



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4026 OF 2019

Devendra Rajiv Patil,
Age 27 yrs., Occ. Service,
R/o Flat No.4, Kamal Apartment,
Nirantar Baugh, Pundliknagar road,
Aurangabad.

... Applicant

... Versus ...

- 1 The State of Maharashtra
- 2 Ravi Baburao Gaikwad,
Age 42 yrs., Occ. Labour,
R/o House No.E-30/9,
Buddhabhushan Sambhaji Colony,
N-7, CIDCO, Aurangabad,
Tq. & Dist. Aurangabad.
At Present r/o Daulatabad,
Dist. Aurangabad.

... Respondents

...

Mr. S.S. Varma, Advocate h/f Mr. S.S. Ladda, Advocate for applicant

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. PB. Waghmare, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

RESERVED ON : 03rd FEBRUARY, 2025

PRONOUNCED ON : 05th MARCH, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashing First Information Report vide Crime No.89/2019 dated 14.08.2019 registered with Police Station, Daulatabad, Dist. Aurangabad and by way of amendment for quashing proceedings in Special Case No.52/2020 pending before learned Special Judge, under the S.C. & S.T. Act, Aurangabad, for the offence punishable under Sections 298, 505, 505(2), 506, 507 of the Indian Penal Code and under Section 3(1)(u), (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as “the Atrocities Act”).

2 Heard learned Advocate Mr. S.S. Varma holding for learned Advocate Mr. S.S. Ladda for applicant, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. P.B. Waghmare for respondent No.2.

3 Learned Advocate for applicant has taken us through First Information Report and entire charge sheet. The main contention at the initial stage before the amendment was that in First Information Report respondent No.2 has given his caste/religion as ‘Navbauddha’ and for that purpose he has annexed the list of Castes and Tribes in Maharashtra that is as

per the constitutional amendment and submits that there is no such religion or caste which has been held to be a scheduled caste or scheduled tribe and, therefore, the offence was initially not registered under the Atrocities Act and later on during the course of investigation a supplementary statement of informant has been recorded on 18.10.2019, wherein he has stated that as he had no caste certificate at the time of lodging of First Information Report, he had mentioned as 'Navbauddha', but, now, he has certificate issued by Sub Divisional Officer, Collector Office, Aurangabad, which shows that he is a member of a Scheduled Caste and, therefore, he has produced it. Thereupon, sections from the Atrocities Act have been added. Thus, there is total suppression of facts when the First Information Report was lodged. There was no question of addition of sections under the Atrocities Act after the registration of First Information Report.

4 Learned Advocate for applicant further submits that in First Information Report itself it is clarified by informant himself that after he saw the procession on the occasion of Lord Parshuram Jayanti on 08.05.2019, he had given some post on his Facebook and WhatsApp. He states that it was his personal opinion, to which he received good as well as bad comments. That means, he had instigated the other persons to react. The alleged phone call from the cell number on his mobile was received around 11.04 p.m. on

09.05.2019. It was in relation to his Facebook post and then according to him, abuses were given and then he says that there is defamation of Dr. Babasaheb Ambedkar in whatever was the dialogue from the said caller. The said caller was not known to respondent No.2. He has given only cell number and, therefore, First Information Report was also against the caller from that cell number. Now, in the investigation the prosecution is relying on the statement of father of present applicant, who has stated that present applicant is using two sim cards and one is the said number from which the informant alleged to have received phone call. Similar is the statement of other two persons i.e. witness Sachin Shelke and Shashank Jaiswal, who are stated to be the friends of applicant. Call records are not fetched and service provider shows that said number/sim card number is in the name of one Vinayak Sudarshan. There is no statement of said Vinayak Sudarshan. Now, police also want to rely on a consent letter signed by applicant stating that he had given a phone call to informant and, therefore, then his voice sample has been taken. Before the report of Voice Analyst is received, the charge sheet is filed. The said consent letter cannot be used as confession. Therefore, the charge sheet which is filed without proper evidence needs to be quashed and set aside. Even in charge sheet the transcripts have been given and perusal of those transcripts or conversations would show that applicant has not shown any disrespect to late leader Dr. Babasaheb Ambedkar. It was against the

informant who was then taking disadvantage of his caste and making allegations and comments against other religion or caste. The documents which have been taken under Right to Information Act from police would show that show cause notice was issued against informant on 05.06.2019 and then by order dated 21.02.2019 the appropriate authority had externed him for two years from entire district of Aurangabad and Jalna. The arrogance and terror of informant can be seen from contents of First Information Report, those are lodged against him. Informant is involved in 1) Crime No.569/2017 registered with Kranti Chowk Police Station, for the offence punishable under Section 143, 147, 148, 149, 341, 342 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act, 2) Crime No.2/2018 registered with CIDCO Police Station, for the offence punishable under Sections 307, 326, 427, 332, 143, 147, 148, 149 of the Indian Penal Code, under Sections 3 & 4 of the Damage to Public Property Act and under Section 135 of the Maharashtra Police Act and 3) Crime No.209/2018 registered with CIDCO Police Station, for the offence punishable under Sections 353, 332, 506 read with Section 7 of Criminal Law (Amendment) Act. There was no intention to disrespect any leader of any caste; even if it is held that said phone call was given by applicant and, therefore, it would be unjust to ask him to face the trial.

5 Per contra, learned APP as well as learned Advocate representing respondent No.2 strongly opposed the application and submit that there is sufficient evidence against present applicant. He has stated that he had given said call to informant. Informant has recorded the said call. The transcript of same has been provided which would show that he has used abusive language and shown disrespect to Dr. Babasaheb Ambedkar. The connection between said mobile number and accused has been established when statements of witnesses have been recorded. Two of them are friends of applicant and other is his father. He has also accepted in the 'Sammattipatra' that he had made conversation with informant. The voice recording report is still with Forensic Science Laboratory and it would be submitted before the Trial Court in due time. So also, the Subscriber Details Record (SDR), Call Detail Record (CDR) has been recovered, but the certificate under Section 65-B of the Indian Evidence Act was not appended and, therefore, communication has been made. After it is received, that can be placed on record before the concerned Court. Taking into consideration the CDS issue involved, this cannot be taken as a fit case where First Information Report and proceedings can be quashed and set aside.

6 Taking into consideration the scope of Section 482 of the Code of Criminal Procedure, we are considering the material and also in view of

recent decision of Hon'ble Apex Court in **B.V. Ram Kumar vs. State of Telangana and another** in Criminal Appeal No. of 2025 (arising out of SLP (Cri.) No.7887 of 2024 decided on 10.02.2025 wherein it has been observed that -

“14. The position of law is well settled by catena of judgments of this Court that in order to entertain a challenge to the FIR, charge sheet or an order taking cognizance, all that has to be seen is, whether from a bare reading of the charge sheet, the ingredients of the sections charged therein are being prima facie made out or not. Reference in this regard may be made to the judgment of this Court in **State of Haryana v. Bhajan Lal** [[1992 Supp (1) SCC 335] wherein it was held that :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable

offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

Thus, it is trite that the constitutional courts are wholly competent to exercise their extraordinary power to quash the criminal proceedings to prevent abuse of the process of the Court or otherwise to secure the ends of the justice if the allegations in the FIR or complaint neither disclose the commission of any offence nor make out a *prima facie* case against the accused.

7 Since in this case the charge sheet is filed, we will have to consider the entire material in the charge sheet also to see whether the offences under which First Information Report and charge sheet is filed are *prima facie* made out or not. As regards offence under Section 505 or 505(2) of the Indian Penal Code is concerned, we will have to read Section 196 of the Code of Criminal Procedure together with the same.

Section 196(1A) of the Code of Criminal Procedure prescribes that - “No Court shall take cognizance of -

(a) any offence punishable under Section 153B or Sub-Section (2) or Sub-Section (3) of Section 505 of the Indian Penal Code
.....

Except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.”

Therefore, for prosecuting a person for the offence punishable under Section 505 or 505(2) of the Indian Penal Code there should be a compliance of Section 196(1A) of the Code of Criminal Procedure. In charge sheet, there is a letter dated 16.10.2019 given by Investigating Officer to Collector, Aurangabad. Perusal of the same would show that it is only the information and not for according sanction as contemplated under Section 196(1A)(a) of the Code of Criminal Procedure, for the offence punishable

under Section 505(2) of the Indian Penal Code. It ought to have been addressed to 'District Magistrate' and not as 'Collector', even if the said posts are held by the same person. However, even after taking note of that letter dated 16.10.2019, which was received by Collector's office, no previous sanction has been given. Neither there is previous sanction from Central Government nor from the State Government nor from District Magistrate also. The charge sheet has been filed on 07.01.2020. We are unable to get the date of taking cognizance by Special Judge, under the Atrocities Act, but, certainly, when special case has been registered in 2020, the concerned Court ought not to have delayed the act of taking cognizance till the date we heard the matter. The legal bar appears to have not been taken into consideration by the concerned Judge.

8 Further, as regards offence under Section 505(2) of the Indian Penal Code the requirement is that the person should make, publish or circulate any statement or report containing rumour or alarming news with intent to create or promote on the ground of religion, race etc., feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes. Here, the conversation is on telephone. Though it is stated to have been made by a person; yet, except the informant nobody else had heard it. Therefore, the conversation *qua* informant, which cannot

be covered under the ingredients of Section 505 or 505(2) of the Indian Penal Code.

9 For proving an offence under Section 298 of the Indian Penal Code the prosecution will have to prove that the accused with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gestures in the side of that person, would then be punishable under the said section. Together with this section, then we will have to consider Section 3 (1)(u) of the Atrocities Act, which punishes a person, who by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes; and for offence under Section 3(1)(v) of the Atrocities Act the accused had by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes. Thus, taking into consideration the ingredients of Section 298 of the Indian Penal Code and Section 3(1)(u) of the Atrocities Act the ingredients are almost similar. For this purpose, contents of First Information Report and prosecution story is that the words have been used which will show disrespect to the religious feelings of informant or those were uttered to promote feelings of enmity,

hatred or ill-will against him. In First Information Report the informant has stated that he had given the post on Facebook as well as on WhatsApp, after he had seen the procession on account of Parshuram Jayanti on 08.05.2019. In the charge sheet, copy of the said post has been annexed. Certainly, we will have to take note of it in view of the admitted fact. The said post was against Brahmins. It was then stated that the said procession was to support terrorist activities of Brahmin community and even the post then makes allegations against the Brahmin community and at the end it is stated that if such persons are not stopped, then the security of the Indian Constitution is in danger. Obviously, it can be clearly seen that he had made allegations against another community/caste. Then what was the reaction from other persons ought to have contemplated by him or apprehended before he could place the post. He cannot justify his post or act of posting by saying that it was his personal opinion. He himself has stated in First Information Report that he received good as well as bad comments. What were those bad comments has not been explained by him and it appears that he has taken action against the person who had called from a particular number. Now, as regards caller from that particular number is concerned, was obviously not known to him and the call was stated to have been received by him at 11.04 p.m. Of course, taking into consideration the responses he was receiving when it was a call from unknown person, it appears that he has recorded the

said conversation. Now, as regards identity of the person is concerned, interestingly, the Investigating Officer has not recorded the statement of Vinayak Sudarshan and as per the said form, he appears to be from Chandbari, Yadgir (Karnataka State). But one of the communications by Investigating Officer states that since the date of taking sim card till the offence has been committed, it is with the applicant, and the accused has given that confession. The Investigating Officer appears to be not well conversant with how a confession is to be recorded and confessional statement given to a Police Officer is not admissible in a Court of Law. Then there are statements of friends and father of applicant regarding the number being used by applicant. Instead of having a concrete evidence, it appears that the Investigating Officer is relying upon the statements under Section 161 of the Code of Criminal Procedure. The mobile handset has been seized and even it is stated that CDR, SDR has been procured, but those are not forming part of charge sheet. Even FSL report is also not produced. There was absolutely then no hurry for Investigating Officer to file charge sheet, which can be said to be incomplete.

10 However, coming back to the conversation, as we take it as it is, we find that the said conversation absolutely does not show any disrespect to Dr. Babasaheb Ambedkar. Rather it is stated that the said caller was asking

the informant, as to why he is using the name of Dr. Babasaheb Ambedkar when he is not behaving on his footsteps. At one place, it is specifically uttered by the caller that because of them Baba (Dr. Babasaheb Ambedkar) is defamed, he is respecting Dr. Babasaheb Ambedkar, but because of people like you the respect in him (Dr. Babasaheb Ambedkar) is reduced nowadays. This conversation in no way disrespect to Dr. Babasaheb Ambedkar or depict intention to disrespect or disturb harmony between two communities. Another important fact which we will have to consider is that it was the reaction of a person from the community against whom informant had posted provocative comments, so, that it has to be taken as a natural reaction. Person from only one community then cannot have right to object, if he had done some provocative act. There has to be reciprocal respect for persons amongst all the communities and castes. That is what is soul of constitutional scheme. We have expressed earlier also that nowadays everybody is sensitive about his own caste and community which is without showing or reciprocal respect to the other community or caste. If we take the said conversation as it is, then even the informant has disrespected or made provocative statements which are against the another community. Therefore, on the same piece of evidence he cannot say that only the applicant has committed the offence. If neither community and persons in the community/caste are showing restraint and there are no efforts in bringing

harmony, such incidences would increase in future. It is not necessary that each and every bad comment/post or speech should be reacted. There are sophisticated ways and means to show dissent to a person who give such provocative post.

11 Here, in this case, the conversation was on a phone call, which the informant says that he has recorded. Nobody else has heard any of the conversation when it was going on. The intention behind enacting Section 298 of the Indian Penal Code as well as Section 3(1)(u) and (v) of the Atrocities Act appears to be not to take cognizance of a private conversation (which is not heard by a third person or the telephonic conversation). Here, it appears that Investigating Officer had not collected the other posts which informant appears to have made viral, which were the photographs and stating 'Brahman Mukht Bharat' and a picture showing that the other community should kick the Brahmin community and it is captioned as "Tabhi Aage Badhega India". All these posts of informant were provocative, which can be certainly said to be with an intention to affect sentiments of that community and, therefore, certainly, when there was a reaction to his provocative posts, thereby he had instigated or invited the comments, he cannot now say that it amounts to an offence. In First Information Report informant has only chosen those words which were according to him,

amounted to offence, thereby eliminating other conversation is rather pick and choose method, which cannot be allowed to sustain.

12 Now, as regards First Information Report is concerned, when it was lodged, that is, on 14.08.2019, he had given his religion as 'Navbauddha' and as aforesaid, later on his supplementary statement has been recorded and then he says that he was not having the certificate. During the course of investigation he had placed the certificate and, therefore, only on that count we may not be with learned Advocate for applicant.

13 However, taking into consideration the reasons stated above, it would be abuse of process of law if the applicant is asked to face the trial. This case would definitely come within the category No.7 of guidelines in **State of Haryana and others vs. Chh. Bhajan Lal and others** [AIR 1992 SC 604], which reads as under :

“7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14 Therefore, the application deserves to be allowed. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceeding in Special Case No.52/2020 pending before learned Special Judge, under the S.C. & S.T. Act, Aurangabad arising out of First Information vide Crime No.89/2019 dated 14.08.2019 registered with Police Station, Daulatabad, Dist. Aurangabad, for the offence punishable under Sections 298, 505, 505(2), 506, 507 of the Indian Penal Code, 1860 and under Sections 3(1)(u), (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside as against applicant Devendra Rajiv Patil.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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