

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

**CRIMINAL WRIT PETITION NO. 686 OF 2015**

Prabhakar S/o Bhagwanrao Suryawanshi

Age : 50 Yrs., Occ. Agriculture,

R/o : Mahatala, At Post. Nivgha,

Tal. Hadgaon, Dist. Nanded.

**.... PETITIONER**

**V E R S U S**

1. The State of Maharashtra

2. Ganesh s/o Kishanrao Bhandwale

Age : 50 Yrs., Occ. Agriculture,

R/o : R/o : Mahatala, At Post.

Nivgha, Tal. Hadgaon,

Dist. Nanded.

**.... RESPONDENTS**

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Mr. M.V.Ghatge, Advocate for Petitioner.

Mr. D.V.Tele, A.P.P. for R.No.1 – State.

Mr. A.G.Ambetkar, Advocate for R.No.2.

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**CORAM : V.M.DESHPANDE, J.**

**DATE OF JUDGMENT : 30<sup>th</sup> JULY, 2015**

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**JUDGMENT :**

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

2. Heard Mr. M.V.Ghatge, learned Counsel for the petitioner, Mr. D.V.Tele, learned A.P.P. for Respondent No.1 – State and Mr. A.G.Ambetkar, learned counsel for respondent No. 2.

3. By filing the present Criminal Writ Petition, petitioner is challenging the Order passed by learned Judicial Magistrate First Class, Hadgaon dated 05/02/2001 in R.C.C. No. 36/2014, thereby issuing process against the petitioner for the offences punishable u/s 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act [for short, 'Atrocities Act'] and u/s 427,323,504,506 read with 34 of the Indian Penal Code together with the Judgment and Order passed by the learned Additional Sessions Judge, Nanded dated 07/05/2001 in Criminal Revision No. 46/2015, by which the learned revisional Court confirmed the order of issuance of process.

4. Private complaint is lodged by respondent No. 2. According to the complaint, both the petitioners, who are accused and the respondent No. 2, the complainant belongs to same village. Complainant belongs to Scheduled Caste. According to the complaint, on the day of the incident, complainant's wife and witness No. 2, his employee were working in G.No. 255 of village Kohali, Tq. Hadgaon, Dist. Nanded. That time petitioner/accused brought JCB machine and four tractors in the field and they started digging the soil. Complainant's wife tried to convince the accused persons, however in-vain. Therefore, she made phone call to the complainant. Therefore, complainant reached on the spot. That time, accused persons used abusive words in the name of caste, gave threats and pushed him.

5. If the complaint is perused, then it is crystal clear that the provisions of the Atrocities Act can not be made applicable.

This Court in the matter of Shri.V.P.Shetty Vs. Sr.Inspector of Police & Anr., 2005 ALL MR [Cri.], 2384 has observed as under :

*“ The plain reading of the complaint filed by the complainant undoubtedly prima facie discloses various accusations against the complainant by the petitioner in the name of the Scheduled Castes and Scheduled Tribes. It also prima facie discloses abuses having been uttered by the petitioner and addressed to the complainant on the ground of the complainant being a member of the Scheduled Caste. However, as rightly submitted by the learned Advocate for the petitioner, the complaint nowhere discloses those accusations having been made in a place within the public view. In various decisions apart from the decision of Bai @ Laxmibai, this Court has time and again held that the expression 'within public view' has specific meaning and in order to attract the provisions of law under Sec. 3 (1) (x) of the Atrocities Act, the acts amounting to insult or humiliation to the member of Scheduled Castes or Scheduled Tribes should be visible and audible to the public. Otherwise, it would not amount to an offence under the said provision of law. Considering*

*the same and considering the allegations in the complaint which relate to the acts by the petitioner in the closed cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant 'within public view'. On this count itself, the petitioner is justified in contending that there was no case for recording the F.I.R. under the provisions of law comprised under Sec. 3 (1)(x) of the Atrocities Act ”.*

6. Further, on the plain reading of the complaint, it is clear that except complainant, his wife and his employee, no other were present. In that behalf, I would like to reproduce herewith the observations of this Court in **Mahesh Sakharam Patole & Ors. Vs. State of Maharashtra, 2009 (2) Bom.C.R. (Cri.) 867 :**

*“ A mere presence of the family members, including resident servant, in my opinion, is not sufficient to constitute an offence under section 3 (1) (x) of the Act. Family members or resident-servant can not be treated as*

*members of public. Members of the public should either be present when the offence is committed and even if the incident was not visible, atleast the utterances or remarks should be audible to the members of public to constitute an offence under the Act. For instance, if the complainant was insulted/intimidated in a closed cabin, and if the remarks were clearly audible outside the cabin and if they were heard by the public, that would also constitute an offence under section 3 (1) (x) of the Act. Similarly, if no member of public was present when the accused uttered the abuses at a public place, it would not constitute an offence. Therefore, to constitute an offence under section 3 (1)(x) of the Act, the incident should occur in the presence of the public or atleast the utterances should be audible to the member/s of public ”.*

7. In the present case, no other independent person was present when the petitioner alleged to have used the abusive words in the name of caste. In that view of the matter, the offence under the Atrocities Act is not at all made

out.

8. In so far as the other offences punishable under Indian Penal Code are concerned, complaint discloses commission of the same prima facie, which needs trial. That leads me to pass the following order.

**ORDER**

- [I] Present Criminal Writ Petition is partly allowed.
- [II] Order dated 05/02/2015 passed below Exh. 1 in R.C.C. No. 36/2014 by the learned Judicial Magistrate First Class, Hadgaon and the Order dated 07/05/2015 passed below Exh. 1 in Criminal Revision No. 46/2015 by the learned Additional Sessions Judge, Nanded are hereby set aside.
- [III] Complaint for the offences punishable u/s 427,323,504,506 read with 34 of the Indian Penal Code to proceed.

**[V.M.DESHPANDE, J.]**

