

**COMMON ORDER BELOW APPLICATIONS (EXHS.30 & 50) IN
SPECIAL (ATRO) CASE NO. 23 OF 2018
CNR NO.MHST0100-2018
(State of Maharashtra Vs. Vikas Baburao Patil -Shirgaonkar)**

Application (Exh. 50) is for further investigation under Section 173(8) of the Code of Criminal Procedure by the informant. Application (Exh.30) is for discharge under Section 227 of the Code of Criminal Procedure by the accused persons.

02. The prosecution case, in brief, is that accused No.1 was District Government Pleader and Public Prosecutor. Since July 2006 to 2014 the informant initially worked in his office as Law student and intern and subsequently as a Junior Advocate. She belongs to Scheduled Caste and the accused persons belong to Maratha Caste. Accused No.1 used to deliberately touch her body, used to sing filmy songs before her and also demanded sexual favour from her. When she refused, in order to harass her, he chased her by his car. With the help of accused No.2 he stolen her purse and mobile phone handset. With conspiracy they misused her phone by giving wrong information to her clients, relatives, etc. They also defamed her. They also harassed and insulted her on her caste. Accused No.1 has not paid her remuneration. Due to continuous harassment she has suffered loss of Rs. 10 Lakhs to 12 Lakhs.

03. On the basis of the first information report lodged by the informant Police Station Officer of Satara City Police Station registered crime vide C.R. No. 235 of 2018 for the offences punishable under Sections 354-A, 354-D and 419 read with

Section 34 of the Indian Penal Code and Sections 3(1)(r) & (s), (w)(i) and (za)(e) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against accused Nos. 1 and 2. (Here-in-after the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act will be referred to as the SC and ST Act). My learned Predecessor granted anticipatory bail to the accused persons. After investigation the Investigating Officer filed charge-sheet in the Court.

04. The informant filed application (Exh. 50) contending that the accused persons have committed breach of terms and conditions of anticipatory bail order. There is need to file caste certificate of herself and accused persons. There is need to collect information regarding Airtel Company mobile phone No. 9766676338 and Micro max Company handset involved in Satara City Police Station C.R. No. 33. Without completion of Law graduation accused No. 2 has obtained Sanad and illegally practicing as an advocate. Even after the period of appointment of District Government Pleader is over accused No.1 by representing as District Government Pleader worked before Court. There is reference of Omkar Shinde in the anticipatory bail order. Omkar Shinde has illicit relations with Advocate Tejswini Patil, cousin sister of accused No.1. She used to harass her in the Court library. Accused No. 2 has given birth to a baby from Omkar Shinde. There is need of DNA test of the baby. Omkar Shinde, Raju Shinde, Aniruddha Shinde, Punam Pawar (Shinde) and Meena Joshi, by hacking her information, assisted accused No.1. They are involved in the conspiracy with accused Nos. 1 and 2 for the commission of offence punishable under Section

376(C) of the Indian Penal Code with her. There is, therefore, need to implead them as co-accused persons. There is need to collect CC TV Cameras from the office of accused No.1 and house of Omkar Shinde. Hence, she has prayed for further investigation in the matter.

05. The accused persons by filing say (Exh.56) resisted the application. According to them, the contents of the application are false and defamatory. There is no need of further investigation. The informant has no right to seek further investigation. Hence, they have prayed for rejection of the application.

06. The accused persons have filed application (Exh.30) contending that there is no reference of humiliation on caste in the complaint filed by the informant, prior to lodging of the first information report, before the Bar Association and Complaint Redressal Committee. Accused No.1 has professional rivalry with Ex-District Government Pleaders Shri Shamprasad Vasantryo Begampure and Shri Sadashiv Narayan Sanap. At their motivation she tried to implicate him in false crime. The informant had admitted her guilt in the complaint filed by Omkar Raju Shinde against her. The accused persons have not committed any crime. There is no prima facie evidence against them. Due to the false litigation they are being defamed and harassed. The charge-sheet is also not filed within the prescribed time limit. Hence, they have prayed for their discharge.

07. The respondent/State and the first informant by filing say (Exhs. 33 and 48 respectively) resisted the application. According to them, the evidence is sufficient to show involvement of the accused persons in the commission of the crime. The informant has further reiterated the aforesaid contents of first information report and application (Exh.50). According to her, accused No. 1 has no authority to file the application on behalf of accused No. 2. Hence, they have prayed for rejection of the application.

08. On every date accused No.1 insists for early hearing of the matter. In spite of repeated oral as well as written intimations and directions issued the informant not appeared and not advanced arguments in person. She, however, by sending letter (Exh.65) by courier and through e-mail communicated that she has authorized Special Public Prosecutor Shri. Milind Oak to advance argument on her behalf. She has further communicated that she has no objection to decide the application in her absence. Thereafter, she also sent her written notes of arguments (Exh.81) by post.

09. At the outset it is to be mentioned that both parties gave much emphasis on the proceeding of anticipatory bail applications by the accused persons and observations in the order of the said bail matters. The criteria for pre-arrest bail under Section 438, further investigation under Section 173(8) and discharge under Section 227 of the Code of Criminal Procedure is different. Hence, the evidence or observations in the anticipatory bail applications cannot be considered as ground

either for further investigation or discharge. Both these aspects need to be considered independently on the basis of available facts and circumstances and prima facie evidence.

10. Learned Special Prosecutor has submitted that after due investigation the Investigating Officer has submitted charge-sheet. The collected evidence is sufficient. There is, therefore, no need of further investigation.

11. According to the accused persons the entire case is false, frivolous and concocted. The criminal proceeding is manifestly intended with *mala fides* and the proceeding is maliciously instituted with an ulterior motive. Hence, the question of further investigation does not arise.

12. Section 173 of the Code of Criminal Procedure deals with completion of investigation and forwarding final report to Court by the investigating agency. Its sub section (8) empowers Officer in-charge of the Police Station to make further investigation, obtain further evidence even after submission of final report.

13. In the written notes of argument (Exh.81) the informant has submitted that for fair and just investigation the Court can direct further investigation. In support of her submissions she has filed copy of an Article written by D. Nageshwar Rao, Prl. JCJ, Manthani on Section 173(8) of the Code of Criminal Procedure.

14. The informant has lodged first information report contending that accused No.1 by touching her body, singing filmy songs, making demand of sexual favour in his office and residence, following her on street etc. sexually harassed her. Both the accused persons also insulted and humiliated her on her caste. They have also tried to spoil her personal life. It prima facie indicates that the allegations and grievances are of personal in nature. In the light of the allegations and grievances the Investigating Officer has recorded her supplementary statement, got recorded her statement under Section 164 of the Code of Criminal Procedure, collected copies of her caste certificate and drawing Panchnama of the place of incident submitted charge-sheet. Thus, prima facie it appears that in consonance with the grievances and allegations in the first information report the investigating agency has made the investigation and filed charge-sheet.

15. In the circumstances it needs to consider the grounds for further investigation tried to be made out by the informant.

16. According to the informant, the proceeding before Complaint Redressal Committee is confidential. In support of her say she has filed xerox copy of Gazatte published by Registrar General, High Court of Manipur, under Gender Sensitization and Sexual Harassment of Women at the High Court of Manipur at Imphal (Prevention, Prohibition and Redressal) Regulation, 2014. The informant repeatedly and vehemently contends in her application as well as written notes of arguments that by filing copies of her confidential documents, presented before he

Complaint Redressal Committee, in anticipatory bail application and by misleading Court the accused persons have obtained anticipatory bail order. She further contends that the accused persons by committing breach of the conditions of the bail order continued her harassment. As stated earlier the evidence in the bail application, if any, cannot be ground for further investigation. If the accused persons have committed breach of conditions of bail order then there is independent remedy. The copy of order of Hon'ble High Court in Criminal Appeal No. 1504 of 2018 discloses that the informant had approached the Hon'ble High Court for cancellation of the bail. However, the order speaks that the appeal is dismissed as withdrawn. Thus, committal of breach of condition of the bail also cannot be considered as ground for further investigation.

17. According to the informant without completion of Law graduation accused No. 2 has obtained Sanad and illegally practicing as an advocate. Even after the period of appointment of District Government Pleader is over accused No.1 by representing as District Government Pleader worked before Court. In the written notes of arguments she tried to emphasize professional misconduct of the accused persons. Considering the nature of grievances with her and offences levelled against the accused persons the professional misconduct of the accused persons, if any, cannot become part of investigation of the present crime. Hence, this ground also cannot be considered as a sound ground for direction of further investigation.

18. According to the informant there is reference of Omkar Shinde in the anticipatory bail order. Omkar Shinde has illicit relations with Advocate Tejswini Patil, cousin sister of accused No.1, she used to harass her in the Court library. Accused No. 2 has given birth to a baby from Omkar Shinde. There is need of DNA test of the baby. Omkar Shinde, Raju Shinde, Aniruddha Shinde, Punam Pawar (Shinde) and Meena Joshi, by hacking her information, assisted accused No.1. They are involved in the conspiracy with accused Nos. 1 and 2 for the commission of offence punishable under Section 376(C) of the Indian Penal Code with her. There is, therefore, need to implead them as co-accused persons and make further investigation with their reference.

19. The informant is a practicing advocate. She mentions that she also works as legal advisor of various Associations. After making grievance before the Bar Association and Complaint Redressal Committee she has lodged elaborate first information report. Thereafter, she has also made elaborate supplementary statement. She has also narrated the facts in detail before Magistrate under Section 164 of the Code of Criminal Procedure. In the earlier statements it is her mere statement that Omkar Shinde is her husband, accused No.1 disclosed him that he has physical relations with her and, therefore, Omkar Shinde went from the office of accused No.1 without talking with her. Except this there is no sort of grievance or allegations against these persons and incidents either in first information report or further statements. Hence, it cannot be said that such subsequent events, if any, become part of the present crime. In the written

notes of argument the informant has repeatedly mentioned that there is need to register independent crime against these persons. Considering all these aspects also these grievances also cannot be considered as sound ground for further investigation.

20. According to the informant at the instance of accused No.1 accused No.2 by stealing her purse and mobile phone handset misused them. Hence, there is need to recover the same and collect information regarding Airtel Company mobile phone No. 9766676338 and Micro max Company handset involved in Satara City Police Station C.R. No. 33. There is also need to collect CC TV Cameras from the office of accused No.1 and house of Omkar Shinde.

21. The informant has come with a case that these incidents have occurred prior to 2014. It is not her say that till lodging first information report in 2018 ever she reported theft of her articles to Police. She herself contends that the accused persons have destroyed the articles and she has obtained duplicate sim card. In such circumstances, especially considering nature of allegations and offences levelled, nothing fruitful will reveal regarding past events of prior to 2014. Hence, these aspects also cannot be considered as sound ground to direct further investigation.

22. According to the informant she had produced caste certificates before the Investigating Officer. There is need to file caste certificates of herself and accused persons.

23. Xerox copy of caste certificate of the informant is filed in the charge-sheet. With permission of the Court authenticated copy of caste certificates can be filed. Merely for the said purpose further investigation does not appear necessary.

24. In the written notes of arguments the informant has referred many instances beyond the contents, scope and ambit of the application (Exh.50). There appears no need to refer the irrelevant aspects. The informant has not made out any convincing ground so as to direct further investigation.

25. According to the accused persons they have not committed any crime. There is no prima facie evidence against them. Hence, they deserve for discharge.

26. Section 227 of the Code of Criminal Procedure provides that if, upon consideration of the record of the case and documents submitted therewith and after hearing submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

27. Accused No. 1 has submitted that if the charge-sheet is perused it will reveal that there is no sufficient and convincing material so as to proceed further. For the said purpose, at this stage, the Court can assess the material on record. In support of his submissions he has placed reliance on the decision in **Kishor S/o Murlidhar Sonar Vs. The State of Maharashtra and**

others in Criminal Revision Application No. 23 of 2019, wherein Our Hon'ble High Court has observed to the effect that while dealing with application filed under Section 227 of the Code of Criminal Procedure the Court concerned is expected to examine and assess the evidence relied by the prosecution against accused and to reach the prima facie conclusion whether there is sufficient evidence to proceed against the accused.

28. He has further placed reliance on the decision in **State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava 2017 ALL SCR (Cri) 1431**, wherein Hon'ble Supreme Court has observed to the effect that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code of Criminal Procedure or any other law for the time being in force and there exists no ground to proceed against the accused, the Court may discharge the accused.

29. Bearing in mind this legal position it needs to consider the grounds for discharge tried to be made out by the accused persons.

30. Accused No. 1 has submitted that there was no reference of humiliation on caste in the complaint filed by the informant, prior to lodging of the first information report, before

the Bar Association and Complaint Redressal Committee. He has professional rivalry with Ex-District Government Pleaders Shri Shamprasad Vasantrya Begampure and Shri Sadashiv Narayan Sanap. At their motivation she tried to implicate him and innocent accused No. 2 in false crime. There is no corroboration to her statement.

31. By referring copy of first information report in Gadchiroli Police Station C.R. No. 175 of 2021 he has further submitted that the informant by pretending herself as wife of Gadchiroli Dy. S. P. Shaikh made hue and cry in his office and the Gadchiroli Police were required to prosecute her for the offences punishable under Sections 353, 294 and 504 of the Indian Penal Code.

32. By placing reliance on the observations of Hon'ble Himachal Pradesh High Court in the matter of **Nirmla Devi Vs. State of H.P. in CWP No. 3987 of 2019** he has further submitted that advocate must be an honest man and loyal citizen. Lawyer owes a high duty to his profession and to his fellow members of the Bar. His profession should be his pride and to presence its honour pure and unsullied should be among. Considering nature and conduct of the informant no weightage can be attributed to her motivated improved statements.

33. In support of his submissions he has further placed reliance on the decision in **Dr Dasharath Bhande Vs. State of Maharashtra 2016 ALL MR (Cri) 4394**, wherein allegations were that deceased committed suicide due to apprehension that

he would be terminated from service by head master from school on say of petitioner. Evidence of witnesses was that they were told by deceased that he was removed from service on the say of petitioner. However, when suicide was committed deceased was very much in service. In the said facts while discharging accused Our Hon'ble High Court has observed to the effect that sufficiency of material for proceeding further against accused would depend upon what is disclosed by witnesses, when their statements are accepted as they are. If it is found that the statements of the witnesses taken at their face value, do not disclose any material sufficient to fulfill the necessary ingredients of the offence of abatement to commit suicide, it would have to be held that there is no sufficient ground for proceeding further against the accused.

34. Considering the aforesaid scope of Section 227 of the Code of Criminal Procedure, at this stage, it is needless to consider the personal life and activities of the informant, if any. Motivation of others, improvements, contradictions, truthfulness and genuineness in the statement etc are the grounds of defence. They can be considered at appropriate time. Considering the scope and ambit of Section 227 of the Code of Criminal Procedure, at this stage, it only needs to consider whether the available prim facie record is sufficient to proceed with the accused or not. The incidents, grievances, allegations and offences levelled regarding sexual harassment, stalking etc prima facie appear to be of personal in nature with the informant. Contents of the first information report lodged by her, her supplementary statement and statement under Section 164 of the

Code of Criminal Procedure speak that the accused persons intentionally insulted, humiliated and harassed her. In such circumstances, at this stage, it would be improper to jump to any conclusion regarding genuineness in the said statements. Hence, the said grounds are not sufficient so as to discharge the accused persons.

35. Accused No.1 has vehemently submitted that in order to attract provisions of the SC and ST Act there must be intentional insult or humiliation on caste in public view. There is, however, no material to attract any of the provisions of the said Act. The inordinate delay itself indicates motivational false implication. There is, therefore, no point in proceeding further. In support of his submissions he has placed reliance on following decisions :

(i) **Gafur Gulam Umarji Munshi Versus State of Gujrat in Criminal Revision Application No. 632 of 2007**, wherein accused persons were prosecuted for assault to a member of scheduled caste for the offences punishable under the provisions of Indian Penal Code and the SC & ST Act. There was no statement recorded of any of the witness to meet with the requirement under Section 3(i)(x) of the S.C. & S.T. Act. In the said facts Hon'ble Gujrat High Court has observed to the effect that in order to attract Section 3(i)(x) of the Act there is need of intentional insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. In the absence of any material merely because

injured happens to be Scheduled Caste or Scheduled Tribe, automatically offence under S.C. & S.T. Act is not made out.

(ii) **Atyam Suryanarayana Vs. The State of Andhra Pradesh in Criminal Revision Case No. 1347 of 2018**, wherein on the allegations of abuses to a member of scheduled caste accused were prosecuted for the offences punishable under Section 506 of the Indian Penal Code and Sections 3(i)(r), (s) and (x) of the S.C. & S.T. Act. In the said facts Hon'ble Telangana High Court has observed to the effect that to attract the said offences under the S.C. & S.T. Act there is need of intentional insult or intimidation with intent to humiliate a member of S.C. & S.T. in any place within public view. There was, however, no such case. There was also unexplained delay in lodging first information report. In the said facts Hon'ble High Court pleased to discharge the accused under the provisions of S.C. & S.T. Act.

(iii) **Sunil Yadavrao Mandve Vs. State of Maharashtra & Ors. 2016 ALL MR (Cri) 4242**, wherein allegations were that accused persons had asked the complainant to vacate house, thrown out household articles and also abused complainant on his caste. In the said facts Our Hon'ble High has observed to the effect that material on record does not make out any offence either under IPC or under S.C. & S.T. Act. No material was produced to show as to whether accused belongs to S.C. caste or not which is necessary to attract provisions under S.C. & S.T. Act. In the circumstances Hon'ble High Court pleased to discharge the accused.

(iv) **Dr. Dhruvaram Murlidhar Sonar Versus The State of Maharashtra & Ors. in Criminal Appeal No. 1443 of 2018 (Arising out of S.L.P.(Criminal) No. 6532 of 2018)**, wherein there were consensus relations between the informant belonging to scheduled caste and accused. In the facts and circumstances of the case Hon'ble Supreme Court came to the conclusion that the alleged offences are not made out and quashed the first information report.

36. On the basis of grievances and allegations levelled the prosecution has come with a case for commission of offences punishable under Sections 3(1)(r) & (s) as well as (w)(i) and (za) (E) of the SC & ST Act. For attraction of Section 3(1)(w)(i) and (za)(E) commission of offence not necessarily within public view. The informant has tried to explain the delay. As stated earlier whether there is substance in the allegations or not and whether the explanation for delay is satisfactory or not is a subject of appreciation and evaluation of evidence and adjudication. The facts in the cited cases and the present case being different, with respect, the observations in the cited cases have no application to the facts of the present case. Thus these grounds tried to be made out are also not sufficient so as to discharge the accused.

37. The crime is registered on 15.03.2018 and the charge sheet is filed on 06.09.2018. Accused No.1 has vehemently submitted that the charge sheet not filed within the prescribed time limit entitles them for discharge. In support of his submissions he has placed reliance on the decision in **National Institute of Rock Mechanics Society Vs. Assistant**

Commissioner and Executive Magistrate in Writ Petition No. 25568 of 2017, wherein the case was under the provisions of Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013. One of the points involved in the matter was whether the complaint barred by limitation. In the said matter Hon'ble Karnataka High Court has observed to the effect that if the complaint is barred by limitation it is open to the accused persons to make application before the concerned Forum for the discharge.

38. Rule 7, sub rule (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 specifies that the investigating officer shall complete the investigation on top priority and the officer incharge of Police Station shall file charge sheet in Court within a period of sixty days (the period is inclusive of investigation and filing of charge sheet). Its sub rule (2-A) further specifies that the delay in investigation or filing charge sheet shall be explained in writing by the Investigating Officer.

39. Sub Sections (1) and (2) of Section 4 of the SC and ST Act cast certain duties on public servant, including to conduct the investigation and file charge sheet in Court within a period of sixty days, and to explain the delay if any, in writing. Sub Section (1) of the Section also prescribes punishment for dereliction in the duty.

40. It indicates that the duty is cast on the investigating officer and in-charge of police station to complete the

investigation and file charge sheet within the prescribed time and in case of delay to explain it in writing. In case of dereliction he would be liable for prescribed punishment. It, however, does not restrict the Court from taking cognizance only because of fault on the part of investigating agency.

41. The record and proceeding of the matter discloses that, by mentioning reasons, the investigating officer had submitted application dated 15.05.2018 seeking time for filing charge sheet. My learned predecessor has passed order dated 14.06.2018 thereon that "Charge sheet is not filed along with application as per Sec 4(e) of SCST Act. Hence, filed." The order dated 17.09.2018 on the charge sheet discloses that by taking cognizance he has issued process against the accused persons. In the circumstances, the fact of mere dereliction in duty, if any, on the part of the investigating officer, does not automatically entitle the accused persons for discharge. The facts of the present case and aforesaid cited case, relied on by the accused, being different, with respect the observations in the cited case have no application to the facts of the present case. Thus this ground is also not sufficient to discharge the accused persons.

42. In view of aforesaid discussion the informant has not made out convincing ground for further investigation. At the same time the accused persons also have not made out convincing ground for their discharge. In the result their both applications deserve to be rejected. Accordingly, I pass following order :

ORDER

The applications (Exhs. 30 and 50) are rejected.

SATARA.
27th August, 2021

(S.G. Nandimath)
Special Court under Scheduled Caste
and Scheduled Tribe
(Prevention of Atrocity) Act, SATARA.