

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

CRIMINAL REVISION APPLICATION NO. 159 OF 2015

Sheshrao s/o Sitaram Parve,
Age: 45 years, Occ: Service,
R/o. Nagar Parishad Colony,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

...Applicant

versus

1. The State of Maharashtra,
Through Palam Police Station,
Tq. Palam, Dist. Parbhani.
2. Laxman s/o Madhavrao Golegaonkar,
Age: 79 years, Occ: Agri.,
R/o. Baliraja Colony, Near Mamta
School, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
3. Haribhau s/o Tukaram Satpute,
Age: 43 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani.
4. Atmaram s/o Dashrath Arsule,
Age: 30 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani.
5. Shivaji s/o Vishwanath Paul,
Age: 39 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani.
6. Girish s/o Shivajirao Solunke,
Age: 35 years, Occ: Service,
R/o. Mamta High School, Baliraja
Colony, Palam, Ta. Palam,
Tq. Gangakhed, Dist. Parbhani.
7. Datta s/o Shivaji Solanke,
Age: 33 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani.

8. Sanjay s/o Prakash Balghate,
Age: 33 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani.
9. Vishwanath s/o Rambhau Waghmare,
Age: 29 years, Occ: Service,
R/o. Madhavrao Patil Mahavidyalaya,
Palam, Tq. Palam, Dist. Parbhani. ...Respondents

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Mr. M.V. Ghatge, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent No. 1
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WITH

CRIMINAL REVISION APPLICATION NO. 207 OF 2015

The State of Maharashtra,
Through Police Inspector,
Palam Police Station,
Dist. Parbhani. ...Applicant

versus

1. Laxman Madhavrao Golegaonkar,
Age: 76 years, Occ: Service,
R/o. Village Arkhed,
Tq. Palam, Dist. Parbhani.
2. Haribhau Tukaram Satpute,
Age: 40 years, Occ: Service,
R/o. Teachers Colony,
Palam, Dist. Parbhani.
3. Atmaram Dashrath Arsule,
Age: 27 years, Occ: Service,
R/o. Madhavrao Patil College,
Palam, Tq. Palam, Dist. Parbhani.
4. Shivaji Vishwanath Pol,
Age: 36 years, Occ: Service,
R/o. Madhavrao Patil College,
Palam, Tq. Palam, Dist. Parbhani.
5. Girish Shivajirao Solanke,
Age: 32 years, Occ: Service,
R/o. Near Mamta High School, Baliraja

Colony, Palam,
Tq. Gangakhed, Dist. Parbhani.

6. Datta Shivaji Solanke,
Age: 30 years, Occ: Service,
R/o. Madhavrao Patil College,
Palam, Tq. Palam, Dist. Parbhani.

7. Pro. Sanjay Prakash Balghate,
Age: 30 years, Occ: Service,
R/o. Madhavrao Patil College,
Palam, Tq. Palam, Dist. Parbhani.

8. Vishwanath Rambhau Waghmare,
Age: 26 years, Occ: Nil,
R/o. Madhavrao Patil College,
Palam, Tq. Palam, Dist. Parbhani.

...Respondents

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Mr. R.V. Dhasalkar, A.P.P. for applicant
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CORAM : N.W. SAMBRE, J.

DATE : 15th APRIL, 2016

ORAL ORDER :

Criminal Revision Application No. 159 of 2015 is preferred by original complainant and Criminal Revision Application No. 207 of 2015 is preferred by the State questioning the order of discharge passed by learned designated (Special) Court, discharging the respondents-accused of the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on 12/08/2015.

2. The facts, as are necessary for deciding the issue raised

herein, are as under :-

Present respondents were charge sheeted for the alleged offence punishable under Sections 420, 147, 149, 323, 504 and 506 of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'Act' for the sake of brevity).

3. Present applicant-complainant filed report in the police station on 09/05/2012 resulting into Crime No. 26 of 2012, in which it is claimed that he was appointed as Lecturer at College run by society/trust, of which respondents-accused are office bearers. It is then claimed that illegal gratification of Rs.15,00,000/- for providing employment, was demanded by accused Nos. 1 and 2. It is then claimed that though substantial payment was made, employment was not given, rather they abused on caste basis in the house of accused No. 1 and in the chamber of accused No. 2.

4. After the charge sheet came to be filed, the accused persons claiming that even if what has been stated in the charge sheet and investigation papers is found to be true at threshold, still according to them, no offence of atrocities could be made against them and as such, sought discharge under the provisions of Section

227 of the Code of Criminal Procedure.

5. The said application is allowed by learned Sessions Judge. As such, revision by the State, so also by the complainant.

6. Heard Mr. Ghatge, learned Counsel for the applicant and learned A.P.P. for the State in both the revisions. Mr. Ghatge, learned Counsel for the applicant would submit that the first incident as is narrated in the first information report is in two parts. According to him, the first incident took place at the house of accused No.1, which was witnesses and heard by one Mr. Dongare, employee in the same institution. He would then urge that utterances were properly heard by Dongre, who was standing outside the house and such utterances must be considered to be public view even had taken place in private premises.

7. Mr. Ghatge, learned Counsel for the applicant would invite attention of this Court to the fact that the second incident took place in the chamber of accused No.2, which was witnessed by Mrs. Dongre, who happened to be at the spot of incident and eye witness to the same. According to him, the fact remains that even if the incident occurred inside the cabin of accused No. 2, still it has to be considered to have taken place in complete public view. In

support of his contention, he would rely upon the judgment of the Apex Court in the matter of ***Swaran Singh and others vs. State Through Standing Counsel and another*** reported in **2009(2) Mh.L.J. 22**, particularly paragraph-28 which reads thus :

“28. It has alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him 'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

8. Learned A.P.P. adopted the above referred arguments.

9. Earlier Mr. C.K. Shinde, learned Counsel appeared in the matter on behalf of respondents, however, he was discharged, so Mr. N.B. Khandare, learned Counsel did appear and submitted that he has no instructions to appear in the matter.

10. With the assistance of learned Counsel for the applicant and learned A.P.P., I have perused the investigation papers and also gone through the statement of two witnesses namely Archana Dongare and Bharat Dongare.

11. Both these witnesses claimed to be eye witnesses to the incident in question. What has been stated by these witnesses even if taken to be true at its threshold, still in my opinion, no offence punishable under Section 3(1)(x) of the Atrocities Act could be made out.

12. It is to be noted that both these witnesses have made general and omnibus allegations without specifying the exact utterances uttered by the accused against the complainant. Apart from above, it is worth to state that it is not in dispute that the incident in question took place in the house of accused No. 1 Mr. Golegaonkar and in the chamber of accused No. 2 Mr. Satpute. At

both these places but for the complainant, his family members, no other persons are admittedly present inside the house and witness. Dr. Bharat Dongare has stated that he was standing outside the house and has heard alleged words. However, he is not witness to the incident as to whether utterances were by accused No. 1, as he has stated that utterances were heard by him on the road but not actually witnessed the incident.

13. So far as the second part of the incident which was witnessed by Archana Dongare is concerned, it is to be noted that the said witness claims to have been present in the chamber of accused No. 2 namely Mr. Satpute. Even if her statement is considered to be correct, the fact remains that the incident took place in the chamber of Mr. Satpute and alleged witness to the incident has not stated about actual utterances. It is only the complainant, who has stated about utterances. The witness Archana Dongare in her statement, as observed herein above, has made omnibus statement and not specific statement as regards attribution uttered by respondents-accused.

14. In this background, in my opinion, the fact remains that admittedly the incident in question took place in private place and cannot be inferred to have been taken place in public view.

15. As such, the view expressed by learned Special Judge, while ordering discharge of the accused, in my opinion, does not call for any interference. The observations narrated herein above also do not attract the requirement of Section 3(1)(x) of the Atrocities Act, particularly happening of the incident in public view. As such, the judgment in the matter ***Swaran Singh and others*** (supra) will be of hardly any assistance.

16. As such, both the criminal revision applications fail and stand dismissed.

[N.W. SAMBRE, J.]