

(2009) 11 BOM CK 0135

In the Bombay High Court

Case No : Criminal Application No. 4102 of 2006

Haridas Kharbadkar and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 237, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 324, 427
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 23(1), 3, 3(1)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7

Citation : (2010) CriLJ 3298

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

Bench : Single Bench

Advocate : None, for the Appellant; V.A. Thakare, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Shinde, J.—When the matter is called out for hearing, none appeared for the applicants. This matter was listed for final hearing on 13.11.2009. When the matter was called out, none appeared for the applicant. To give one more opportunity to the Counsel appearing for the applicants to represent and argue on behalf of the applicants, the matter was adjourned today for final hearing at 2.30 p.m. Even today, none appears for the applicant. This Court, on 13.11.2009 has made it clear that in case none appears for the applicant on the adjourned date i.e. today, this Court will proceed to decide the application on its own merits and accordingly the matter is taken up for final hearing.

2. Brief facts of the case are as under:

The applicants herein have been charge-sheeted u/s 147, 148, 149, 324, 427 of the Indian Penal Code and also u/s 3(1)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act"). On the basis of report lodged by one Shantabai Anandrao Khandekar

on 06.11.2004, the applicants were summoned made to appear before the trial Court. They appeared before the trial Court and the case came to be fixed for framing of charge.

3. The applicants, on the date of framing of charge, moved an application before 1st Ad hoc Additional Sessions Judge, Akola u/s 237 of the Code of Criminal Procedure 1973 for discharge of the accused persons i.e. the applicants, who were charge-sheeted u/s 3 of the Act. It was the contention of the applicants that the alleged offence cannot be constituted against accused person because in the report, there are no specifications regarding what abuses are given or by whom they are given. It was further contention of the applicants in the said application that if there is no mention of caste in the First Information Report, investigation conducted on basis of said report cannot be entertained. It was further contended that the said offence should not have been registered by non applicant against the applicants. Therefore, it was prayed that the applicants be discharged from the said offence especially from offence punishable u/s 3(1)(ii) of the Act.

Non applicant-State filed reply thereby resisting the claim of the applicants and prayed for rejection of the application.

4. The learned Special Judge, Akola was dealing with the said trial having Sessions Trial No. 12/2006 and was pleased to reject the application at Exh.-51 filed by applicants for their discharge u/s 3(1)(ii) of the Act. Hence, this application is filed by the applicants.

5. On perusal of para 9 of the said application, the applicants have taken a ground that neither caste of the complainant nor the caste of accused was mentioned in the report. Therefore, the ratio laid down by this Court in the case of Manohar v. State of Maharashtra All MR (Crimes) 2602, the prosecution is unsustainable. In para 11, it is further stated that it seems that caste is mentioned as "Buddha" and it was argued before the trial Court that "Buddha" is the name of religion and not caste. Therefore, it was prayed that unless the caste is mentioned in the First Information report, the said First Information Report cannot be investigated further and no allegation in the said First Information Report can be sustained. In para 13, it is further stated that there are no specific allegations in the First Information Report and, therefore, provisions of Section 3(1)(ii) of the Act are not attracted.

6. On careful perusal of the averments made in the application, it appears that the only ground taken in the application is that caste of accused or complainant is not mentioned in the First Information Report and no specific allegations are made in the First Information Report so as to attract provisions of Section 3(1)(ii) of the Act.

7. The learned A.P.P. for the State invited my attention to the contents of the First Information Report and submitted that the allegations in the First Information Report clearly attracts provisions of the Act and submitted that the

trial Court has rightly rejected the application for discharge. Learned A.P.P. invited my attention to the reported judgment of the Supreme Court in the case of Ashabai Machindra Adhagale Vs. State of Maharashtra and Others, and submitted that the point raised in this application is no more res integra and the Apex Court in the said judgment has held that merely non mentioning of the caste of the accused or complainant, as the case may be, may not itself be a ground to quash First Information Report by exercising powers u/s 482 Code of Criminal Procedure. Learned A.P.P further invited my attention to the contents of the First Information Report and submitted that this Court may not exercise jurisdiction u/s 482 of the Code of Criminal Procedure to quash the First Information Report. I have perused contents of the application and provisions of Section 3(1)(ii) of the Act. Section 3(1)(ii) reads as under:

3. Punishments for offences of atrocities.- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(i)....

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or an other obnoxious substance in his premises or neighbourhood;

8. On careful perusal of the annexures to the application, it appears that in pursuance to registration of the First Information Report statement of the witnesses have been recorded and at the stage when matter was fixed for framing charge, the person filed application for discharge before the trial Court, which came to be rejected.

9. On careful perusal of the complaint/First Information Report it clearly reveals that there was assault by applicants on the complainant as well as relatives of the complainant. Therefore, bare perusal of the First Information Report would show that the said First Information Report is lodged with specific allegations, therefore, the first ground taken in the application that there are no specific allegations in the First Information Report, is required to be rejected.

10. The another contention, which is taken in the application that no caste of the applicants or complainant is mentioned in the First Information Report, the said point is no more res integra and the Hon'ble Apex Court in the case of Ashabai Machindra Adhagale (supra) in para 10 to 12 has held as under:

10. It needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned Counsel for the appellant whether the accused belongs to Scheduled Caste or Scheduled Tribe can be gone into when the matter is being investigated. It is to be noted that u/s 23(1) of the Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short "the Rules") have been framed.

11. Rule 7 deals with the investigating officer, Under Rule 7, investigation has to be done by an officer not below the rank of Deputy Superintendent of Police.

12. After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the court to either accept the same or take cognizance. Even if the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the court that the materials do not show that the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe.

11. On bare perusal of para Nos. 10 to 12 of the judgment of the Apex Court, it appears that the Hon"ble Apex Court has considered the rival contentions and held that the First Information Report is not expected to be an encyclopedia. Under Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rule 1995, investigation has to be done by officer not below the rank of Dy. Superintendent of Police and after ascertaining the facts, during the course of investigation, it is open for the Investigating Officer to record that the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court either to accept the same or to take cognizance. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to Scheduled Caste or Scheduled Tribe.

12. Thus, what follows from the aforesaid judgment of the Apex Court, it is not mandated in all the provisions under the Act that it is mandatory to mention caste of the accused or complainant, as the case may be, in First Information Report/complaint. In my considered view, the present application deserves to be rejected.

13. In view of above, the application is rejected. Rule discharged. Interim order stands vacated. It is made clear that the observations made in this judgment will not come in the way of the applicants while facing the trial. These observations are only for the purposes of deciding the present application.