

(2003) 02 BOM CK 0069
In the Bombay High Court
Case No : Criminal Application No. 90 of 1999

Yashwant Bhelave

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2003) BomCR(Cri) 1506 : (2003) CriLJ 2765 : (2003) 2 MhLj 839 :
(2004) 1 RCR(Criminal) 255

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Amol Mardikar, for the Appellant; T.R. Kankale, Assistant Public
Prosecutor for non-applicant No. 1 and R.K. Borkar, for non-applicant No. 2, for
the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Rule is taken up for final hearing with consent of parties.

2. Heard Shri Mardikar, learned Counsel for the applicant, Shri Kankale, learned
Additional Public Prosecutor for the non-applicant No. -1, and Shri Borkar,
learned Counsel for the non-applicant No. 2.

3. This application is filed u/s 482 of Code of Criminal Procedure for setting aside
the charge framed u/s 3(1)(v) of Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST Act") in
Special Case No. 37/1994 by the Special Judge.

4. Brief facts are as under:

The first information report is lodged by non-applicant No. 2 on 18-7-1993 at
about 4.45 p.m. at Police Station, Amgaon for the offences punishable u/s 324 of
Indian Penal Code and Section 3(1)(2) of SC/ST Act against the applicant on the
allegation that latter committed the offence on 18-7-1993 at about 10 A. M. by

going into the field of non-applicant No. 2 armed with sticks and assaulted him and tried to dispossess him or interfere in his rights. After completion of investigation, charge-sheet was filed in the Special Court, Gondia, which was numbered as Special Case No. 37/1994 and the learned Special Judge framed charge on 1-1-1999 against the applicant for the offences punishable u/s 3(1)(2) of SC/ST Act and Section 324 of Indian Penal Code.

5. Shri Mardikar, learned Counsel for the applicant, contended that applicant neither tried to dispossess non-applicant No. 2 nor tried to interfere with his enjoyment of rights over the land and, therefore, prima facie offence cannot be attracted. Even assuming but not admitting the case of the non-applicant No. 2 as disclosed in the first information report, offence u/s 3(1)(2) of SC/ST Act has not been made out for framing charge and, therefore, learned Special Judge was not right in framing charge for the offence punishable u/s 3(1)(2) of SC/ST Act.

6. The learned Counsel for the applicant contended that the Special Judge could have framed the charge by considering the provisions of Section 228 of Code of Criminal Procedure only if there was a ground existing for presuming that the accused has committed an offence punishable u/s 3(1)(2) of SC/ST Act. He further contended that there was absolutely no material on record capable of inferring strong suspicion about commission of offence and, therefore, Special Judge has committed an error in framing the charge though he does not dispute the fact of framing of charge u/s 324 of Indian Penal Code. In support of these submissions, he relied on the decision of the Full Bench of the Apex Court in the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, and decision of the Division Bench of Apex Court in the case of State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., . Shri Mardikar contended that this is a case wherein exercise of extraordinary jurisdiction u/s 482 of Code of Criminal Procedure is absolutely essential because allegations mentioned in the first information report, even if they are taken at their face value and accepted in entirety do not prima facie constitute any offence or make out any case against the accused. In support of these contentions, he relied on the Division Bench decision of the Apex Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate and Ors., 1998 (1) Mh.LJ. 599. Therefore, he contended that framing of the charge by the Special Judge is not sustainable in law.

7. Shri Borkar, learned Counsel for the non-applicant No. 2, contended that there was a prima facie material available on record for framing charge u/s 3(1)(2) of SC/ST Act and the learned Special Judge correctly framed the charge and no interference in the same is warranted. He contended that remedy is available to the applicant to move Special Judge for altering the charge u/s 216 of Code of Criminal Procedure and, therefore, there is no necessity to invoke the extraordinary jurisdiction of this Court to interfere in framing of the charge, which has been framed by the Special Judge on consideration of the material which was before him. He, therefore, contended that framing of charge u/s 3(1)

(2) of SC/ST Act was correct and legal and order of framing charge is legally sustainable,

8. Shri Kankale, learned Additional Public Prosecutor for non-applicant No. 1, has adopted the contentions canvassed by the learned Counsel for the non-applicant No. 2.

9. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not disputed that on 18-7-1993 non-applicant No. 2 had lodged the first information report at Police Station, Amgaon wherein it has been mentioned that on that date at about 10 A.M. when complainant was engaged in repairing his bandh, applicant arrived at the spot armed with tangya (sort of weapon) and stick. The wife and son of the complainant were also present at that time. The applicant asked the complainant to leave the said field whereupon complainant stated that field belongs to him. Suddenly applicant delivered blows by stick on the hand and assaulted him by tangya on his head and also assaulted his wife.

10. Section 3(1)(2) of SC/ST Act reads as under:

"3(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe.

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

11. A bare reading of the aforesaid provision will clearly reveal that what is made punishable under Clause (v) of Section 3(1) is not only wrongful dispossession of a member of a Scheduled Caste or Scheduled Tribe from his land or premises, but also if somebody interferes with enjoyment of his rights over any land, premises or water, then the same would be squarely covered by this provision. The allegations mentioned in the first information report clearly indicate that the applicant not only assaulted the complainant but also asked him to leave his field and, therefore, it is quite obvious that he interfered with enjoyment of rights of the complainant over that land. Assaulting the complainant thereafter by sticks and causing him injuries was the aggravating circumstance in applicant's design to interfere with enjoyment of his rights over the land and hence, I am of the considered view that the act as alleged and complained of in the first information report squarely falls within the ambit and mischief of Clause (v) of Section 3(1) of SC/ST Act. Therefore, it is difficult to accept the contention of the learned Counsel for the applicant that there was no prima facie material to presume that a case has not been made out for framing of charge under this section. In a situation like this, I am of the view that both the decisions of the Hon'ble Supreme Court in the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, and State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., have no bearing on the facts and circumstances

of the present case and both the decisions are of no assistance to the applicant.

12. The learned Counsel for the applicant also relied on the decision of the Apex Court in the case of Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors., 1998(1) Mh.LJ. 599 wherein it has been observed that it is settled that High Court can exercise its power of judicial review in criminal matters. Exercise of such powers would depend upon facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of the cases where the High Court can exercise jurisdiction is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. In the present case, it is difficult to accept the contention of the learned Counsel for the applicant that the complaint/first information report even if it is taken on its face value and accepted in its entirety does not show existence of prima facie case constituting the offence. In such circumstances, the aforesaid authority is not applicable in the present case. Consequently, I am of the considered view that there is no merit in the present application and, therefore, same deserves dismissal. The application is dismissed. Rule is discharged,