

Spl. Case No. 79/2021
CNR No. MHWR010010962021
State Vs. Ravindra and Ors.
Common Order below Exh.1 & 4

(1) Accused Nos.1 and 2 have been charge-sheeted for the offences under Sections 500, 501, 504, 506 of I.P.C. and u/s. 3(1)(q), 3(1)(r), 3(1)(u), 3(1)(za)(E), 3(1)(va) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989. Accused no.2 has filed application Exh. 4 for his discharge.

(2) I heard learned A.P.P. Shri. V.R. Ghude for the prosecution and Advocate Shri P.B. Taori for the informant, Advocate Smt. Kanchan Mahalle for accused No.1 and Advocate Shri S.P. Raut for accused No.2. Following points arose for my determination, and I record my finding thereon for the reasons stated below -

Points	Finding
(i) Whether the material on record, if remained unrebutted, would warrant the conviction of the accused for the offences u/s. 500, 501, 504, 506 of I.P.C. and u/s. 3(1)(q), 3(1)(r), 3(1)(u), 3(1)(za)(E), 3(1)(va) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 ?	: Partly yes, against accused No.1, and in negative against accused No.2.
(ii) What order ?	: As per final order.

(3) Informant Arvind Domaji Nikose, a member of Schedule Caste, filed application OMC No.79/2020 before this Special Court u/s. 156(3) of I.P.C., which was allowed

vide order dated 15/01/2021 by then Special Judge/District Judge-2 and Additional Sessions Judge, Wardha whereby Dy.SP Wardha was directed to make investigation and take necessary steps in accordance with law. Thereafter, the application filed by the informant (OMC No.79/2020) was treated as FIR and C.R. No.94/2021 came to be registered with Police Station Ramnagar, Wardha for the offences u/s. 500, 501, 504, 506 of I.P.C. and u/s. 3(1)(q), 3(1)(r), 3(1)(u), 3(1)(za)(E) and 3(2)(va) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989. As per the allegations in the FIR, the informant is working as a Government Contractor and taken the contract for installation of water pipe lines from Zillha Parishad, Wardha. Accused No.1 is running daily newspaper Sahasik at Wardha which has vast circulation in Wardha District. Accused No.2 Vijay Rannavare and his wife are members of Zillha Parishad Wardha. As per the allegations in the FIR the accused No.2 is also taking various contracts from Zillha Parishad in the name of his henchmen. Therefore, accused No.2 is having business rivalry with the informant.

(4) The informant is a member of Schedule Caste i.e. Mahar caste, whereas accused No.1 and 2 are not the members of the Schedule Caste or Schedule Tribes since they belong to Kunbi and Maratha caste respectively. The caste certificates show that informant is a member of the Schedule Caste and accused are not members of Schedule Caste or Schedule Tribes. According to the informant accused No. 2

with oblique motive made collusion with accused No.1 and caused him to publish defamatory and derogatory news articles in his newspaper dated 24/08/2020, 25/08/2020, 28/08/2020, 31/08/2020, 03/09/2020, 23/09/2020 of which defamatory, insulting and humiliating parts of the articles are incorporated in para No. 9 and 11 of the application O.M.C.No.79/2020. The copies of the newspapers produced on record, prima facie shows that accused No.1 published those news against the informant along with his photograph. The gist of the allegations in the newspapers against the informant are as under as mentioned in the para Nos. 9 and 11 of the application --

(5) Those allegations prima facie shows they are published by accused no.1 since he is Chief Editor of the newspaper, and they are per se defamatory against the informant. The reports of officer of Zilla Parishad prima facie show that the informant has not committed any corruption/ malpractice in completing his work of the pipe lines and it is as per the standard norms and as per terms of the tender. Accused No.2 has referred the informant as Haramkhor, Mahathug, Bhamtya, Luchad, addicted to the womanizer and liquor etc. Thus, it appears accused No.1 has committed offences u/s 500, 501 of I.P.C.

(6) However, as per section 199 of Cr.P.C. the Court cannot take the cognizance of the offences under chapter 21 of I.P.C., unless the complaint is filed by the person aggrieved

by such offences. There is no special provision under SC and ST Act to override the bar u/s 199 of Cr.P.C. created on the powers of the Court to take the cognizance without complaint. Therefore, in my view although offences u/s 500, 501 of I.P.C (which are under the Chapter 21 of IPC) are made out against accused No.1, but their cognizance cannot be taken by this Court for want of complaint to be filed by the complainant/informant before the Court. The FIR filed by the informant/complainant with the police cannot be created as complaint within the meaning of section 2(d) of Cr.P.C. Therefore, accused Nos. 1 and 2 both are entitle for discharge u/s 500 and 501 of I.P.C.

(7) As regard offence under Section 504 of IPC the record shows that accused No.1 has used abusive words referring the informant as 'Haramkhor, Bhamta, Luchad, Mahathag etc. but those abusive and insulting words used toward the informant by publishing them in newspaper may be defamatory but not sufficient to attract the offence under Section 504 of IPC particularly when to constitute the offence under Section 504 of IPC, it is requirement that such insulting/abusive words must be intended to give provocation which would cause the informant to break the public peace or commit any other offence. Publishing such abusive words in the newspaper are certainly not used with an intention to cause provocation to the informant with a view that he should break public peace or commit any other offence. Therefore, in my view the offence under Section 504

of IPC is not made out against accused Nos.1 and 2.

(8) As regard offence under Section 506 of IPC, it is necessary to show that the accused caused threats to cause injury to the person or property or reputation with intend to cause alarm to aggrieved person. In this case the accused No.1 has caused injury to the reputation of the informant by publishing those news items which are per se defamatory since the allegations are made against him that he has made corruption, shown bogus bills of his work, he is a Luccha, Bhamta (cheater). However, another ingredients of the offence under Section 506 IPC as defined in Section 503 of Cr.P.C. is that threat to cause injury must be with an intention to cause alarm to that person (aggrieved) or to cause him to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, is missing in this matter. The published news does not show that, accused No.1 asked the informant to do any act or not to do any act or those items were published to cause alarm to the informant. Therefore, in my view offence under Section 506 of IPC is also not made out against both accused. The offence u/s 506 IPC is specified in the scheduled and makes its punishable also with Section 3(2)(va) of SC and ST Act. Since the offence under Section 506 of IPC or any other offence specified in the Schedule under SC and ST Act is not made out, there is no question of application of offence under Section 3(2)(va) of SC and ST Act. Therefore, there is material to frame the charge against the accused for the

offence under Sec.506 IPC as well as under Section 3(2)(va) of SC and ST Act.

(9) Section 3(1)(q) is applicable when the accused, who is not the member of SC and ST, gives false or frivolous information to any public servant with a view to cause the public servant to use his lawful power to the injury or annoyance of a member of Schedule Caste. In this case there are no allegations that accused Nos.1 and 2 have given any false information against the informant the member of Schedule Caste to any public servant; therefore, the offence under Section 3(1)(q) is also not made out. No doubt, record shows that accused No.2 being member of Zilla Parishad made complaints to Executive Engineer of Zilla Parishad to make inquiry into the work carried by informant with allegations that the quality of the work was of substandard and not as per norms. In my view such complaint made by accused No.2 being the member of the Zilla Parishad, cannot amount the offence under Section 3(1)(q) of SC and ST Act. He has not given any false information and he only wanted to have inquiry into the matter. Therefore, no offence under Section 3(1)(q) of SC and ST Act is made out against both accused.

(10) As regard offence under Section 3(1)(r) is concerned, accused No.1 has used abusive and insulting words against the informant by publishing news in the newspapers referring the information as Haramkhor,

Bhamtya, Luccha etc. and those words are used to humiliate and insult the informant. Those abusive and insulting words have been published in the newspaper which are read by public at large; therefore; those words amounting to insult and humiliation is within public view. Accused No.1 used those abusive and insulting words against the informant knowing that he was a member of the Schedule Caste. Therefore, in my view prima facie offence under Section 3(1)(r) SC and ST Act is made out against accused No.1.

(11) As regard offence under Section 3(1)(u) of SC and ST Act requires use words in written or spoken promoting or attempting to promote feelings of enmity or hatred or ill-will against the members of the Schedule Caste. Accused No.1 published those abusive, insulting words in the newspaper and promoted hatred or ill-will amongst the officers of Zilla Parishad and other public members against the informant who is the member of Schedule Caste. Therefore, in my view offence under Sec. 3(1)(u) of SC and ST Act is made out against accused No.1.

(12) As regard offence under Section 3(1)(za)(E) of SC and ST Act is applicable when a member of Schedule Caste is obstructed or prevented in any manner practicing his profession or carrying his occupation, trade or business which other members are having right to use or have access to. Every one can run the occupation/ business of taking tender and to get the work orders from Zilla Parishad. Prima facie it

appears that accused No.1 by publishing false and defamatory news against the informant was causing obstruction to the informant from carrying on his business of taking the contract from Zilla Parishad by making such baseless and defamatory statements about corruption and false work so that the Officer of the Zilla Parishad should not grant contract to the applicant. Therefore, in my view the offence under Section 3(1)(za)(E) of SC and ST Act is made out against accused No.1.

(13) In view of above discussion, accused Nos.1 and 2 are entitled for discharge for the offences under Sections 500, 501, 504, 506 of IPC, Sections 3(1)(q), 3(2)(va) of SC and ST Act. However, prima facie case is made out to frame the charges against accused No.1 for the offences under Sections 3(1)(r), 3(1)(u), 3(1)(za)(E) of SC and ST Act. Now I will discuss whether those offences which are made out against accused No.1 are also made out against accused No.2 or not.

(14) As regard accused No.2 is concerned, the allegations against him are that he has colluded with accused No.1 to publish the news articles against the informant. There are allegations that accused No.2 is taking contract from Zilla Parishad in the name of his other persons (his henchman); therefore, he is having hatred and business rivalry with the informant. Thus, the allegations are that accused No.2 has got published those news items in the newspaper of accused No.1 by making accused No.1 to the forefront.

(15) The learned Advocate Shri Raut submitted that there is no such material against accused No.2 to connect him with the crime. He submitted that the Hon'ble High Court while granting anticipatory bail to accused No.2 in Cri.Appeal No.165/2021 vide order dt. 06/08/2021 has made observation that there was no prima facie case against accused No.2 to attract the offences under SC and ST Act; therefore, anticipatory bail was granted. On the other hand, learned APP Shri Ghude, Adv. Shri P.B. Taori for the informant submitted that there is a prima facie material i.e. the statement of the informant and witnesses. They submitted that the observation made by the Hon'ble High Court while deciding bail application cannot be considered while deciding the discharge application. I agree with the submission of the learned Advocate Shri Taori that the observations made by Hon'ble High Court while deciding bail application, cannot be considered while deciding discharge application. The court has to consider the material before it filed with the charge-sheet, which may not be available before the Court while deciding bail application.

(16) The informant in the FIR only stated that accused No.2 made collusion with accused No.1 due to his business rivalry and got published false news items against the informant with the help of accused No.1. Of course the informant stated said fact in the report but prosecution has not submitted any material to show that accused No.2 made any collusion with accused No.2 and asked him to publish

such abusive and insulting words towards the informant in his newspaper. The copy of the letter dt. 17/07/2020 shows that accused No.2 made complaint against the informant to Executive Engineer of Zilla Parishad to make the inspection of the actual work carried by the informant and to satisfy that the work was carried out as per the standard. The copy of the letter dt.17/07/2020, 21/01/2020 and various others correspondence shows that accused No.2 being the member of the Zilla Parishad pointed out certain irregularity to the Executive Engineer or Z.P. The report dt. 19/03/2021 given by Sub-Divisional Executive (Water Supply Engineer) show that the work of pipeline was carried by the informant was as per the tender and was not of substandard quality. Thus, merely because accused No.2 made certain complaints against the informant to the Executive Engineer with request to make inspection and to satisfy that the work was carried as per the tender, would not amount any offence under IPC or under SC and ST Act. Any person can ask the public authority to do its duty of making inspection of the work carried by the contractor and to satisfy that it was as per the norms and the tender conditions.

(17) The learned APP and Advocate for the informant could not point out any statement of witnesses pointing out that accused No.2 asked accused No.1 to publish such defamatory and false news items against the informant. Witness Vijay Gakhare, who is a husband of the President of Zilla Parishad Wardha, in his statement told that present

accused No.2 filed a tender for pipe line work in the name of others and this fact was told to him by accused No.2 himself. Thus, it appears that accused No.2 although was member of the Zilla Parishad and legally unable to take contract but he was taking the contract in the name of others. However, that would not amount criminal offences as alleged by the informant.

(18) Learned Advocate for the informant further submitted that accused Nos.1 and 2 have taken joint press conference and made allegations against the informant. However, what allegations were made by accused No.2 in the press conference are not disclosed, and no material produced about said press conference. Even there is no reference in the FIR to the said press conference. Even it is not stated what kind of words were used by accused No.2. Thus, there is no prima facie material to show that accused No.2 has made collusion with accused No.1 and got published defamatory and derogatory and abusive news articles against the informant in the newspaper of accused No.1. Therefore, in my view prima facie no case is made out to frame charges against accused No.2 for any offences. Therefore, accused No.2 is entitled for discharge from all the offences. In the result, I answer point No.1 accordingly; and pass following order :

ORDER

(i) Discharge application Exh.4 filed by accused No.2 is allowed.

(ii) As per Section 227 of Cr.P.C. accused No.2 Virendra @ Rana Baburao Rannaware is discharged from offences under Sections 500, 501, 504, 506 of I.P.C. and u/s. 3(1)(q), 3(1)(r), 3(1)(u), 3(1)(za)(E), 3(2)(va) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

(iii) As per Section 227 of Cr.P.C. accused No.1 Ravindra Kotambkar is discharged from the offences under Sections 500, 501, 504, 506 of I.P.C. and u/s. 3(1)(q), 3(2)(va) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

(iv) As per Section 228(1)(b) of Cr.P.C. the charges be framed against accused No.1 Ravindra Kotambkar u/s. 3(1)(r), 3(1)(u), 3(1)(za)(E) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

(v) Earlier bail bonds of accused No.2 are cancelled. However, as per Section 437A of Cr.P.C., accused No.2 shall execute fresh P.R. bond for Rs.50,000/- with surety in like amount for his appearance before Hon'ble High Court in case the prosecution/informant files appeal against present order. The bail bonds of accused No.2 shall remain in force for a period of 6 months.

Date : 18/07/2024

(N. B. Shinde)
Addl. Sessions Judge,
Wardha.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word to word, as per the assigned order.

(Vinod V. Kadu)
Stenographer (Grade-1)