

MHAU030041522022



Cri. M. A. No.825/2022

Sakshi Namdev Waghmare

Vs.

Sana Shahrukh Attar & Ors.

ORDER BELOW EXH. 1 IN CRI. MISC. APPLICATION NO.825/2022

This is an application filed by the applicant seeking relief of directions under section 156(3) of the Code of Criminal Procedure against the accused.

Brief facts of the complainant's application are as under-

2. Applicant and husband of the accused No.1 are residing in the same village and therefore they know each other. In September 2021 accused No.2 has contacted the applicant on her mobile phone and accused No.1 and 2 have threatened the applicant and insulted her with abusive language. They have made false allegations as applicant and the husband of the accused No.1 have the love affair. Applicant has denied the said allegations. Accused No.1 and 2 have sent a legal notice to the husband of accused No.1 and they have mentioned the said false allegations of love affair. Therefore, they have intentionally defame the applicant. On 29.01.2022 the accused No.1 to 3 have contacted the applicant and asked her to meet them. Accordingly, applicant went to meet accused No.1 to 3. At that time accused No.1 to 3 have assaulted the applicant and threatened with her dignity and also insulted her with abusive language in respect of her caste which amounts to atrocity. Thereafter, on 02.02.2022 accused No.2 has contacted the applicant on mobile phone and threatened the applicant and also used filthy language to the applicant. Applicant is belongs to SC and ST community. Accused have knowledge about the same. However, accused No.2 has used

abusive language regarding the caste of applicant.

3. Applicant further contended that, on 14.02.2022 accused No.1 has sent another legal notice to her husband and mentioned same false allegations regarding love affair of applicant and husband of accused No.1. Accused No.1 to 3 have contacted the applicant on 06.03.2022 by phone call and used filthy language and falsely made allegations regarding the character of the applicant. Hence, on 08.03.2022 applicant went to MIDC Waluj police station and requested to lodge a complaint against the accused. However, police officer has not taken the First Information Report and registered said report as Non Cognizable offence. Police officers have not registered the proper case against the accused. Hence, applicant has filed present complaint in Court. Accused have committed the offence punishable under section 323, 500, 504, 507, 120(B) read with Section 34 of the Indian Penal Code and under Section 3 of the Schedule Caste and Schedule Tribe Act. Hence, prayed for the direction of investigation under section 156(3) of the Code of Criminal Procedure.

4. Read the application and perused the record. Heard Ld. Advocate for the applicant. Application is supported with an affidavit.

5. Applicant contended in present application that, accused have committed the offence punishable under Section 323, 500, 504, 507, 120(B) read with Section 34 of the Indian Penal Code and under Section 3 of the Schedule Caste and Schedule Tribe Act. Applicant has filed the copy of N.C.R which shows that police officer of concerned police station has lodged Non Cognizable report for the offence punishable under Section 507 of the Indian Penal Code. Therefore, prima facie it appears that the applicant has approached to the concerned police station for her allegations.

6. It is the contention of the applicant that, she went to the

concerned police station to lodge an FIR against the accused but police officers have refused to do so. As per Section 154 of the Code of Criminal Procedure, it is necessary for any person to lodge a report of Cognizable offence in concerned police station. If the police officer has refused to lodge a report of Cognizable offence then it is necessary for that person to send a written complaint to the Superintendent of Police regarding the commission of said Cognizable offence. Therefore, as per Section 154 of the Code of Criminal Procedure, it is necessary to file a written complaint to the Superintendent of Police, if the police officer has denied to lodge a report. In present case the applicant contended that, the police officer of MIDC Waluj police station has refused to lodge an FIR. Therefore, considering the contention of applicant it was necessary for the applicant to file a written complaint to the Superintendent of Police. However, it appears that, applicant has not filed a written complaint to the Superintendent of Police. Therefore, it appears that applicant has not complied with the mandates of the Section 154 of the Code of Criminal Procedure. If the applicant is seeking directions under Section 156(3) of the Code of Criminal Procedure then it is necessary firstly to comply the requirements enumerated in Section 154 of the Code of Criminal Procedure.

7. From perusal of record it appears that, applicant has not filed any evidence regarding her allegations against the accused. Mere words of the applicant does not constitute an offence against the accused. So also it is not seen to be necessary to compel the accused to face the criminal prosecution on the basis of insufficient evidence. Therefore, it is seen to be proper to scrutinize more evidence regarding the allegations made by the applicant in present application. Hence, as there is absence of sufficient material on record, prima facie the offence punishable under Section 323, 500, 504, 507, 120(B) read with Section 34 of the Indian Penal Code and

under Section 3 of the Schedule Caste and Schedule Tribe Act are not attracted at the present stage.

8. From the above discussion and observations, prima facie, allegations in the application as to the offences punishable under Section 323, 500, 504, 507, 120(B) read with Section 34 of the Indian Penal Code and under Section 3 of the Schedule Caste and Schedule Tribe Act are not made out. So also it appears that, applicant has not complied with Section 154 of the Code of Criminal Procedure. Therefore, in my considered opinion, applicant has to produce more evidence before this Court to constitute alleged offences against the accused. Hence, I do not find it to be fit case to send for investigation by police machinery. Hence, I Pass the following order.

ORDER

1. Prayer for the direction to investigate the matter by police under Section 156(3) the Code of Criminal Procedure is rejected.
2. Applicant is at liberty to proceed with the matter under Section 200 of the Code of Criminal Procedure.
3. If applicant wants to proceed under Section 200, matter be register as complaint case and be numbered regular criminal case or summons case, as per the nature of proceeding accordingly.

Date: 27.06.2022
Place: Aurangabad

(Sameer Gopal Gunari)
Judicial Magistrate First class
(Court No. 17), Aurangabad

C E R T I F I C A T E

“I affirm that the contents of this P.D.F. File order are same word for word as per original order.”

Name of Steno : Pankaj Anil Ghule

Court Name : 17th Jt. C.J.J.D. & J.M.F.C., Aurangabad

Date : 27.06.2022

Order signed by

presiding officer on : 27.06.2022

Order uploaded on : 08.07.2022