

(2022) 10 BOM CK 0129

In the Bombay High Court

Case No : Criminal Application (APL) No. 776 Of 2022

Gurudatta Ruprao Warudkar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 306, 323, 498A, 504, 506
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(x), 3(1)(r)(s), 3(2)(v)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 10 BOM CK 0129

Hon'ble Judges : Rohit B. Deo, J;Anil L.Pansare, J

Bench : Division Bench

Advocate : S.V.Sirpurkar, V.A.Thakre

Final Decision : Dismissed

Judgement

Anil L.Pansare, J

1. Admit. Heard finally.

2. By this Application, the Applicant has put forth the following substantive relief(s) :

" 1) Allow this application, quash and set aside FIR No.06/2022 (Annexure-I) dated 12/ 01/2022 registered at Police Station, Badnera, District Nagpur Railway and charge-sheet No.12/ 2022 (Annexure III) dated 14/03/2022 registered at Police Station, Badnera, Dist Nagpur Railway for offence punishable under sections 306 r/w 34 of Indian Penal Code along with 3(1)(r)(s), 3(2) (v) of the S.C.& S.T. (Prevention of Atrocities) Act.

(2) During the pendency of this application, stay the further proceedings in the present F.IR. No.06/2022 (Annexure-I) dated 12/01/2022 and charge-sheet No. 12/2022 dated 14/03/2022 registered at Police Station, Badnera, for offence punishable under sections 306 r/w 34 of Indian Penal Code along with 3(1)(r)(s),

3(2)(v) of the S.C.& S.T. (Prevention of Atrocities) Act.”

3. We have heard both the sides at length and have gone through the contents of the first information report (FIR) and the final report (charge-sheet).

4. The applicant is charge-sheeted for the offences punishable u/s. 306, 34 of the Indian Penal Code read with Section 3(i)(r)(s) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as “the Atrocities Act”).

5. The FIR has been lodged by the father of the deceased on 12.01.2022 against four persons, namely, Ankit, Harshad, Tejas and another person having beard. The contention of Mr. S.V. Sirpurkar, learned Advocate for the applicant is that the name of the present applicant is not disclosed in the FIR. However, the learned APP would submit that the fourth person who is described to have beard, has been later identified as the present applicant.

6. The charge-sheet would show that the father of the deceased, namely Mahesh, has lodged FIR on the basis of information received by him. He received information from one Lakhan Sanjay Telange whose statement was recorded on 20.01.2022. He stated before the police that he was in financial crisis during Covid-19 period. He was residing at Kondhali. On 16.04.2021 he met Mahesh. He informed his financial precarious situation, to which Mahesh asked him to join his business relating to sand, bricks and property. Lakhan joined him at Warud and started residing with Mahesh in his room. There was one more person named Arjun who was residing with Mahesh in the room. On 21.12.2021, accused-Ankit came to the room and was annoyed but Mahesh was not in the room. Witnesses Lakhan and Arjun were present. Ankit abused them by caste. He thundered that let Mahesh come and that he will throw everyone out of the room. Later on Lakhan came to know that Mahesh committed suicide. Ankit concluded his statement by saying that Mahesh was always harassed by Ankit and his friends on account of financial dispute. They used to abuse him by caste in the room and also near ST depot square and, therefore, Mahesh committed suicide. The other witnesses have also supported the prosecution version on this count.

7. Learned Advocate for the applicant has relied upon the following judgments, two of which are of the Apex Court and three of this Court, to contend that provisions of the Atrocities Act will not be attracted in this case. They are,

(1) Hitesh Verma vs. State of Uttarakhand : (2020) 10 SCC 710

(2) Ramawatar vs. State of Madhya Pradesh: 2021 SCC Online SC 966

(3) Papu Supekar vs.State of Maharashtra: 2020 SCC Online BOM 831.

(4) Raju vs. State of Maharashtra : 2019 SCC Online BOM 98

(5) Gayatri vs. State of Maharashtra: {Criminal Appeal No.876/2019 decided on 8.11.2019}

8. The Hon'ble Apex Court in the case of Hitesh Verma vs. State of Uttarakhand (supra), in context with the offence punishable u/s. 3(1)(r) of the Atrocities Act, has held that all insult or intimidation to person will not be offence under the Atrocities Act unless such insult or intimidation is only on account of the victim belonging to Scheduled Caste or Scheduled Tribe. The Court further held that the offence under the Atrocities Act would be made out when member of a vulnerable section of society is subjected to indignities, humiliations and harassment, because of belonging to that vulnerable section of the society. On the point of the insult or intimidation "any place within public view" as envisaged u/s. 3(1)(r), the Supreme Court has referred to earlier judgment, in Swaransingh vs. State: (2008) 8 SCC 435, wherein the concept of public view was explained by illustration, viz. if an offence is committed outside the building, e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.

9. Learned Advocate for the applicant would contend that the accusation against the applicant and the co-accused is that the abuses hurled by referring to caste, were made in the room and not in the public place. However, learned APP has drawn our attention to the statement dated 02.03.2022 made by one Rajendra Shivaji Jadhav. He stated that he is doing online CSC work and was required to visit Warud where deceased Mahesh was residing. He used to meet Mahesh. In December 2021 when he had been to Warud to purchase certain items, he met Mahesh at ST Depot Square. He saw 4/5 persons along with Mahesh. They were quarrelling with Mahesh for money. Mahesh was explaining them something. The names of those person as heard by him (the witness) were Ankit, Tejas, Harshad and Guddu. They all were abusing Mahesh by insinuating his caste "Mangtya" and such abuses continued for quite some time and that they were laughing amongst themselves at the same time. After some days i.e. 21.12.2021 the witness came to know that Mahesh took the extreme step.

10. Learned APP has correctly argued that the abuse was in public place and if taken at its face value, would indicate that the abuse was on the count that Mahesh belonged to Scheduled Caste. Learned Advocate for the applicant countered this submission. According to him, the statement was recorded on 02.03.2022 relating to the incident that occurred on 21.12.2021. The statement is nothing but an attempt made by the prosecution to falsely implicate the applicant.

11. We are not impressed with the submissions made by Mr Sirpurkar, inasmuch as his submission could, at the most, be taken as defence, but no inference as suggested by him could be drawn without trial. At present, the allegation as levelled against the applicant will have to be taken at its face value to decide whether the offence is made out or not. The witness has stated that the

applicant and others have abused Mahesh near ST depot which admittedly is a public place and is in the public view. The caste based abuse continued for some time and that the applicant and co-accused were laughing at such status. The aforesaid allegation, in our view, will have to be tested in a trial before arriving at certain inference as to whether the abuses were caste based or not.

12. In the case of *Ramawtar vs. State of MP* (supra), the Hon'ble Supreme Court was pleased to quash the criminal proceeding on the basis of compromise, by invoking powers under Art.142 of the Constitution and, therefore, the said ruling cannot be taken aid of, to grant relief in favour of the applicant.

13. The judgment of the Bombay High Court in the case of *Papu Supekar vs. State of Maharashtra* (supra) was in context with granting anticipatory bail, which has altogether different consideration and parameters and, therefore, we are not inclined to consider the said judgment to extend any benefit to the applicant.

14. In the case of *Raju Sadar vs State of Maharashtra* (supra), the coordinate Bench was dealing with challenge to the conviction of the appellant therein. The entire evidence was before the Court and, therefore, the finding of the Court was based on evidence led by the prosecution. The appellant was tried for the offences punishable u/ss. 323, 294, 506, 34 of the IPC read with sections 3(1)(x) of the Atrocities Act. The said judgment will not render any assistance for quashing the charge-sheet.

15. In the case of *Gayatri vs. State of Maharashtra* in Criminal Appeal No. 876/2019, the coordinate bench was dealing with grant of anticipatory bail to the appellants. The dispute arose out of matrimonial discord. The relatives of the husband were roped in for the offence punishable u/ss. 498A, 323, 504 and 506 of IPC read with section 34 IPC so also u/s 3(1)(x) of the Atrocities Act. The facts of the case were considered in context with granting anticipatory bail. We are not inclined to refer to the said order passed in the case where consideration for granting bail were altogether different.

16. The law is well-settled on the point of quashing FIR or charge-sheet and is that the allegations as levelled in FIR and the charge-sheet are taken at its face value, if do not make out any case, the same could be quashed by invoking inherent jurisdiction u/s 482 of the Code of Criminal Procedure, 1973.

17. What transpires from reading FIR and charge-sheet is that Mahesh and the accused were friends. They were engaged in the business of sand, bricks and property. There occurred some financial dispute between them. Accused, including the applicant, were constantly abusing Mahesh by caste, in the room so also in the public view. Ultimately, Mahesh committed suicide because of such harassment. In our view, if the above contents are taken at its face value, though Mr. Sirpurkar vehemently argued that the allegations would not amount to instigation or abetment to commit suicide, there is still an element which requires examination whether harassment was such that Mahesh was left with no

other alternative but to commit suicide. In a given case, if the harassment is caste based and is in public view, it could be argued that the person was compelled to commit suicide. Thus, the argument on abetment to commit suicide will have to be tested in the evidence.

18. So far as the offences under the Atrocities Act are concerned, the statements of witnesses, prima facie, indicate that the abuses were caste based and were in public view.

19. In the circumstances, we are not inclined to invoke the inherent jurisdiction u/s 482 of Cr.P.C. to quash the proceedings. Consequently, the Application fails and is rejected.