

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3077 OF 2021

Kanhaiyalal Devichand Jain @ Chhoriya

.. Applicant

Versus

1. The State of Maharashtra

2. Ishwar Malhari Kshirsagar

.. Respondents

...

Mr. Joydeep Chatterji, Advocate for applicant.

Mr. R. D. Sanap, APP for respondent No.1 - State.

Mr. D. B. Bhange, Advocate for respondent No.2.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : NOVEMBER 28, 2022.

PRONOUNCED ON : JANUARY 18, 2023.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed for quashing the FIR vide Crime No.317 of 2021 dated 23.09.2021 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 504, 506 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") as well as the charge-sheet (Special Case No.44 of 2022) pending before the learned Special Judge, under Atrocities Act/Additional Sessions Judge,

Osmanabad.

2. Heard learned Advocate Mr. Joydeep Chatterji for the applicant, learned APP Mr. R. D. Sanap for respondent No.1 - State and learned Advocate Mr. D. B. Bhange for respondent No.2. With the able assistance of both the parties, we have gone through the FIR, documents and the evidence collected in the form of charge-sheet.

3. It has been vehemently submitted on behalf of the applicants that as per the FIR, the incident is alleged to have taken place on 01.00 p.m. on 15.09.2020, yet the FIR has been lodged on 23.09.2021. There is no explanation given by the informant for such belated lodging of the FIR. The informant is not a layman. He is serving as Headmaster. If we consider the contents of the FIR, it can be seen that he has booked a house with the company of the applicants on 12.08.2011 and he states that he gave the substantial amount till 20.10.2015. He also states that the sale-deed was executed in his favour on 21.10.2015, but then he states that still at that time the construction of the house was incomplete, which he has got it completed later. He then states that he received the possession of the house on 02.03.2017. In fact, the sale-deed contains the statements about handing over of possession. If everything was over in the year 2017, there was no occasion for him to meet the applicant on 15.09.2020. He says that the company of the applicant is at Pune, however, he says that the applicant had come to Tuljapur on

15.09.2020. Informant was along with his nephew at that time and then he says that at that time, the applicant had abused him in the name of caste. He has not stated that the said words were heard by any other person other than his nephew. Further, the FIR is silent about the exact place and it cannot be then said that the said place i.e. place of offence was within public view, which is one of the essential ingredient of the offence punishable under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

4. Learned Advocate for the applicant has pointed out that on 16.09.2020, a complaint was filed on behalf of the company of the applicant against the informant, as he used to give threats to the site engineers and employees of the company of the informant. Even on 22.09.2020 once again similar kind of complaint was given against the informant. Complaints were again given by the company of the applicant against the informant to the Collector, Osmanabad, Sub Divisional Officer, Tuljapur, District Superintendent of Police, Osmanabad on 20.09.2021. Therefore, the FIR that was filed by respondent No.2 is nothing but to take revenge or with *mala fide* intention.

5. Learned Advocate appearing for the applicant has also taken us through the charge-sheet wherein the statement of one Abhijit Vishnu Dede, who is the nephew of the applicant, has been recorded on 01.10.2021 and he says that in tune with the FIR, but for the first time

in his statement, he says that the incident has taken place near the gate of Dhariwal Society. The supplementary statement of the informant is taken on 30.10.2021 i.e. subsequent to the statement of the witness Abhijit. There is also statement of one Shubham Kisan Jadhav, whose presence was not at all stated by either the informant or witness Abhijit. Witness Shubham Jadhav says about his conversation with the informant on phone to the prior date, which is not stated by the informant himself in his FIR. Therefore, there is no evidence, which would attract the offence under the Atrocities Act.

6. Learned Advocate for the applicant relied on the Single Bench decision of this Court in ***Balu s/o Bajirao Galande Vs. State of Maharashtra and another, [2006 ALL MR (Cri.) 3197]***, wherein this Court after relying upon the decision of Delhi High Court in ***Daya Bhatnagar and others Vs. State, (2004) Delhi Law Crimes 915***, held that :-

"15. The Delhi High Court has, therefore, interpreted the expression "within public view" to mean that the utterances should be heard and viewed at least by one independent person. It has excluded the relatives, friends, persons having blood relationship or persons having close business or other fiduciary relationship with the victim from the purview of word public"

Similar view was taken by the Single Bench of this Court, Bench at Nagpur in ***Shri. Prakashs/o Gopalrao Pohare Vs. State of Maharashtra and Another, [2008 ALL MR (Cri) 180]***. He,

therefore, prayed for quashment of the FIR and the charge-sheet.

7. Per contra, the learned APP as well as learned Advocate for respondent No.2 have strongly opposed the application. It has been submitted that there is sufficient material on record to show that the offence had taken place. The incident had taken place at the gate of Dhariwal Society and it can be viewed from the spot panchanama. If the place is gate, then it would be in public view and in order to support this statement, learned Advocate for respondent No.2 has relied on the decision in ***Swaran Singh and Ors. Vs. State through Standing Counsel and another, [(2008) 8 SCC 435]***, wherein it has been observed by the Hon'ble Supreme Court that :-

" Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically down trodden. The SC/ST communities in our opinion are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this Court. In the age of democracy no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country."

8. In this case, the offence is stated to have taken place near the car, which was parked at the gate of the premises and, therefore, it was held that it is a place within the public view.

9. It has been pointed out on behalf of the respondents that not only Abhijit Dede has heard the abuses, but witness Shubham Jadhav has also heard the abuses. He was present at the spot. It was tried to be submitted on behalf of respondent No.2 that respondent No.2 was making an attempt to lodge the report immediately after the incident, however, it was not taken. He cannot be made responsible for the delay. Further, the delay can be explained at the time of evidence. In the FIR also, it was stated that since his amount was outstanding to the accused, he waited that the amount would be given and, therefore, he had not lodged the report. This cannot be taken as a fit case, where the inherent powers should be exercised.

10. There are umpteen judgments on the scope, object and powers of exercise of provision of Section 482 of Cr.P.C. It would be profitable to refer to few landmark judgments, wherein the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

In the landmark case of ***Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.***, reported in ***(2007) 12 SCC 1***, it was observed as under:

"23. This Court in a number of cases has laid down the scope and ambit of courts' powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex

debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court."

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and (iii) to otherwise secure the ends of justice.

24. Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

Similarly, the Hon'ble Apex Court in the case of ***State of Orissa v. Saroj Kumar Sahoo ; (2005) 13 SCC 540***, the Hon'ble Apex Court, in para 8, made the following observations :

"8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of

court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."

Similarly, in **Vineet Kumar v. State of U.P. ; (2017) 13 SCC 369**, after referring to several other cases, including **State of Haryana and others v. Ch. Bhajan Lal ; AIR 1992 SC 604**, the Hon'ble Apex Court concluded and made following observations in Paragraph No. 41 :

*"41. Inherent power given to the High Court under Section 482 Cr.P.C is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in **State of Haryana v. Bhajan Lal ; 1992 Supp (1) SCC 335**. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr PC to quash the proceeding under Category (7) as enumerated in State of Haryana v. Bhajan Lal (supra), which is to the following effect:*

"102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, but did not

advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr PC and quashed the criminal proceedings."

Based on above precedent, the Hon'ble Apex Court very recently in the case of ***Mahendra K.C. v. State of Karnataka and another ; (2022) 2 SCC 129*** observed that "while exercising powers under Section 482 Cr.P.C., for quashing proceedings, following tests are required to be applied, firstly, whether the allegations made in the complaint, prima facie constitute an offence; and secondly, whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint."

This is the settled legal position on scope and object of Cr.P.C. that can be culled out from various rulings discussed above.

11. Taking note of the legal position as to when the powers under Section 482 should be exercised, we would proceed to consider the facts of the case. Admittedly, there is delay in lodging the FIR. The alleged incident is stated to have taken place on 15.09.2020 at about 1.00 p.m., however, the FIR has been lodged on 23.09.2021 at about 16.33 hours. In the FIR, it has been stated that since the informant's amount was outstanding with the accused, he was having hope and, therefore, he waited, but as he could not get his amount till today i.e. 23.09.2021, he is lodging the report. No doubt, deep scrutiny of the

reason explaining the delay cannot be gone into at this stage, yet apparently also the reason that has been stated in the FIR for lodging it belatedly is not convincing at all. Registration of offence is nothing to do with the outstanding amount. The outstanding amount could have been recovered by the informant by filing a civil suit i.e. by taking legal recourse. For that purpose, lodging of the FIR could not have been kept on hold. The law requires promptness in lodging the FIR, as it rules out the possibility of implication and concoction.

12. As per the informant, as stated in the FIR, the applicant had come to Tuljapur on 15.09.2020 and, therefore, he met him along with his nephew Abhijit around 01.00 p.m. His FIR is silent about the place of incident. The spot panchanama has been drawn on 24.09.2021 i.e. next day of the FIR, yet it appears that it was not noted that in the FIR there is no mention about the spot. If we consider the spot panchanama, it is to be noted that there is no gate shown. The spot is shown much inside from Tuljapur-Latur road and the strip is mentioned as "धारीवाल वस्तीकडे जाणारा सिमेंट रोड". Therefore, it is doubtful as to whether the place which has been shown in the spot panchama is a public road because towards the west and east of the said spot, it appears to be the open space of Dhariwal Complex, that means it is a private space that too belonging to the applicant.

13. The supplementary statement of the informant is recorded on 30.10.2021. Even in his supplementary statement, as regards the

incident dated 15.09.2020 is concerned, he has stated that the applicant had come on that day to the society and by calling him, he asked as to in respect of what his amount is outstanding and why he want to agitate against the company. After the alleged abuses, it is stated that the applicant sat in his car and went. Thus, it can be seen that in his supplementary statement also he was not clear as to exactly where the incident had taken place and specifically he has not stated that incident had taken place near the gate of the society. In his supplementary statement also, his statement does not disclose presence of Shubham Jadhav.

14. As aforesaid, in the statement of Abhijit Dede, which was recorded on 01.10.2022 (prior to the supplementary statement of the informant). He has stated that the incident had taken place near the gate of the society. He has not stated about the presence of Shubham Jadhav. Perusal of the statement of Shubham Jadhav would show that informant had given a phone call to him on 14.09.2020. He says that he had also booked a bungalow with applicant and had met the applicant on 15.09.2020. He has not stated the time of his meeting with the applicant, but then he says that when he was leaving the place, the informant had come along with a person. Important point to be noted is that he has also not stated the exact place where he had met with applicant and thereafter, the informant along with another person had met and the further alleged incident had taken

place. Except the statements of Abhijit and Shubham, there is no other statement in the entire charge-sheet.

15. Section 3(1)(r) and 3(1)(s) of the Atrocities Act when specifically uses expression "within public view" would definitely expect that such insult or utterances should be viewed and heard by the public. We agree with the interpretation by the Hon'ble Delhi High Court in ***Daya Bhatnagar and others Vs. State (Supra)*** and the Single Bench of this Court in ***Balu s/o Bajirao Galande (Supra)*** and ***Shri. Prakashs/o Gopalrao Pohare (Supra)*** that those utterances should be heard and viewed by the independent person/persons thereby excluding the relatives, friends, persons having blood relationship or persons having close business or having fiduciary relationship with the victim. Otherwise it would be very easy to multiply the number of witnesses. We fully agree with the observations in ***Swaran Singh and Ors. (Supra)*** regarding protection that is required to be given to the members of SC/ST Communities, however, when such protection is granted, it should not be misused by anybody. The ingredients of the offence if completed/proved in its entirety would form an offence and it has to be strictly proved. A criminal case rests on strict proof to be adduced by the prosecution and, therefore, when offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act uses expression within public view, then such place should not be a private place or if it is a private place, yet it should be at such a distance from a public place

that such utterances would be heard or viewed. That is so held in ***Swaran Singh (Sura)***. That means though the place was a gate which was near to the public road, yet it was covered under the said expression. Here, the spot panchanama and the aforesaid omissions regarding mentioning of the place in the FIR, supplementary statement and the statement of witness Shubham will have to be viewed against the prosecution.

16. The documents which have been collected in the FIR also form the applications given by the informant to the company of the applicant since 10.10.2017. Later on it is given on 20.08.2019, 02.03.2020, 31.08.2020, 12.11.2020 and 05.09.2021. All those applications may show that some amount was due or applicant was intending to get it back from the applicant's company, however, those applications, after the date of alleged incident 15.09.2020, are silent regarding the incident dated 15.09.2020. An application was given by the informant to the Superintendent of Police on 15.09.2021 i.e. after a year of the alleged incident, but still it is silent in respect of the incident dated 15.09.2020. Same is the case with the another complaint application by him to Superintendent of Police on 20.09.2021. Note of these communications will have to be taken and it can be thus inferred that the present FIR has been lodged with *mala fide* intention, which is one of the ground for quashing the FIR in the principles laid down in ***State of Haryana and others Vs. Ch.***

Bhajanlal and others, [AIR 1992 SC 604].

17. For the aforesaid reasons, we find this to be a fit case where asking the applicant to face the trial would amount to injustice and, therefore, this is a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) Application stands allowed.

II) The FIR vide Crime No.317 of 2021 dated 23.09.2021 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 504, 506 of Indian Penal Code and under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act and the charge-sheet vide Special Case No.44 of 2022 pending before the learned Special Judge, under the Atrocities Act/ Additional Sessions Judge, Osmanabad, stand quashed and set aside.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm