

Mansur A. Khan Vs. State of Maharashtra,

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Court : Mumbai

Decided On : Feb-27-2004

Reported in : 2004(3)MhLj550

Judge : D.B. Bhosale, J.

Acts : Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 - Sections 3 and 3(1); [Protection of Civil Rights Act, 1955](#); Code of Criminal Procedure (CrPC) - Sections 320 and 482; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Criminal Application No. 641 of 2004

Appellant : Mansur A. Khan

Respondent : State of Maharashtra, ;The Senior Inspector of Police and ;vikrant Motiram Gavare

Advocate for Def. : K.V. Saste, APP for Respondent Nos. 1 and 2; ;M.K. Banatwala, Adv. for Respondnet No. 3

Advocate for Pet/Ap. : A.P. Mundargi and ;Ganesh Gole, Advs.

Disposition : Application allowed

Judgement :

D.B. Bhosale, J.

1. Leave to amend granted.

2. Heard Mr. Mundargi, learned counsel for the petitioner, Mr. Saste, learned A.P.P. for respondent Nos. 1 and 2 and Mr. Banatwala for respondent No. 3.

3. Rule, returnable forthwith. The learned counsel for the respondents waives service. By consent of the parties, heard finally.

4. Mr. Saste, learned A.P.P. waives service for respondent Nos. 1 and 2. Mr. Banatwala, learned counsel waives service for respondent No. 3. Heard finally by the consent of the parties.

5. In this application, the petitioner has prayed for quashing the F.I.R. being C.R. No. LAC/94/2004 registered at Azad Maidan police station at the instance of respondent No. 3 for the offence mainly punishable under Section 3(1)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act') and the provisions of the [Protection of Civil Rights Act, 1955](#). This petition for quashing has been filed on the ground that there is an amicable settlement between the petitioner and complainant - respondent No. 3 (for short 'the complainant').

6. The complaint came to be lodged by the complainant on 16.1.2004. The accusation made in the complaint was that on 15.1.2004 the petitioner abused and insulted the complainant in context of his caste. The complainant belongs to the 'Hindu Mahar' which is recognised as a 'Schedule Caste' and hence the offence was registered under the provisions of the Atrocities Act. In the application, the petitioner has stated that the complaint came to be filed due to some misunderstanding. The petitioner has denied the alleged utterances on the caste. The complainant has filed an affidavit stating that he has lodged the complaint without understanding the exact meaning and interpretation of the utterances. He has also stated that the petitioner never uttered such words as alleged by him in the complaint. The relevant paragraphs of the affidavit filed by respondent No. 3 read thus:

'3. That on 16.1.2004, I lodged a complaint with Azad Maidan police station being C.R.LAC 94/2004, under the provisions of Schedule Tribes and Scheduled Castes (Atrocities) Act, alleging that Shri Mansur A. Khan had insulted me by giving bad words to me as well as regarding my caste. I say that as I belong to Hindu Mahar Scheduled Caste, I had filed the said complaint, as I misunderstood the remarks made by Mansur A. Khan to me regarding my work. I say that I had lodged the said complaint without understanding the exact interpretation of the words, which were said to me by Shri Mansur A. Khan. I further say that at the time of lodging of the said complaint, I was mentally upset and not in the proper frame of mind and had lodged the complaint, as I felt was correct.

4. I say that later on when I returned to the proper frame of mind, I realised that the complaint lodged by me was not the correct fact and was assumption on my part regarding the conversation/argument, which had taken place between Shri Mansur A. Khan and myself. I further say that Mr. Mansur A. Khan had never uttered such words as alleged by me in my complaint being C.R.LAC 94/2004 registered at Azad Maidan police station, Mumbai.

5. I say that after realising that the facts stated by me in my complaint were not correct as the same were stated by me when I was not in the proper frame of mind. I therefore submit that I am withdrawing the allegations made by me in the said complaint and I further say that I have no grievance against Shri Mansur. A. Khan as no such incident as alleged in my complaint had occurred.

6. I further say and submit that I am withdrawing my complaint being C.R.LAC 94/2002 registered at Azad Maidan police station, Mumbai, and there is no ill feeling between Shri Mansur A. Khan and myself.'

7. In view of an amicable settlement the petitioner has invoked the inherent powers of this court under Section 482 of the Code of Criminal Procedure (for short, Cr PC) and prayed for quashing the criminal proceedings. In support, the petitioner has placed reliance upon the judgment of the Apex Court in B.S. Joshi and Ors. v. State of Haryana and Anr. : 2003 CriLJ2028 .

8. I have perused the instant application, the affidavit filed by the complainant and the cited judgment of apex court. The apex court in B.S. Joshi's case while considering the ambit of the inherent powers of the High Courts under Section 482 of Cr PC, read with Articles 226 and 227 of the [Constitution of India](#) to quash criminal proceedings, has clearly held that the High Court in exercise of the inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

9. Every offence under the provisions of Section 3 of the Atrocities Act, is cognisable, non bailable, triable as a warrant case and non compoundable. Section 3(1)(x) provides that whosoever not being a member of a schedule caste or a schedule tribe intentionally insults or intimidates with intent to humiliate a member of a schedule caste or a schedule tribe in any place within the public view 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. It is the duty of the Court to examine and judicially scrutinise the accusations made in the FIR or allegations contained therein to find out whether on its face value, the FIR constitute an offence under the Atrocities Act. The correctness of the allegations is not required to be gone into and the only thing required to be seen is that the allegations made in the FIR taken as true on its face value do constitute an offence under the Atrocities Act. Keeping this in view, in my opinion, if the allegations in the FIR are taken as true on its face value it cannot be considered without trial whether the accused intended to insult or intimidate a member a schedule caste and a schedule tribe. According to Mr. Mundargi, learned counsel for the petitioner, a plain reading of this provision shows that the utterance or the abuses on the caste of a person belonging to a schedule caste and a schedule tribe insults or intimidates with the intent to humiliate a member of the said caste within the public view, is liable for punishment for imprisonment. He further submitted that it is, therefore, possible for a person, who is charged for the offence punishable under Section 3(1)(x) of the Atrocities Act, to contend that he never abused with an intention to insult a member of a schedule caste or a schedule tribe; or that he never abused with an intent to humiliate a member of a schedule caste or a schedule tribe; or that the utterances in any case were not within the public view. And in this view of the matter, according to Mr. Mundargi, in the present case no

useful purpose will be served by allowing to continue the proceedings. It is in this backdrop of the case the facts of the present case will have to be examined keeping in view of an affidavit filed by the complainant.

10. The offences under the provisions of the Atrocities Act are cognisable, non bailable and are non compoundable. If the complainant in a case under the provisions of the Atrocities Act does not support the imputations made in the FIR, chances of an ultimate conviction are bleak and that no useful purpose is likely to be served by allowing a criminal prosecution to continue. This Court, in such case, can undoubtedly exercise the inherent powers to quash the proceedings. None of the provisions of the Atrocities Act limit or affect the inherent powers of this Court under Section 482 Cr PC to quash the criminal proceedings or the FIR at any stage of the proceedings. It would, therefore, be improper to decline to exercise the power of quashing on the ground that it would be permitting the parties to compound the noncompoundable offence under the provisions of the Atrocities Act. Needless to say that while exercising the inherent powers under Section 482 Cr PC, a subjective satisfaction as to the mutual settlement that it is bonafide and free from pressure and force would be a paramount consideration, which one will have to borne in mind, while quashing the proceedings.

11. In the instant case the complainant has stated on oath that he misunderstood the remarks and the utterances of the petitioner regarding his work while he was working with the petitioner and that he lodged a complaint without understanding the exact interpretation of the said utterances. In paragraph 4 of the affidavit, he has gone a step further and stated that he was not in a proper state of mind while lodging the F.I.R. and that he subsequently realised that the complaint lodged by him was factually incorrect. He has also stated that the complainant never uttered the words referred to in the complaint attracting the provisions of the Atrocities Act. In this backdrop, even if it is assumed that the allegations in the complaint constitute an offence under the provisions of Section 3(1)(x) of the Atrocities Act, the chances of an ultimate conviction are bleak. The complainant, who was present in the court, is not likely to support the imputations made in the FIR. I do not find any reason to doubt the bonafides of the parties in seeking quashing. In the circumstances, I am of the considered view that no useful purpose is likely to

be served by allowing the criminal prosecution to continue. This application is accordingly allowed. The F.I.R. bearing C.R.LAC 94/2002 registered at Azad Maidan police station, Mumbai at the instance of respondent-3 - complainant is hereby quashed. The petitioner stands discharged.

12. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Court Stenographer of this Court.

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