. The learned Advocate for the applicants on the basis of paragraph of the said judgment submits that, calling a person on caste may be insulting him but it would not be an insult on the ground of untouchability.

11. The learned Advocate for the applicants further invited my attention to the reported judgment of this Court in M.A. Kuttappan Vs. E. Krishnan Nayanar and Another, . The learned Advocate invited my attention to paragraphs 11 and 12 of the said judgment and submitted that, "to attract provisions of Section 7(1)(d) of the Protection of Civil Rights Act, the words uttered should encouraged his audience to practise untouchability or that practised untouchability". Therefore, on the basis of above mentioned three judgments, the learned Advocate for the applicant submits that the provisions of Section 7(1)(d) of the Protection of Civil Rights Act, 1955 are not attracted in the instant case.

12. The learned Advocate for the applicants further invited my attention to the case of Shailendra Kumar Sengupta Vs. State of Maharashtra and Another, , to content that "acts alleged had nexus with official duties, then sanction u/s 197 of the Criminal Procedure Code to prosecute the applicant is necessary." The learned Advocate for the applicants invited my attention to paragraph 17 of the said judgment.

13. The learned Advocate for the applicants further invited my attention to the judgment of the Hon"ble Apex Court in case of Gorige Pentaiah Vs. State of A.P. and Others, and more particularly paragraph 4 of the said judgment and submitted that the case of the applicants squarely fall in the category of cases which are given by way of illustration in para 102 in case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

14. The learned Advocate for the applicants further invited my attention to judgments in the case of Sarita Shyam Dake Vs. Sr. Police Inspector and Others, ; and in the case of Swaran Singh and Others Vs. State through Standing Counsel and Another, , to contend that, to attract the provisions of Section 5 and Section 7(1)(d) of the Protection of Civil Rights Act, 1955 the alleged offence should have taken place in the public view.

15. The sum and substance of the argument advanced by the learned Advocate appearing for the applicants is that there is an inordinate delay in filing the First Information Report. Even if the allegations in the First Information Report taken as it is no offence can be made out against the applicants to prosecute the applicants, the sanction u/s 197 of the Criminal Procedure Code should have taken. On plain reading of Sections 5 and 7(1)(d) of the Protection of Civil Rights Act, 1955 no offence is made out and the alleged offence even as per the narration in the complaint has taken place in the house and therefore, it cannot be said that the said alleged offence had taken place in public view. The learned Advocate for the applicants submitted that since the offence u/s 506 part 1 of the Indian Penal Code is non cognizable offence, to prosecute it is necessary to take the permission of the Magistrate. That apart learned Advocate for the

applicants submitted that there was no question of the criminal intimidation to the complainant. Therefore, even offence u/s 506 of the Indian Penal Code can be tried against the applicants. The learned Advocate for the applicants submitted that the complaint is filed by the complainant just to counter-blast the earlier complaint filed by the applicants. Therefore, on aforesaid submissions the learned Advocate submits that this application deserves to be allowed.

16. The learned APP appearing for the non-applicant/State submitted that since the chargesheet is filed and cognizance is taken, this Court may not interfere at this stage at the proceeding and leave it to the court below to try the case. The learned APP further invited my attention to the contents of the First Information Report as well as other documents and submitted that on plain reading of said First Information Report and documents case is made out by the prosecution and offences as alleged are attracted. Therefore, this Court may not exercise its jurisdiction u/s 482 of the Criminal Procedure Code. The learned APP further submitted that the offence in question has taken place in public view. The learned APP further submitted that, after inquiry by the officer offence is registered and time was consumed in preliminary enquiry and thereafter offence is registered. Therefore, there it cannot be said that there is delay in filing the F.I.R. The learned APP further submitted that unless full fledged trial is conducted, it is difficult to prejudge the issue at this stage and concluded that no offence as alleged in the complaint or chargesheet is attracted against the complainant.

17. I have heard the learned Advocate appearing for the applicants at great length and also the learned APP for the non-applicant/State. I have also perused the contents of the application, annexures thereto, impugned order passed by the Court below and also record which is made available.

18. On careful perusal of the contents of the documents on record and more particularly complaint, it clearly reveals that the alleged incident took place on 12-10-2005 and the complainant on 17-10-2005 filed the application for lodging the F.I.R. with the Police Station. It means there is a delay of five days even by the complainant in lodging application for registering the First Information Report. The said delay has not been explained. That apart, the First Information Report came to be registered on 4-1-2006. On perusal of the documents on record and more particularly, the First Information Report there is nothing to suggest that there was enquiry and enquiry report and due to that there is a delay in filing First Information Report, though the First Information Report casually mentions that the said is filed after enquiry. There is no supportive material on record to come to the conclusion that the enquiry report or enquiry has been conducted by the Police Officer before registering the said First Information Report. If any cognizable offence is required to be registered, the Police Officer is bound by the provisions u/s 154 of the Criminal Procedure Code. On plain reading of Section 154 of the Criminal Procedure Code, there is no scope for enquiry so far cognizable offences are concerned and the officer is

bound to register the offence on the narration of the complainant. Even assuming for a moment that it is necessary to make the preliminary enquiry before registering the offence, in the instant case, the application was given by the complainant on 17-10-2005 and the offence has been registered on 4-1-2006. There is about 75 days delay in lodging the First Information Report. In fact this ground alone is sufficient to infer that, the said F.I.R. was after thought and strengthen the contention of the applicants that the said First Information Report, which is lodged on the basis of application filed by the complainant dated 17-10-2005 is based upon false allegations just to counter- blast the complaint filed by the applicant No. 2 against the complainant. Though it is possible to hold that, since there is a delay of 75 days for filing the First Information Report and delay of five days by complainant to file application for lodging First Information Report, the First Information Report could not be further investigated and proceedings based thereupon needs to be quashed. However, the applicants have made out the case even to quash the First Information Report and chargesheet based upon it on other grounds also.

19. I find considerable substance in the contention advanced by the learned Advocate for the applicants that the applicant No. 2 lodged the complaint against the complainant and to counter-blast, false complaint is lodged by the complainant against the applicants. On careful perusal of the affidavit in reply filed by the non-applicant/State, it can safely be said that whatever offences are alleged against the applicants those have nexus with their official duties and therefore, it was necessary to obtain the sanction as envisaged u/s 197 of the Criminal Procedure Code. Therefore, in absence of sanction to prosecute the applicants, it was not possible for the Magistrate to proceed further. Thirdly, on plain reading of Section 5 of the Protection of Civil Rights Act, 1955, it can be concluded that the said section is not attracted in the instant case. The hospital in question is for the animals and there is no question of not allowing any person in the hospital on the ground of untouchability.

20. On careful perusal of the judgments of this Court and the Hon''ble Apex Court referred above, it can be safely said that to attract the provisions of Section 7(1)(d) of the Protection of Civil Rights Act, 1955 mere utterance of any word on the cast is not sufficient and something more is necessary. In the instant case, even if the allegation in the complaint is taken as it is, at the most it can be said that the applicants have uttered the word "Mahar" and utterance of that word itself would not attract the provisions of Section 7(1)(d) of the Protection of Civil Rights Act, 1955. It is not necessary to elaborate this aspect since this is concluded by the aforesaid pronouncement by this Court and the Hon''ble Apex Court. Therefore, even the provisions of Section 7(1)(d) are not attracted and no offence is made out u/s 7(1)(d) of the said Act. So far part 1 of the Section 506 of the Indian Penal Code is concerned, the said offence is not cognizable and if offence is not cognizable, the permission by the Magistrate to try the said section against the applicants is required.

21. In the instant case, on careful perusal of the contents of the complaint and other documents, it appears that there is no question of any criminal intimidation by the applicants to the complainant. That apart, since the part 1 of the said section is not cognizable, the permission of the Magistrate would be required to try the applicants under said section. In the instant case, it is admitted position that no such permission has been obtained by the prosecution from the Magistrate.

22. Another important aspect of the matter that whether the offence in question has taken place in the public view or not, on perusal First Information Report, it is clear that alleged offence in question has taken place inside the house. There is nothing on record to suggest on plain reading of the First Information Report that the said offence was taken place at the place which is available for the public view. Therefore, since the alleged offence took place inside the house, it can be safely held that the said offence was not in public view.

23. To sum up, firstly, the First Information Report and chargesheet based upon it, and any further proceedings are required to be quashed since the First Information Report came to be lodged after 80 days from the commission of alleged offence and 75 days from the application filed by the complainant to the Police Officer. Secondly, no sanction as envisaged u/s 197 of the Criminal Procedure Code was obtained by the prosecution to prosecute the applicants, though they are Government servants. Thirdly, the alleged offence in question had taken place inside the house and it can be said that the said offence was not in the public view. On plain reading of Section 5 of the Protection of Civil Rights Act, 1955 no offence is attracted against the applicants since the hospital where the applicants are working is the hospital for animals. As stated earlier relying on the reported judgment pronouncement of this Court as well as Hon'ble Supreme Court, the offence u/s 7(1)(d) of the Protection of Civil Rights Act, 1955 is also not attracted, the offence u/s 506 part (1) is non-cognizable and to try the same permission of the Magistrate is required and apart from this, I find substance in the contention of the learned Advocate for the applicants that there is no question of any criminal intimidation and on careful perusal of the paragraph 102 in case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the case in hand falls under Clause 2,5,6,7. Therefore, by any stretch of imagination continuation of further proceedings based upon aforesaid Crime No. 3001/2006 and Chargesheet No. 22/2006 filed on the basis of First Information Report and further proceedings thereupon i.e. Criminal Case No. 9/2006 would be abuse of process of Court. Therefore, in the result, the applicants succeeds. Rule is made absolute in terms of prayer Clause (a) and the application is disposed of accordingly.