



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 660 OF 2022

Nitin Shivdas Satpute

... PETITIONER

VERSUS

1. The State of Maharashtra
through the Police Station Officer,
Police Station, Murtizapur, Tahsil
Murtizapur, District Akola.
2. Santosh Madhavrao Thakre

... RESPONDENTS

Mr. S. M. Vaishnav, Advocate for Petitioner.
Mr. A. R. Chutke, APP for Respondent No.1/State.
None for the Respondent No.2.

CORAM : ANIL L. PANSARE, J.
DATE : DECEMBER 22, 2023.

ORAL JUDGMENT

. Heard. **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for both the sides, matter is taken up for final hearing at admission stage.

2. The challenge is to the Judgment and order dated 10/8/2022 passed by the learned Additional Sessions Judge, Akola in Criminal Revision Application No. 60/2022, by which the Sessions Court has set aside the order dated 4/2/2022 passed by the Judicial Magistrate First Class, Murtizapur, District Akola, issuing process against the Respondent No.2.

3. The Petitioner is working as Librarian in the college named and styled as "*Shri Gadge Maharaj Mahavidyalaya, Murtizapur*". The Respondent No.2 is/was working as Principal in the said College. According to the Petitioner, the Respondent No.2 was habitual of using abusive and filthy language against the Petitioner as well as the teaching staff.

4. On 8/11/2020 the Petitioner along with the other five staff members had preferred a complaint to the Vice Chancellor of Sant Gadge Baba Amravati University, Amravati complaining therein about the abusive behaviour of the Respondent No.2. According to the Petitioner, the Respondent No.2 was annoyed by the complaint made to Vice Chancellor and only with a view to teach a lesson to the Petitioner, he called complainant in the chamber on 11/11/2020 at 4.00 p.m. The Petitioner went to the chamber, where Mr. Prakash Pawar, the Peon was also present. The Petitioner used filthy and abusive language against the Petitioner. In doing so, the Respondent No.2 used terminology like, "*you people have lodged complaint to the Vice Chancellor. I am capable of committing four murders and hence the Petitioner should be cautious.*" He also questioned, "*whether the Petitioner's wife had been to him (Respondent No.2) to sleep to tell as to how bad he is.*"

5. According to the Petitioner, similar such treatment was given to the other staff members, and therefore, the complaint/report was lodged by five persons including the Petitioner working in that College with the Police Station, Murtizapur, District Akola on 13/11/2020. The report, however, has been registered on 21/11/2020 under Section 155 of the Code of Criminal Procedure, 1973 (*In short, 'the Code'*), vide NCR No. 455/2020 for the offences punishable under Section 504 and 506 of Indian Penal Code.

6. The Petitioner, on 20/1/2021, approached the jurisdictional Magistrate under Section 200 of the Code stating therein that though the ingredients under Section 294 of Indian Penal Code were attracted, which is a cognizable offence, the investigating agency has registered the report under Section 155 of the Code (for non-cognizable offence). The complaint was registered as Misc. Criminal Case No. 35/2021. The learned Magistrate issued process against the Respondent No.2 vide order dated 4/2/2022 for the offences punishable under Section 294, 504, 506 of Indian Penal Code.

7. The Respondent No.2 questioned the legality of order issuing process against him by filing revision application under Section 397 of the Code before the learned Additional Sessions Judge, Akola. The proceedings came to be registered as Criminal Revision Application No. 60/2022.

8. The learned Sessions Court, vide impugned order, has quashed and set aside the order passed by the learned Magistrate. The Sessions Court noted that the place of incident is Chamber of the Principal and nothing is emerging from the record that apart from the Petitioner No.2, whether anyone else was also present at the time of hurling abuses, and therefore, the

ingredients of the offence under Section 294 of Indian Penal Code will not be attracted. The Sessions Court has also noted that the Petitioner in his complaint has referred to the video-graph of the incident, allegedly recorded by him, however, the same has been not placed on record.

9. The learned Counsel for the Petitioner has invited my attention to the paragraph No.2 of the complaint, wherein the Petitioner has stated that the Respondent No.2 has abused the Petitioner and other associates namely, Professor Dr. Rakesh Balgujar, Professor Dr. Sachin Matode and Assistant Professor Akshay Chavan by calling them all in the Chamber. The learned Counsel accordingly submits that the finding of the Sessions Court that except for the Petitioner and the Respondent No.2, no one else was present in the Chamber, is incorrect. Thus, if not in the report, the averments, in the complaint spelt out presence of other staff members. That apart, he submits that the Chamber of the Principal is located in the College premises. This premise is accessible to the public, and therefore, is a public place. He, thus, contends that the Sessions Court has committed an apparent error by noting that the Chamber is not a public place. He further submits that the Petitioner has admittedly tendered pen-drive containing video-graph of the incident, and therefore, the second finding noted by the Sessions Court is also incorrect.

10. The learned APP, though admits that pen-drive containing video-graph of the incident was submitted by the Petitioner with the complaint, but submits that the order passed by the Sessions Court does not require interference in the writ jurisdiction, in as much as, there is no patent illegality committed by the Sessions Court.

11. To my mind, if the pen-drive containing video-graph was annexed with the complaint, there is no merit in arguing that the Sessions Court has not committed a patent illegality, because the Sessions Court has set aside the order of issuance of process for the offences punishable under Section 504 and 506 of Indian Penal Code on the ground that the Petitioner appears to have not submitted the video-graph of the incident.

12. As regards setting aside the order of issuance of process under Section 294 of Indian Penal Code, it would be better to go through this provision, which reads thus:

*“294. Obscene acts and songs. – Whoever, to the annoyance of others –
(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,
shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”*

Bare reading of this provision indicates that whosoever, to the annoyance of others, does obscene act in any public place will be said to have committed an offence under Section 294 of Indian Penal Code.

13. In the present case, abusive words uttered by the Respondent No.2 are, *“Whether your wives had come to me for sleeping to tell you that I am of bad character;”* This act can be said to be an obscene act. The averments in the complaint allege that along with the Petitioner three more persons were present in the Chamber, and therefore, when the aforesaid abusive language used by the Respondent No.2 in presence of the other

persons, the act committed can be said to be an obscene act committed to the annoyance of the others.

14. As regards public place, the act has been committed in the Respondent No.2's Chamber, which is situated in the College premises. The College premises is admittedly a public place, as the students, teachers, staff and other such persons connected with the College have access to the building, in which the Chamber of the Principal is located. In that sense, the Chamber of the Principal could be said to be a public place. The Sessions Court, however, took an erroneous view that the Principal's Chamber is not a public place.

15. The contentions of the Petitioner, therefore, that the Sessions Court has committed patent illegality is correct. The Sessions Court failed to exercise its jurisdiction in accordance with law. Therefore, the order impugned requires correction.

16. Before I part with the Judgment, I deem it appropriate to comment upon the scope of Section 155 of the Code, which reads as under :

“155. Information as to non-cognizable cases and investigation of such cases –

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

Sub-section (1) of Section 155 provides that when information is given to the officer in charge of a police station of commission of non-cognizable offence, he shall enter the substance of the information in a book in the form prescribed by the State Government and shall refer the informant to the Magistrate.

Sub-section (2) of Section 155 provides that no Police Officer shall investigate non-cognizable case without the order of a jurisdictional Magistrate.

17. The experience shows that the Investigating Officer would seldom approach the jurisdictional Magistrate and seek permission to investigate a non-cognizable case. In fact, I haven't come across a case where the investigating officer has approached the Magistrate to seek such permission. The usual practice is to leave the things to the informant to take the case further, if he so desires.

18. In my view, this mindset should change. In appropriate cases, the Investigating Officer should approach the jurisdictional Magistrate and seek permission to investigate the offence. The question may come in the mind of the investigating officer as to what parameters should be applied to determine an appropriate case. In my view, the appropriate case would be the one, in which the non-cognizable offence has been committed, not in the spur of moment but otherwise. In other words, the non-cognizable offence, which occurred in the spur of moment may be a case where the investigating agency need not approach the jurisdictional Magistrate to seek permission to investigate the crime and will be justified in leaving the things to be carried forward by of the informant, who may then file application under sub-section (2) of Section 155 of the Code with the jurisdictional Magistrate and seek direction against the investigating agency to investigate the offence. The informant/complainant may also file complaint under Section 200 of the Code in this regard. Thus, there are two options available to the informant/complainant, one is to submit application under sub-section (2) of Section 155 of the Code seeking direction to investigate the offence; and the other is to file complaint under Section 190/200 of the Code.

19. In the present case, the Petitioner chose to file complaint under Section 200 of the Code. The Investigating Officer concerned, for the reasons best known to him, firstly did not register the offence under Section 294 of Indian Penal Code; and secondly, did not seek permission of the jurisdictional Magistrate to investigate the offence.

20. The report of Superintendent of Police concerned was, therefore, sought in this regard. The report is received, which indicates that the

Investigating Officer concerned has committed error in processing the information received. This error surfaced only because the Superintendent of Police was requested to intervene. There must be many such cases where Investigating Officer ought to seek permission to investigate the offence, but for want of guidelines/directions, the necessary steps are being not taken.

21. Considering the ambiguous status, I deem it necessary to issue directions to the Director General of Police, State of Maharashtra, Mumbai to issue Circular/Notification stating therein that in appropriate cases (which should be made identifiable), the investigating agency should approach the jurisdictional Magistrate under sub-section (2) of Section 155 of the Code, seeking permission to investigate the non-cognizable offence. The investigating officer should be mindful of the fact that even the non-cognizable offences are punishable, and therefore, in appropriate cases, he is duty-bound to investigate even such offences and ensure that the investigation reaches logical end.

20. Coming back to the case in hand, the fact remains that the information lodged by the Petitioner spelt out the ingredients of offences punishable under Section 294, 504 and 506 of Indian Penal Code. The order of issuance of process under the aforesaid provisions was fully justified. The Sessions Court has committed patent illegality, as pointed out above. The order, therefore, is liable to be quashed and set-aside. Hence, the following order.

ORDER

1. The Writ Petition is allowed.
2. The Judgment and order dated 10/8/2022 passed by the learned Additional Sessions Judge, Akola in Criminal Revision Application No. 60/2022 is hereby quashed and set aside.
3. The order dated 4/2/2022 passed by the learned Judicial Magistrate First Class (Court No.1), Murtizapur, District Akola in Misc. Criminal Case No.35/2021 is hereby restored.
4. The Director General of Police, State of Maharashtra, Mumbai is directed to issue Circular/Notification, directing the investigating agency to approach the jurisdictional Magistrate under sub-section (2) of Section 155 of the Code, in appropriate cases (should be made identifiable by illustration or otherwise), seeking permission to investigate the offence.
5. The copy of order be served upon the Director General of Police, State of Maharashtra, Mumbai for appropriate action.
6. The compliance of order be reported within six weeks from the date of receipt of this order.

Rule is made absolute in above terms.

(ANIL L. PANSARE, J.)