

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.546 OF 2015

1. Sanjeev s/o Baban Bhor,
Age 39 years, Occu. Business,
R/o Pipe Line road,
Ahmednagar,
District Ahmednagar
 2. Kartik s/o Indrabhan Harde,
Age 27 years, Occu. Agri.,
R/o Chincholi, Taluka Rahuri,
District Ahmednagar
 3. Kunal s/o Dashrath Gaikwad,
Age 26 years, Occu. Agri.,
R/o Kolhar, Taluka Rahata,
District Ahmednagar
- .. Petitioners

Versus

1. The State of Maharashtra,
Through Police Station, Loni,
Taluka Rahata,
District Ahmednagar
 2. Amol s/o Baban Rokade,
Age 27 years, Occu. Service,
R/o Sankrapur, Taluka Rahuri,
District Ahmednagar
- .. Respondents

Mrs M.D. Thube-Mhase, Advocate for petitioners
Mr S.A. Ambad, A.P.P. for respondent No.1
Mr R.R. Karpe, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 21st August 2015

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With the consent of parties heard finally.

2. By way of present petition, the petitioners who are accused in the criminal complaint preferred under Section 156 (3) of the Cr.P.C.

and subsequent thereto suffered a charge-sheet for offence punishable under Sections 143, 144, 323, 504, 506 of the Indian Penal Code with Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for brevity), have questioned the order dated 11th March 2015 passed below Exh.13 in Sessions Case No.73/2013 whereby the learned Sessions Judge has rejected the prayer for discharge of the present applicants for an offence punishable under Section 3 (1) (x) of the Atrocities Act.

3. The few facts as are necessary for deciding the present petition are as under :

4. The respondent No.2 to the present petition filed complaint before the Court of Judicial Magistrate, First Class alleging therein that the present petitioners, on 20th April 2013 have assaulted him and made caste based accusations at public place which has prompted the learned Judicial Magistrate, First Class to direct an inquiry in the matter.

5. Pursuant to the inquiry, offence came to be registered against the present petitioners vide Crime No.72/2013 for offence punishable under Sections 323, 504, 506, 143, 147, 149 and Section 3 (1) (x) of the Atrocities Act.

6. In the said proceedings, the petitioners moved an application vide Exh.13 in Sessions Case No.73/2013, for discharge alleging therein that no offence under the Atrocities Act could be made out against the petitioners, even if the contents of the F.I.R. and that of evidence brought on record are taken to be true at its face value. According to the petitioners, learned Sessions Judge has failed to appreciate the said aspect of the matter and sought indulgence.

7. Mr Karpe, learned Counsel for respondent No.2 has supported the order passed by learned Sessions Court refusing to discharge the present petitioners of an offence punishable under the Atrocities Act. He would urge that the conduct of the petitioners in the commission of crime is required to be noted. He would further urge that the present petitioners who are having political background have indulged in criminal act, which is already spelt out in evidence that was led before the learned Judicial Magistrate, First Class. According to him, there is prima facie material available against the petitioners and prayed for dismissal of present petition.

8. Learned Assistant Public Prosecutor, while endorsing the submissions made by Mr Karpe, would urge that it is not open for this Court to appreciate the evidence at this stage, so as to order discharge and submits that the learned Sessions Judge is seized of the matter and shall decide the said issue on its own merits.

9. Upon considering the rival contentions of the parties, it is required to be noted that the respondent No.2 in his complaint has alleged that the petitioners have threatened him and has slapped him. It is specifically mentioned that one Ganesh Harde has made caste based insulting accusations in full public view against the present respondent No.2. In support of thereof, Sunil Shinde, Satish Chindhe, Rajendra Khapke, Sushil Ghangale, Anil Mali have given their statements alleging commission of the crime, however, so far as the caste based insulting accusations in the public view are concerned, as stated herein above, no specific role is attributed to the present petitioners, as same could be ascertained from the statements of the above referred witnesses. All these witnesses have attributed the commission of crime to the present petitioners but the attributions are only to the extent of offences committed under the provisions of Indian Penal Code and not under the Atrocities Act. There is specific mention in the complaint about the caste based accusations made by Ganesh Harde. It is required to be noted that the involvement of the present petitioners as could be noticed from the accusations made against respondent No.2, does not appear to be an intention to commit the crime under the provisions of Atrocities Act but the accusations primarily reflect about the commission of crime by the present petitioners under the provisions of Indian Penal Code. In such an eventuality, whether it is open for this Court to invoke the jurisdiction for quashing order passed for an offence punishable under the provisions of Atrocities Act is required to be examined.

10. What has been discussed herein above, it is noted that the

petitioners were not instrumental in committing the crime, particularly with respect to the caste based accusations in public view. Though the accusations against the petitioners of commission of offence under Indian Penal Code needs to be examined on its own merit, but in my opinion, the petitioners cannot be proceeded against for commission of offence under Atrocities Act. Appropriate support can be drawn from the judgment of Apex Court in the matter of **Asmathunnisa Vs. State of A.P.** Reported in **AIR 2011 (SC) 1905** wherein the Honourable Apex Court in paragraph Nos.5, 6 and 9 has noted thus :

“5. The brief facts which are necessary to dispose of this appeal are recapitulated as under:

A complaint was filed against the appellant and her husband Mohd. Samiuddin on 09.02.2006 before the Sub-Inspector of Police, Jubilee Hills Police Station, Hyderabad, which reads as under:

I am to inform you that just besides my house a building bearing No.8-2-293/82/B/60, in 1+3 storied building, a school is being run from 1 to 10th class. I have informed the management of the school with regard to sound pollution. I have also submitted representation to the DEO, Hyderabad. Since the authorities have not taken any action in this regard, I approached the Hon'ble High Court of A.P., and obtained an interim order on 03.10.1995. While the DEO trying to implement the interim orders, the Little Star School management, Gayathri Hills, has created more sound pollution. When we were not able to stay at our houses due to sound pollution, we invited the press people and expressed our grievances on 08.02.2006. The same news was published

in the Newspapers on 09.02.2006. After reading the news, the School management, Smt. Asmatunnisa and her husband namely Md. Samiuddin came to my house at 9.00 a.m., when I was not there. Md. Samiuddin abused in filthy language by naming caste and asked my wife, R. Sridevi, without even looking that she is a lady, that where did she sent me and also said that "AA LAMBADODU", "let him come home today we will settle the matter with him." Smt. Asmatunnisa also abused my wife. Smt. Anuradha, who is staying opposite to my house was the eye witness for the incident."

The significant part of this complaint is that the offending words were admittedly spoken by Mohd. Samiuddin, the husband of the appellant. He abused Sridevi's husband in filthy language by naming caste and said that "AA LAMBADODU", "let him come home today we will settle the matter with him." At that time, admittedly Sridevi's husband was not present.

6. The appellant has also been implicated because she had accompanied her husband to the house of the complainant. Admittedly, the appellant did not utter offending words. It would be relevant to set out relevant provisions of law as under:

7. Section 3 sub-section (1) sub-section (x) of the 1989 Act is reproduced as under:

"3. Punishments for offences of atrocities. - (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

xxx xxx xxx intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

9. In this connection, learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in E. Krishnan Nayanar v. Dr. M.A. Kuttappan & Others 1997 Cri. L.J. 2036. The relevant paragraphs of this judgment are paras 12, 13 and 18. The said paragraphs read as under:

"12. A reading of Section 3 shows that two kinds of insults against the member of Scheduled Castes or Scheduled Tribes are made punishable - one as defined under sub-section (ii) and the other as defined under sub-section (x) of the said section. A combined reading of the two sub-sections shows that under section (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under sub-section (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in sub-section (ii) of Section of Act 3/1989. By avoiding to use the expression "within public view" in sub-section (ii), the Legislature, I feel, has created two different kinds of offences an insult caused to a member of the Scheduled Castes or Scheduled Tribes, even in his absence, by dumping excreta etc. in his premises or neighbourhood and

an insult by words caused to a member of the Scheduled Castes or Scheduled Tribes within public view which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the Legislature would have avoided the use of the said expression which it avoided in sub-section (ii) or would have used the expression "in any public place".

13. Insult contemplated under sub-section (ii) is different from the insult contemplated under sub-section (x) as in the former a member of the Scheduled Castes or Scheduled Tribes gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrongdoer for which he must be present at the place.

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18. As stated by me earlier the words used in sub-section (x) are not "in public place", but "within public view" which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view, the entire allegations contained in the complaint even if taken to be true do not make out any offence against the petitioner".

10. The aforesaid paragraphs clearly mean that the words used are "in any place but within public view", which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present.

11. Appropriate support can also be drawn from the observations made in paragraphs 14 and 22 of the said judgment, which read thus:

14. The law has been crystallized more than half a century ago in the case of R.P. Kapur v. State of Punjab AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under Section 482:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

22. In Bhajan Lal (supra), this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

12. If the submissions of the petitioners narrated and analysed herein above are tested in the light of law laid down by the Apex Court in the above referred judgment, it is required to be noted that the allegations made in the complaint and the evidence collected during the investigation, in my opinion, does not specify the ingredient of the offence under Section 3 (1) (x) of the Atrocities Act. If such prosecution under the Atrocities Act is continued, the same would encourage the harassment to the person like the present petitioners.

13. In view thereof, in my opinion, the present petition deserves to be allowed.

14. In the result, Writ Petition is allowed. The order dated 11th March 2015 passed below Exh.13 in Sessions Case No.73/2013 is hereby quashed and set aside. The prosecution of the present petitioners for an offence punishable under Section 3 (1) (x) of the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, is hereby quashed and set aside.

15. The Sessions Court, however, shall proceed with the trial as regards other offences punishable under Indian Penal Code against the present petitioners, pending before it.

16. Rule made absolute in above terms.

(N.W. SAMBRE, J.)

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