

(2014) 11 BOM CK 0147
In the Bombay High Court
Case No : Criminal Revision No. 138/2014

Sharad Shankarrao Chavan

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 203, 397(3), 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3[1][ix]

Citation : (2014) 11 BOM CK 0147

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : Rajnish R. Vyas, Advocates for the Appellant; S.M. Bhagde, A.P.P,
Advocates for the Respondent

Judgement

S.B. Shukre, J.—Heard learned Counsel for the parties. Admit. Considering the fact that relevant material is already present on the record, there is no need to call for the records and proceedings of the court below.

2. With the consent of the learned Counsel appearing for the parties, the revision application is heard finally.

This revision application is preferred by the applicant against the order dated 09.09.2014 passed in Criminal Revision No. 22/2014 by the Sessions Judge, Gadchiroli thereby directing the Chief Judicial Magistrate, Gadchiroli to proceed against the applicant in the matter of a complaint filed by the respondent no. 2, under Section 190 of the Criminal Procedure Code, in accordance with law.

3. The applicant is presently working as a Deputy Director(Research), and when he was working in the capacity as a Senior Research Officer, his remarks were called by the Commissioner, Tribal Research and Training Institute, Pune in cases pertaining to caste claims of 4 candidates, who were claiming to be of "Mana" Scheduled tribe category. The applicant had submitted his detailed remarks in the matter by his letter dated 24.08.2009 sent to the said Institute. One

paragraph of this letter, however, caused much annoyance and indignation to respondent no. 2. The relevant observations in this paragraph read thus :

These observations, according to the respondent no. 2 violated the legal and fundamental rights of the members of Mana community and also amounted to commission of criminal offence and, therefore, the respondent no. 2 filed a complaint before the Chief Judicial Magistrate, Gadchiroli praying to proceed against the respondent no. 2 for an offence punishable under Section 3[1][ix] of the Scheduled Caste/ Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short).

4. Upon perusal of the allegations made in the complaint, the learned Chief Judicial Magistrate found that the aforesaid observations were part of freedom of expression a Research Officer would have in the field of academics and in any case they reflected subjective opinion of the applicant and, therefore, could not be considered as giving of any false or frivolous information, the main ingredients requisite for constituting an offence punishable under Section 3[1][ix] of the Atrocities Act. Accordingly, the learned Chief Judicial Magistrate dismissed the complaint being groundless, in view of his power under Section 203 of the Criminal Procedure Code, on 16.06.2014.

5. The complainant/respondent no. 2 was not satisfied with this, and therefore, he filed a revision application against the said order of Chief Judicial Magistrate dated 16.06.2014, before the Sessions Judge, Gadchiroli which was registered as Criminal Revision No. 22/2014. After hearing the complainant as well as the applicant, the learned Sessions Judge found the aforesaid observations of the applicants as sufficient to prima facie indicate commission of offence alleged against the applicant, and therefore, the learned Sessions Judge by his order dated 09.09.2014, quashed and set aside the order dated 16.06.2014 passed by the Chief Judicial Magistrate, Gadchiroli and directed him to proceed with the complaint in accordance with law. This time the applicant/ accused was aggrieved, and that is why he is before this Court in the present revision.

6. According to the learned counsel for the applicant, the observations taken at their face value do not indicate commission of any offence by the applicant. He submits that these observations are nothing but, an opinion expressed by the Research Officer which was based upon the research carried out by him and that it has not resulted in causing of any injury or annoyance to the members of Mana community, and as such no offence punishable under Section 3[1][ix] of the Atrocities Act, has been made out.

7. The learned A.P.P. appearing on behalf of the respondent State submits that an appropriate order in accordance with law may be passed.

8. The learned Counsel for respondent no. 2 in his forceful argument has submitted that the impugned judgment and order is legal and correct and calls for no interference. His first objection is that, this Revision Application itself is untenable because it is a revision against revision, and also a revision filed

against an interlocutory order. His second objection is, that no legality or perversity can be seen in the impugned judgment, and therefore, it would be out of scrutiny of this Court in exercise of its revisional jurisdiction. His third objection is, that the observations made by the applicant, when accepted as they are, amount to constituting of an offence punishable under Section 3[1][ix] of the Atrocities Act and, therefore, law must be allowed to take its own course.

9. In the case of H.K. Rawal and Another Vs. Nidhi Prakash and Another, , relied upon by learned Counsel for the respondent no. 2, Full Bench of Allahabad High Court has after considering various precedents of Hon"ble Supreme Court held that if a revision is filed by a person against an order of the Sessions Judge and it is dismissed, a revision against the order dismissing the revision cannot be entertained in the High Court at the instance of a person whose revision application has been dismissed by the Sessions Court. Well, there is no dispute about this principle of law. But, it must be stated that the present revision application has been filed by a person who had not filed any revision application before the Sessions Court, and this being the first and fresh revision application, this case would not be hit by the principle of bar of revision against revision. As such, the case of H.K. Rawal (supra), would not help in any manner the case of respondent no. 2.

10. At this stage, the learned counsel for respondent no. 2 refers to me the case of Rajan Kumar Machananda Vs. State of Karnataka, , wherein the Hon"ble Supreme Court held that when a second revision at the instance of a party whose first revision before the Sessions Court is dismissed is barred under Section 397(3) of Criminal Procedure Code, the party cannot be permitted to circumvent the bar by invoking the jurisdiction of the High Court for exercise of it's inherent power under Section 482 of the Criminal Procedure Code. This is a settled legal principle. But, in my humble opinion, it has no application to the present revision, as it is the first and fresh revision application of the applicant and the applicant is not invoking inherent powers of this Court in this application.

11. As regards the contention that the impugned judgment is basically an interlocutory in nature, in the sense that the Chief Judicial Magistrate, has been directed only to proceed in the complaint in accordance with law, nothing finally has been decided and the order has also not caused any prejudice to the applicant and he would have all the opportunity to put up his defence before the concerned Court. It must be understood that any prosecution for an offence which the accused believes to be not committed by him brings immense stress, discomfort and disrepute to the accused and, therefore, he has a right to plead for dismissal of the complaint at the threshold. His such right is valuable and it's denial, if it is by an order passed without considering the aspects materially affecting the right of the accused, would adversely affect the accused physically, mentally and financially. It is well settled law that an order which affects valuable right of an accused or which is an order of moment for the accused is not an interlocutory order (see Amar Nath and Others Vs. State of Haryana and Another,

and Hasmukh J. Jhaveri Vs. Shella Dadlani and another, . Asking the accused, the applicant herein to face the ordeal of trial of the case against him by an order passed without considering the material aspects of the case is, something which is a matter of moment for the applicant and, therefore, the present revision application is maintainable.

12. The learned counsel appearing on behalf of the respondent no. 2 has referred to the following cases Bindbasni and Others Vs. State of U.P., and Ram Babu .vrs. State of Madhya Pradesh (Criminal Appeal No. 962/2009 decided on 08.05.2009 by the Hon''ble Supreme Court).

In Bindbasni and others .vrs. State of U.P. (supra), it has been held that revision does not lie against an order which does not deal with final rights of the parties. There is no dispute about this proposition of law. But, an order which touches upon the valuable rights of an accused is also not an interlocutory order, as seen earlier, and, therefore, the case of Bindbasni would not be of any help to respondent no. 2 in asserting that this revision application is not maintainable.

In the case of Ram Babu .vrs. State of Madhya Pradesh (supra), relied upon by the respondent no. 2, the Hon''ble Supreme Court has held that the High Court should not quash the proceedings in exercise of its powers under Section 482 of the Criminal Procedure Code when allegations in the complaint, if read as they are, and without adding or subtracting anything to them make out an offence. These observations appear to have been made while considering the scope and ambit of power of the High Court under Section 482 of the Criminal Procedure Code. Nevertheless they do have their application to cases where cognizance of the allegations made in a criminal complaint is required to be taken and the Court would be justified to take cognizance of the allegations if the allegations taken at their face value disclose commission of an offence. However, for the reasons stated in the subsequent paragraphs, I have found that in the instant case the allegations made in the complaint when taken as they are and without adding or subtracting anything there, do not make out any offence as alleged against the applicant and this is only by following this very principle of law.

13. The next two contentions of rival parties relate to making out of or absence of prima facie case against the applicant for his prosecution for the offences alleged against him, and the impugned order being perverse and illegal or vice-versa. These contentions are inter linked with each other and, therefore, would have to be considered together. To examine them and find out the truth, it would be necessary to make an appropriate reading of the alleged offending remarks / observations made by the applicant in the light of essential ingredients of offence punishable under Section 3[1][ix] of the Atrocities Act. Since these observations have been reproduced verbatim earlier, it would be enough now to just make a reference to them.

14. The alleged offending observations, when considered as they are, will only show that they are basically in the nature of opinion and that they do not fall

within the meaning of the term "information", which term is the pivot of an offence punishable under Section 3[1][ix] of the Atrocities Act. Reasons are not far to seek. Dictionary meaning of the word "information" is "facts or knowledge provided or learned" as defined in Concise Oxford Dictionary, Indian Edition Pg. 730. Same dictionary gives meaning of the word "opinion" as "a view or judgment not necessarily based on fact or knowledge" at page 1003. The meanings ascribed to these terms "information" and "opinion" indicate that these two terms are different and convey different ideas of concepts. While information is something which is a fact or thing or a state of being which can be seen, heard or perceived by senses or of which one is mentally conscious, opinion is something which comes out of a mind of a person as an inference or conclusion or expression of a reaction made through intelligent process of vetting of information and/or using one's own knowledge. It involves application of mind to the information or knowledge so as to reach to some inference or conclusion. In other words, information is about what is and opinion is about what could be or ought to be. Such being the difference between these two terms, opinions can be likened to the personal beliefs of a person and therefore, can be liked or disliked by different persons. But, in law likes or dislikes of opinions and personal beliefs do not constitute an offence. Proscription and prescription of the legislature decide which act is an offence and which is not. This is not to say that all opinions are out of purview of Criminal law. But, we are concerned here not with opinions but with what constitutes an information. Having seen the meaning of the pivotal term "information" as distinguished from that of "opinion", which is sometimes confused with the former term, let us now advert to the requirements of section 3[1][ix] of the Atrocities Act. The section reads thus -

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

(i)

(ii)

(iii)

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled tribe."

15. The language of Section 3[1][ix] is clear and unambiguous. It has three essential ingredients which must be present for constituting an offence thereunder. These ingredients are (a) giving of information to a public servant, (b) information given must be false or frivolous and (c) inducing the public servant by such information to use his lawful power to the injury or annoyance of a member of Scheduled Caste/ Scheduled Tribe. If no information is given or though given, it is not false or frivolous, or though it is false or frivolous, it has not led to public servant using his authority or power to cause injury or annoyance to any member of a Scheduled Caste or a Scheduled tribe, the

offence under Section 3[1][ix] would not be made out. Thus, it can be seen that the term "information" lies at the base of this section and what it seeks to suppress is the information of the character and consequence prescribed therein and not the opinions. Now, if we revert to the offending observations, we could see that they fall in the category of opinion and not the information. They do not portray any facts or knowledge. They constitute an individual view or judgment or a reaction made to some facts. They are not facts in themselves but, are the result of some subjective thinking of the applicant, which may be disapproved by some. But, the fact remains that they are not facts or knowledge themselves and are the product of personal thinking of the applicant, and therefore, these observations would not be capable of being called as information so as to fall within the meaning of Section 3[1][ix] of the Atrocities Act. Thus, in my view, the first ingredient of the offence under Section 3[1][ix] of the Atrocities Act itself is not satisfied in the instant case.

16. Even if it is presumed, just for argument, that these observations were nothing but information and that too false and frivolous, still, I must say, no offence as contemplated under Section 3[1][ix] is prima facie made out as there is no allegation made in the complaint that the alleged false and frivolous information has caused some public servant to exercise his lawful power to the injury or annoyance of Mana community, nor is there any instance given about a public servant being prejudiced by that information in using his authority in injurious or annoying manner. With these facts present on record, I do not think that any illegality or impropriety was committed by the learned Chief Judicial Magistrate, when he dismissed the complaint under Section 203 of Criminal Procedure Code. Rather these facts have not been considered in their proper perspective by the learned Sessions Judge and the result is that the impugned judgment as passed, is not in consonance with the settled principles of law, thereby overriding valuable right of the applicant, and therefore, interference with the same is necessary.

17. All said and done. A word of caution, in my opinion, seems necessary having regard to the position held by the applicant. Some of the expressions in the above mentioned observations, I think, were best avoided. After all, the applicant is a Research Officer, who is basically an academician. Academicians are well endowed with intellect, knowledge and wisdom, which make up for sanskrit word "vidya". There is a Sanskrit saying which symbolizes humility and politeness of all intellectual qualities. Freely translated, it means, knowledge and wisdom suit well those who are humble and polite. The applicant now onwards in his academic path may well imbibe these qualities advocated for an intellectual so powerfully by the Sanskrit saying.

In the result, the revision application deserves to be allowed by quashing and setting aside the impugned order.

18. The Revision Application is allowed. The impugned order passed by the Sessions Judge, Gadchiroli dated 09.09.2014 in Criminal Revision No. 22/2014 is

hereby quashed and set aside and the order passed by the Chief Judicial Magistrate, Gadchiroli dated 16.06.2014 in Regular Complaint Case No. 34/2014, is confirmed.