



ORDER BELOW THE APPLICATION (EXHIBIT 36)
IN ATRO. SPECIAL CASE NO. 41/2022
(STATE VS. PRAJAKTA)
(PASSED ON : 27/03/2024)

1. This is an application filed by the victim-Jayant Bokefode (for short 'victim') to issue summons to Smt. P. N. Pathade, Judicial Magistrate First Class, Pandharpur (Court No.4) (for short 'Magistrate'), under sub-section 4 of Section 15(A) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act').
2. Read application.
3. This application is not signed by the Additional Public Prosecutor (for short 'A.P.P.') which showed that the prosecution is not supporting this application filed by the victim.
4. The victim in person, in presence of Shri. S. V. Wangikar, A.P.P. for the prosecution submitted at bar that it is not necessary to argue on this application. His submissions are taken on record.
5. The charge against the accused is yet to be framed.
6. The contents in the application if read between the lines give clear indication that those are in respect of Crime Register (for short 'C.R.') No. 44/2023. The C.R.No. 44/2023 was registered on the complaint of the accused on 13/01/2023 in respect of incident dated 06/06/2022.
7. The copy of C.R. No. 44/2023 is produced on record by the victim with this application. The perusal of C.R. No. 44/2023 showed

that it is registered on the complaint lodged by the accused under Sections 354, 451, 506, 507 and 509 read with 34 of the Indian Penal Code and it is a separate complaint.

8. This case is outcome of C.R. No. 739/2022 registered on the complaint filed by the victim on 28/10/2022 under Sections 3(1)(p) and (q) and 3(2)(i) and (ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act')

9. The contents in the C.R. No. 739/2022 showed that the accused made false allegations against the victim and his wife in order to avoid repayment of the amount given by them to her and she has filed false criminal complaints and gave false information to the Pandharpur Administration causing mental harassment to them.

10. After considering contents in the C.R. No. 739/2022 it is clear like cloudless sky that it is outcome of civil dispute in respect of repayment of amount which proves that a private civil dispute between the parties is converted into criminal proceeding, prima-facie and initiations of the criminal proceeding therefore is nothing but an abuse of process of Law and Court.

11. It is well settled that framing of a charge is an exercise of jurisdiction by the Court in terms of Section 228 of the Code of Criminal Procedure (for short 'Cr.P.C.'), unless the accused is discharged under Section 227 of the Cr.P.C.. **Under both these provisions, the Court is required to consider the record of the case and documents submitted therewith and after hearing the parties,** may either discharge the accused or where it appears to the Court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Thus, at the initial

stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

12. Any document or other thing envisaged under Section 91 of the Cr.P.C. can be ordered to be produced on finding that the same is **'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'**.

13. Admittedly, the charge is not framed against the accused and it is not framed only because of the various applications filed by the victim on almost each and every date.

14. The Magistrate has passed final order in Criminal Miscellaneous Application (for short 'Cri.M.A.') No. 644/2023 and has accepted 'B' summary report vide order dated 17/02/2024.

15. After considering the contents in the C.R. No. 739/2022 and this application I am of the considered view that at this stage presence of the Magistrate or her say is not necessary or desirable for the purpose of framing charge against the accused. Therefore, the question of invoking Section 91 of the Cr.P.C. at this initial stage of framing of a charge would not arise and the application is liable to be rejected.

16. After going through the contents in the application it transpires that no details as to why and for what purpose the victim is seeking issuance of summons to the Magistrate and for what purpose the victim want presence and say of the Magistrate that too at the stage of framing charge against the accused are given. Hence, merely because

the application is filed no summons can be issued, as prayed. The application is devoid of merits and is liable to be rejected.

17. **It is not disputed that a Judicial Order can be challenged only before appropriate Court of Law as per prescribed legal procedure.**

18. The Magistrate while disposing of Cri.M.A. No. 644/2023 has passed a Judicial Order which is subject to scrutiny by the appropriate Court of Law. Therefore, filing of this application by the victim is a futile exercise to raise a grievance against a Judicial Order.

19. In this application the victim has levelled unsavoury and serious allegations against the Magistrate which are vague, baseless and without any evidence on record. Those are :-

- **The Ld. Magistrate maliciously and willfully not acknowledged remaining evidence and facts from point no. 4 to help Complainant of FIR 44/2023 (i.e. accused in Atrocity Special Case 41/2022) and Mrs. Bharati More and Pratik More in Atrocity Special Case 32/2023.**
- **The Ld. Magistrate while passing of final order cause evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment.**
- **The act done by Ld. Magistrate is against public justice and it is offense under THE SC ST POA ACT, 1989.**

20. After going through the allegations (supra) it is crystal clear that the victim has made various serious allegations against the Magistrate. **In my firm opinion all these allegations are**

contemptuous and are in respect of the Judicial order passed by the Magistrate in Cri. M.A. No. 644/2023.

21. In fact the victim was at liberty to challenge the order passed by the Magistrate in Cri.M.A. No. 644/2023 by filing appropriate proceeding before appropriate Court of Law as per prescribed legal procedure but instead of doing that he has levelled baseless allegations which are not at all warranted. Hence, no need to consider these allegations.

22. After taking note of the allegations (supra) leveled by the victim against the Magistrate it is necessary to intimate the Magistrate in respect of the allegations in respect of a Judicial Proceeding/Judicial Order so that if necessary the Magistrate can take suitable action against the victim in accordance with Law.

23. In the result, following order :-

ORDER

1.	The application (Exhibit 36) is rejected.
2.	Smt. P. N. Pathade, Judicial Magistrate First Class, Pandharpur (Court No.4) be intimated in respect of the allegations made by the victim–Jayant Deepak Bokefode, in respect of judicial order passed by her.

(Pronounced in Open Court).

Dated :- 27/03/2024.

(M. B. Lambe)
Special Judge (Atrocity Act,)
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 27/03/2024
- (d) Order uploaded on : 29/03/2024