

(2005) 08 BOM CK 0010

In the Bombay High Court

Case No : Criminal Application No's. 786, 788, 798 to 800, 805, 809, 812, 814, 869, 1200, 1257, 1318, 1344, 1406, 1407, 1574, 1624, 1682, 1654, 1826, 1878 and 1936 of 1996, 266 and 965 of 1997, 1056, 1807 and 1877 of 1998, 525, 1053, 1160, 1785, 1980 and 2161 of 1

Manohar Kulkarni and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 258
Protection of Civil Rights Act, 1955 — Section 7
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3, 7

Citation : (2005) CriLJ 4653 : (2005) 4 MhLj 588 : (2006) 1 RCR(Criminal) 537

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : R.M. Borde, S.V. Mundhe, S.S. Choudhary, Sanjay Yadav, V.M. Deokate, S.C. Bora, V.C. Solshe, C.V. Korhalkar, A.B. Kale, S.D. Kulkarni, B.A. Darak, R.N. Dhorde, A.S. Deshpande, P.V. Mandlik, R.J. Ranshoor, V.D. Hon, N.B. Khandare, Abhay Mantri, A.H. Kapadia, N.G. Kale, T.S. Lodhe, S.K. Barlota, S.B. Talekar, C.R. Deshpande, S.D. Joshi, N.K. Kakade, G.M. Jadhav, R.R. Mantri, A.J. Rathi, V.D. Patnoorkar, Joydeep Chatterji, Arvind Bagul, M.Y. Deshmukh, A.N. Kakade, R.F. Totla, M.A. Khandarkar, M.S. Deshmukh, C.V. Thombre, R.S. Deshmukh, J.N. Jagtap, V.D. Sonawane, V.A. Nimbalkar, Jaishri Patil, M.M. Joshi, P.R. Lakhotiya, M.I. Menachery, B.L. Sagar Killariker, S.S. Jadhav, S.S. Panale, V.D. Salunke, S.J. Salunke, P.F. Patni, P.B. Patil and V.D. Sapkal, for the Appellant; B.J. Sonawane, M.L. Dharashive, N.H. Borade and K.B. Choudhari, A.P.Ps., C.K. Shinde, K.J. Ghute Patil, S.G. Shinde, S.B. Gaikwad, G.H. Barhalikar, S.S. Shete, V.B. Wagh, M.K. Deshpande, N.N. Shinde, R.B. Salve, K.S. Bhore, M.R. Andhale, M.R. Zakade, B.V. Dhage, A.S. Golegaonkar, S.S. Rathi, B.V. Wagh, N.L. Jadhav, P.V. Tapse Patil, S.G. Chapalgaonkar, B.S. Kudale and P.B. Shirsath, for the Respondent

Judgement

R.S. Mohite, J.—The aforesaid group of 59 matters has been clubbed together because they involve a common question of law, which is no longer res integra

and since they can all be decided and disposed of on the basis of the said question of law. All the matters pertain to the quashing of an F.I.R./investigation/proceedings under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act for the sake of brevity). In all the aforesaid matters either rule or notices have been issued on the footing that the matters would be decided finally at the stage of admission, such notices having been served upon the respondents. In such of the matters that Rule has not been issued. Rule is now issued and the same is made returnable forthwith by consent. All the matters are, therefore, being disposed of finally on a point of law by this judgment and order.

2. In applications being Criminal Application Nos. 786/1996, 788/1996, 805/1996, 809/1996, 869/1996, 1344/199, 1406/1996, 1574/1996, 1654/1996, 1878/1996, 266/1997, 1053/1999, 1785/1999, 2161/1999, 1390/2001, 9/2003, 1693/2003, 2029/2003, 387/2004, 1012/2004, 118/2005, 147/2005, 781/2005, 782/2005 and 1415/2005, the police registered an offence under the Atrocities Act against the accused even though in the body of the First Information Report, the caste of the accused was not mentioned.

3. In the remaining applications being Criminal Application Nos. 798/1996, 799/1996, 800/1996, 812/1996, 814/1996, 1200/1996, 1257/1996, 1318/1996, 1407/1996, 1682/1996, 1624/1996, 1826/1996, 1936/1996, 965/1997, 1056/1998, 1807/1998, 1877/1998, 525/1999, 1160/1999, 1980/1999, 1847/2000, 2227/2001, 1169/2002, 1834/2002, 261/2003, 513/2003, 141/2004, 444/2004, 623/2004, 1264/2004, 1435/2004, 1637/2004, 2093/2004, 1206/2005 and 1423/2005, the police registered an offence under the Atrocities Act against the accused even though in the body of the first information report the caste of the complainant was not mentioned.

4. A Division Bench of this Court (V. K. Barde and A. P. Deshpande, JJ.), in the case of Anant Vasantlal Sambre v. State of Maharashtra, delivered a judgment on 20-4-2001 in Criminal Writ Petition No. 49 of 2001, in which a view was taken that if the First Information Report does not contain an averment that the accused does not belong to a Scheduled Caste or Scheduled Tribe, the offence u/s 3 of the Atrocities Act cannot be registered. In the case before the Division Bench, the complainant had alleged that one Shri Kailash Gorantyal, who was a sitting M.L.A., committed an offence punishable under the provisions of the Atrocities Act, but though a report in that regard was made to the Sadar Bazar Police Station at Jalna, the police did not investigate into the matter. In that case, the Police-Sub-Inspector, Sadar Bazar Police Station, Jalna had filed an affidavit-in-reply, wherein he admitted that such a First Information Report was received at the police station on 15-1-2001. He, however, contended that though the enquiry was made on the receipt of the report, no crime was registered on the basis of that report. Further, the complainant in that case, had along with his First Information Report, had filed his caste certificate, indicating that he belonged to a Scheduled Caste (Hindu Khatik). However, in the First Information

Report there was no mention that the person against whom the complaint was made viz. Shri Kailash Gorantyal, did not belong to Scheduled Caste or Scheduled Tribe. In paragraph No. 6 of the judgment, the Division Bench observed as under :

"06. 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 Gorantyal, 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 Gorantyal does not belong to Scheduled Caste or Scheduled Tribe. In the absence of such averment, 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 cognizable 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."

5. A Single Judge of this Court (R.M.S. Khandeparkar, J.) vide his judgment dated 7/8th November, 2000, had earlier decided the case of Bai " Laxmibai Nivrutti Poul and Ors. v. State of Maharashtra, in which, based upon similar logic, it was laid down that if the caste of the complainant is not disclosed in the F.I.R. the police authorities could not be said to have any material to invoke the powers under Chapter XII of the Criminal Procedure Code and to commence investigation considering the complaint to be a cognizable complaint. In that case, the complainant Sugriva Bhimrao Manare had lodged the statement with the police on 21-2-2000, complaining that on 20-11-1999 at about 6.30 Hrs., while he was passing by the side of the house of the applicants on a public road, he was assaulted by one Deepak Vyankatesh Poul as well as by the applicants before the Court and he was also insulted by using abusive language and was humiliated by reference to his being a member of "Mahar caste". Based on such

statement, the police had registered F.I.R. No. 2/2000 u/s 154 of the Criminal Procedure Code. In that case, while registering the complaint, the police had filled in the format u/s 154 of the Criminal Procedure Code, in which the caste of the complainant was shown as "Mahar". However, the statement of the complainant recorded after filling in the proforma format did not disclose the caste of the complainant. On such facts, the Single Judge of this Court observed in paragraphs 8 and 9 as under :

"8. However, there is considerable substance in the second ground of challenge by the learned Advocate for the applicants i.e. the F.I.R. nowhere discloses the caste of the complainant. Indeed, the perusal of the F.I.R. discloses that the complainant has nowhere stated anything about his caste to which he belonged to. There is no doubt that the format u/s 154 of Criminal Procedure Code filled in by the Police authorities does disclose that the complainant is of "Mahar" caste. It is, however, not known as to from where this information was acquired by the police authorities to record the same in the format u/s 154 of Criminal Procedure Code. The format prescribed u/s 154 by itself does not provide for any need for the complainant to disclose his caste. At the same time, the statement lodged by the complainant also does not disclose the caste of the complainant. Once it is apparent on the face of the provisions contained in Section 3 as well as Section 7 of both the Statutes referred to above, that in order to constitute an action on the part of the person to be an offence within the meaning of those sections, the insult or intimidation has to be addressed to a member of the Scheduled Caste. It is nobody's case that the complainant belongs to any Scheduled Tribe. In the absence of any such information, therefore, as rightly submitted by the learned Advocate for the applicants, there was absolutely no material before the Police authorities to invoke powers under Chapter XII of the Criminal Procedure Code and to commence investigation considering the complaint to be a cognizable complaint. 9. The Apex Court in *Manoj alias Bhau and Ors. v. State of Maharashtra*, (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 the 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."

6. On behalf of the complainants, it was urged before me that merely because the caste of the complainant and/or the accused was not given in the body of the F.I.R., that could not be a ground for not registering the crime under the Atrocities Act. Reliance was placed on the judgment of the Apex Court in the case

of Superintendent of Police, C.B.I. and Ors. v. Tapan Kumar Singh. In this case, the Apex Court has taken a view that the First Information Report need not disclose all the facts and details relating to the offence reported. The true test was that the police officer should have reasons to suspect the commission of the offence which he is empowered to investigate. In para 20 of this judgment, the Apex Court observed as under :

"20. It is well settled that a first information report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need necessarily be an eye witness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer, on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage, it is also not necessary for him to satisfy himself about the truthfulness of information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered u/s 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it disclose full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to" investigate the case and discover the true facts, if he can."

7. The learned Single Judge of this Court in Bai Laxmibai Poul v. State of Maharashtra, reported supra, had dealt with this argument. The earlier judgment of the Apex Court in the case of Manoj @ Bhau and Others Vs. State of Maharashtra, was dealt with by the Single Judge. In that case, the Apex Court

had observed that the F.I.R. was 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. The Single Judge observed that 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 the investigation on the basis of F.I.R. which does not disclose such information which can empower the police to investigate in terms or provisions contained in Chapter XII of Criminal Procedure Code. The Single Judge further observed that as the F.I.R. before him did not disclose 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.

8. The judgment of the Apex Court, which is cited above by the complainants, takes the same settled view of law taken in the judgment of the Apex Court in the case of Manoj alias Bhau and Ors. v. State of Maharashtra (supra). It is, thus, clear that there is a distinction which can and ought to be drawn between disclosure of all facts and details relating to a cognizable offence and disclosing essential substantial facts which are necessary to be given for conducting that a cognizable offence has been committed. This in essence was the reasoning and the logic of this Court in the case of Bai Laxmibai's case, I am in agreement with the view expressed by the Single Judge in this regard.

9. In my view, apart from the fact that there is a clear judgment of a Single Judge of this Court referred to aforesaid on this point, the logic and reasons given by the Division Bench judgment delivered in Criminal Writ Petition No. 49/2001 (referred to supra) would also apply to cases in which the caste of the complainant is not disclosed in the F.I.R.

10. It appears that from prior to the delivery of the two judgments referred to above, the police had been registering cases under the Atrocities Act and investigating the same even though the caste of the complainant/accused or both the complainant and the accused were not disclosed in the body of the First Information Report. This is reflected from the fact that some of the applications, which have been decided today are of the years 1996 onwards. It appears further that notwithstanding these judgments, even after the said judgments were delivered, the police have continued to register such offences in spite of there being a lacuna in the First Information Report of the nature referred "to hereinabove.

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.

12. It was pointed out to me that in several cases, there was a complaint as regards other offences under the Indian Penal Code, such as assault, molestation, rape etc. That some of these offences were bailable and in some cases non-bailable offences under the Indian Penal Code were also involved. In certain other cases offence u/s 7 of the Protection of Civil Rights Act, 1955 was also alleged. Insofar as the offence u/s 7 of the Protection of Civil Rights Act, 1955 is concerned, a Single Judge of this Court (R.M.S. Khandeparkar, J.) has held that the lacuna in not mentioning the caste of the complainant in the F.I.R. would be fatal. This logic would, however, not extend in cases under the same Act where the caste of the accused was not mentioned as any person can be guilty of an offence under the said Act. I wish to make it absolutely clear that the registration of the offence/offences under the provisions of the Indian Penal Code suffers from no lacuna. I propose to give certain clarifications in this regard hereinafter.

13. In the circumstances, it is held that the registration of the crime by the police in all the aforesaid matters under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 or the Protection of Civil Rights Act, 1953 (where applied and only where the caste of the complainant is not given in the body of the F.I.R.) and the consequent investigation and prosecution for the offences under the Atrocities Act or the Protection of Civil Rights Act, 1955 (where applied and where the caste of the complainant is not given in the body of the F.I.R.), was not in accordance with law and is liable to be quashed and set aside.

14. It is clarified that, however, on the basis of the First Information Reports, which are lodged by the complainants in the aforesaid cases with the police, if there is an allegation of the commission of an offence under any other enactment (excepting the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, or the Protection of Civil Rights Act, 1955 (in cases where the caste of the complainant is not given in the body of the F.I.R.)), then the said F.I.R./ investigation/prosecution after completion of investigation under such provisions, would be competent and can proceed. It is clarified that insofar as these other offences are concerned, the police would be at liberty to effect an arrest of the accused in accordance with law. The accused will also have a right to apply for anticipatory bail before the competent Court in cases where non-bailable offence are involved and if any such application is made, the same will be dealt with and disposed of by the Court on its own merits.

15. It is clarified that in any warrant triable cases, either before the Magistrate or cases which would be required to be committed to the Sessions Court, the accused will have a right to apply for discharge in accordance with law. It is also clarified that any summons triable cases instituted otherwise than upon complaint, the Magistrate would have the powers to stop proceedings u/s 258 of the Criminal Procedure Code, 1973.

16. It is lastly clarified that if any summary proceedings have been filed by the police in respect of any of the offences, the Magistrate will decide whether the summaries are required to be accepted in accordance with law.

17. In the result, Rule is made absolute in all the aforesaid matters in the aforesaid terms and they stand finally disposed off.