

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 673 OF 2016

Dr. Satish Balkrishna Bhise
Age :- 63 yrs. Occ. Retired Principal,
Residing at A/202, Navkar Residency,
Behind Bibavewadi Police Station,
Bibavewadi, Pune – 411 037

... Applicant

Vs.

1. State of Maharashtra
Through Sr. Inspector,
Karad Police Station,
Karad, Dist. Satara
2. Bhaskar Karbhari Gaikwad
Age:- about 50 yrs.
Residing at B/6 ABC,
Employees Sahakari Housing
Society No.2, Pavana Nagar,
Chinchwad, Pune – 33.

... Respondents

WITH
CRIMINAL APPLICATION NO. 1015 OF 2016

Dr. Subhash Kashinath Mahajan,
Age: Adult, Occ: Director of
Technical Education, Mumbai,
R/at: 403, Asavari,
Near Marine Drive Police Station,
Vachchha Gandhi Road,
Mumbai – 400 020.

... Applicant

Vs.

1. The State of Maharashtra
(At the instance of City Police Station,
Karad, District Satara).
2. Bhaskar Karbhari Gaikwad,
Age: about 50 years,
Residing at B/6, ABC, Employees
Sahakari Housing Society No.2,
Pavana Nagar, Chinchwad,
Pune – 33.

... Respondents

.....

Mr. Sachindra B. Shetye for the Applicant in APL No. 673 of 2016.

Mr. A. A. Kumbhakoni, Senior Advocate a/w Mr. V. V. Purwant for the Applicant in APL No. 1015 of 2016.

Dr. F. R. Shaikh, APP for Respondent No.1-State in both Applications.

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Balasaheb R. Deshmukh and Mr. Nilesh Y. Ukey for Respondent No.2 in both Applications.

.....

**CORAM : S. C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : MAY 05, 2017.

ORAL JUDGMENT (PER S. C. DHARMADHIKARI, J.) :

1. Rule. By consent, Rule made returnable forthwith and heard finally at the admission stage itself.

2. These two Applications were heard together and as common arguments were canvassed and common issues raised, we dispose of the same by this judgment.

3. We take the facts from Criminal Application No. 1015 of 2016 for convenience.

4. The applicant therein is an Indian citizen and was serving as Director of Technical Education when this Application was filed. He is the original accused in C.R. No.164 of 2016 registered at City Police Station, Karad for the offences punishable under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the Atrocities Act”), as also Sections 182, 192, 193, 203 and 219 read with 34 of The Indian Penal Code, 1860 (for short, “I.P.C.”).

5. The 2nd respondent is the original complainant.

6. The 2nd respondent alleged in this First Information Report (for short, “F.I.R.”) that he is an ordinary resident of Pune. He is

serving in the Department of Technical Education. At the time of registration of F.I.R., he was posted at the Government Distance Education Institute, Shivaji Nagar, Pune. Prior to that, he was posted in the Government College of Pharmacy at Karad as a storekeeper. In the year 2007-2008, one Mr. Satish Bhise and Mr. Kishor Burade belonging to Brahmin and non scheduled caste respectively, were posted at this College at Karad. The complainant-2nd respondent belongs to Mahar community. This fact is known to both Mr. Bhise and Mr. Burade. It is alleged that Mr. Bhise and Mr. Burade colluded with each other and communicated some information which was false and mischievous with regard to the conduct of the complainant. They have, therefore, caused an injury to him. The information that was communicated by these persons in the form of remarks, was made known to the complainant. The confidential letter dated 26th August, 2008 from the Joint Director of Technical Education, Divisional Office, Pune apprised the complainant of these remarks. Therefore, the complainant addressed a letter to Joint Director and simultaneously, on 19th September, 2009, approached the Karad Police Station. Then, he narrated the nature of the

information communicated by Mr. Bhise and Mr. Burade. He states that the annual confidential report of the complainant for the year 2007-2008 contained these remarks (information). These remarks, according to the complainant, are that he is in the habit of making false complaints, that he does not deserve any promotion, that he requires more and extensive training, that he is not fit to work at the regional level. These remarks, according to the complainant, are false and mischievous and entered in his annual confidential report so as to cause injury to him. This act is attributed to Mr. Satish Bhise. As far as Mr. Kishor Burade is concerned, in the same year, he has reported that the complainant's integrity and character is not good. Rather, he is lacking on both counts. This is also a false and frivolous remark and entered in the annual confidential report so as to cause insult and injury to the complainant. It is alleged by the complainant that the said remarks were false has now been proved and established. It is alleged that both of them deliberately and in connivance and collusion with each other, entered and communicated these remarks so as to cause injury to the complainant. Both Mr. Bhise and Mr. Burade are Government

Servants. That is how they are allegedly guilty of the offence punishable under the Atrocities Act.

7. The complainant then elaborates as to how, when such adverse remarks were communicated to him, he made a representation and which was accepted. That is how he relies upon the action taken by the Joint Director of Technical Education. The complainant has got his statement recorded pursuant to which the F.I.R. has been registered. He has submitted all the official documents in relation thereto. The present Application has been filed to quash another F.I.R. in C.R. No. 164 of 2016 dated 28th March, 2016 registered at that very Police Station. We referred to the earlier C.R. and its contents only with a view to appreciate the contentions raised before us by the applicant in Criminal Application No. 1015 of 2016, namely, Dr. Subhash Mahajan.

8. As far as the subject F.I.R. is concerned, the complainant is the same. He refers to the earlier complaint against Mr. Bhise and Mr. Burade. He says that after that complaint was registered, the

prosecution was of the opinion that since the accused are Government servants, for prosecuting them, sanction under Section 197 of the Cr.P.C. would have to be obtained. This sanction will have to be obtained prior to the charge sheet being filed. That is why the prosecution applied for such sanction. The prosecution proceeded on the footing that the competent authority is the Director of Technical Education, Divisional Office, Pune. That is why, the papers were forwarded to the said office. At that time, the present applicant was the In-charge Director. The present applicant is also not belonging to Scheduled Caste, but is a member of Leva Patil community.

9. The allegations are that despite being aware of the legal position that the accused Bhise and Burade are Class-I Officers and in the service of the State Government and a Sanction to prosecute them would have to be granted by the State Government, the applicant-accused proceeded as if he is the sanctioning or the competent authority. He has not provided the requisite information about the power to grant such sanction and deliberately. The power to grant such sanction is not vesting in

this Director In-charge. Yet he has addressed a communication so as to shield and protect Mr. Bhise and Mr. Burade, acting in connivance and collusion with them. The intent on the part of the applicant was to save both Mr. Bhise and Mr. Burade from criminal legal proceedings and the probable punishment. That is why despite not possessing requisite powers, he himself took the decision to refuse sanction. That decision is also contrary to the material on record and based on conjectures and surmises. That is because the intent throughout was to cause mental, physical and financial injury to the complainant. The details in that behalf and the information which was provided by the applicant-accused to the Investigating Officer, according to the complainant, is contained in a communication dated 20th January, 2011. This resulted in a "C" Summary Report being filed against both accused in the competent Criminal Court. The complainant has alleged as to how systematically there was an attempt made to shield and protect Mr. Burade and Mr. Bhise from criminal prosecution and the present applicant, acting in connivance and collusion with them, committed the aforesaid acts. There is a further elaboration in that regard in the statement pursuant to which the said F.I.R. of

2016 has been recorded.

10. It is this F.I.R. which is sought to be quashed by means of this Application and invoking the power of this Court under Section 482 of the Cr.P.C. On 13th January, 2017, this Application was placed before a Division Bench of this Court. The learned Assistant Public Prosecutor, on instructions of the concerned Police Officer present on that date, made a statement that the charge sheet will not be filed against the applicant till the next date. That is how, after this statement was made, the Application was posted to 15th February, 2017. On 15th February, 2017, this Application could not be taken up and it was adjourned to 14th June, 2017. However, the papers were again produced on 1st March, 2017 and the Division Bench passed the following order.

“Not on Board. Taken on Board. No order.”

11. However, subsequently, the date was preponed by consent of parties. A copy of this Application has been served on both, the State/prosecution and the complainant. There is an affidavit-in-reply which has been filed by the complainant-respondent no.2.

12. In that affidavit, the complainant-respondent no.2 states that it is true that he made a complaint against Mr. Satish Bhise and Mr. Kishor Burade. That was for the purpose of prosecuting these officers for the offences with which they have been charged by him and referred by us hereinabove. The complainant states that for the purpose of prosecuting them, sanction under Section 197(1) of Cr.P.C. was required. Mr. Bharat Tangade, the Deputy Superintendent of Police, Karad, wrote a letter dated 21st December, 2010. That letter was written to the applicant Dr. Subhash Kashinath Mahajan, who, at the relevant time, was working as In-charge Director of Technical Education, Maharashtra State, Mumbai. The complainant then refers to the Government Resolution dated 22nd December, 2006, issued by the Home Department of the Government of Maharashtra. He also referred to a corrigendum dated 10th January, 2007 to this Resolution.

13. The allegation then is that in the light of this Resolution and the corrigendum, it was necessary for the applicant to refer the application seeking sanction to the State Government. However,

instead of referring this matter to the State Government, the applicant *suo motu* decided to reject the said application. He, therefore, refused sanction on the footing that he is the sanctioning authority and issued a communication in that behalf on 20th January, 2011.

14. Then, the complainant reiterates his allegations and with reference to the relevant statutory provisions and the documents which he had produced at the time of registration of the F.I.R.

15. He denies that this F.I.R. registered on 28th March, 2016 and the earlier F.I.R. of 2009 can be said to be identical. The role and involvement of the applicant in this Application, which is elaborated in F.I.R. of 2016, may be registered at the same Police Station, is different and distinct. He has been accused of an offence and which is clearly spelt out by the Atrocities Act and the I.P.C. The attempt, therefore, to link these two F.I.Rs., and to contend that for the same act of omission or commission, two F.I.Rs. cannot be registered, is an erroneous and frivolous plea. That is how in this affidavit, he has endeavoured to point out this

distinction.

16. At the same time, he has also relied upon a Government Resolution dated 1st February, 1996, and particularly, paragraph 12 of Schedule-A thereof, to contend that this, and the other paragraph 45, would guide the reporting/reviewing authority as to how the annual confidential remarks have to be entered in the cases of those officers who belong to Scheduled Castes and Scheduled Tribes. Such officers require necessary protection and guidance. Therefore, unduly harsh criticism and unjustified adverse comments should not be entered about their conduct, character and performance. The whole attempt ought to be to encourage and not to discourage them. It is, therefore, the contention of the complainant that this was the guiding principle and which has been completely bye-passed in communicating the adverse remarks. These adverse remarks have been entered knowingly. Such false and frivolous remarks being deleted, there was no justification for the applicant Dr. Mahajan to protect and shield the other two accused, namely Bhise and Burade. With a view to shield and protect them from criminal prosecution and the

probable punishment, he has committed the alleged acts which amount to an offence punishable under both statutes.

17. It is, therefore, the complainant's contention that the application be dismissed.

18. It is on this material that we have heard Mr. Kumbhakoni, learned senior counsel appearing for the applicant, Mr. Anturkar, learned senior counsel appearing on behalf of respondent no.2 and the learned APP.

19. Mr. Kumbhakoni would submit that if this F.I.R. is read and perused as a whole, it is evident that the same does not cull out any offence as far as the applicant is concerned. He has taken us through the present Application and all the annexures thereto. The complainant, according to Mr. Kumbhakoni, has indulged in acts which would demonstrate as to how he has been avoiding work and has made no endeavour to improve his performance. The remarks were entered in the annual confidential reports during the course of official duties. The complainant does not allege that the remarks could not have been entered by the

reporting authority, nor reviewed by the reviewing authority. He admits that position. If the adverse remarks are communicated to a public servant, then his duty is to make a representation and seek deletion thereof. That such representation is made and the request therein has been accepted is not a ground to allege commission of an offence and that too, as serious as an atrocity on the employee belonging to Scheduled Caste. In Government service, such remarks as are entered can be entered in the confidential records of all employees irrespective of their caste. Therefore, when such an official duty was performed, no offence and punishable under the provisions of the Atrocities Act was committed. That apart, as far as the applicant before this Court in this Application is concerned, Mr. Kumbhakoni has pointed out that a bare perusal of the two Sections of the Atrocities Act which are relied upon would reveal that they have no application. Thus, the argument is that even if all the allegations are assumed to be correct and taken at their face value, still no offence is made out under Section 3(1)(ix) as it then stood and Sections 3(2)(vi) and 3(2)(vii) of the Atrocities Act.

20. Mr. Kumbhakoni submits that the Section presupposes that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable for a term which shall not be less than six months but which may extend to five years and with fine. In the present case, the applicant was performing an official duty. A request was made by the Police machinery to grant sanction to prosecute Mr. Bhise and Mr. Burade. That was the application which was forwarded to the office of the Joint Director (Divisional Office), Technical Education Department, Government of Maharashtra. The applicant, at the relevant time, was the Director In-charge of this Department of Technical Education. He, therefore, acting on the premise that he is the competent authority to grant or refuse sanction, passed an administrative order in exercise of his administrative powers and refused sanction. The complainant himself alleges that this was an order and passed by the applicant. Once, he alleges so, then, there is no offence which can be said to be committed within the

meaning of this provision.

21. The second act attributed to the applicant is that, within the meaning of Sub-section (2) of Section 3, and particularly, clause (vi) and (vii) thereof, he knowingly or having reason to believe that an offence has been committed under this Chapter (Chapter II) of the Atrocities Act, gave information respecting the offence which the applicant knew or believed to be false. Mr. Kumbhakoni submits, and once again, that given the nature of the duties and power that is vested in the applicant, an erroneous exercise thereof would not result in any of these ingredients being attracted. Therefore, no offence punishable under these provisions has been committed. Secondly, clause (vii) of Section 3(2) envisages that, being a public servant, an offence punishable under Section 3(2) is committed. As explained, the applicant is a public servant, but when he acted as above, he cannot be accused of having committed any offence. It is in these circumstances that Mr. Kumbhakoni would submit that this is a fit case where this Court should exercise its inherent powers and quash the subject F.I.R.

22. On the other hand, Mr. Anturkar, learned senior counsel appearing for the complainant, would submit that there is no merit in any of the contentions of Mr. Kumbhakoni. He would submit that the power under Section 482 of the Cr.P.C. has to be exercised in an exceptional case in order to prevent an abuse of the process of the Court or to otherwise secure the ends of justice. In the present case, there is neither any abuse of the process of the Court, nor the ends of justice require exercise of such power. The inherent power has to be exercised sparingly, carefully and with caution in order to promote justice. Mr. Anturkar would submit that the present complaint made against a public servant would demonstrate as to how any officer in Government service but belonging to a deprived and backward section of the community has to suffer insult and harassment on a day to day basis. A fair treatment expected from highly placed officials is not extended to them. The annual confidential records have been spoiled deliberately by two public servants and the superior authority protected them from criminal prosecution and possible punishment. It is such an act which is attributable to the applicant and one should not, therefore, indulge in play of words to quash

the complaint. The object and purpose of the Atrocities Act cannot be lost sight of in arriving at any conclusion. Mr. Anturkar would submit that both provisions are squarely attracted. All the ingredients are present in the complaint of the complainant. That would have to be read as a whole and not in parts or reading certain sentences therefrom, but torn from the context and complete factual backdrop. Mr. Anturkar criticizes Mr. Kumbhakoni's argument by submitting that merely because a sanction was sought to prosecute Mr. Bhise and Mr. Burade and that sanction has been refused, an innocuous administrative act is highlighted and blown up. That is not how the complaint proceeds. The complaint, read as a whole, demonstrates as to how from the beginning and inception, the communication of the adverse remarks by Mr. Bhise and Mr. Burade was never objected to by the applicant. Even the applicant has a grudge against the complainant. He deliberately and in order to harass, insult and cause injury to the complainant, protected and shielded Mr. Bhise and Mr. Burade. It is not as if he was approached only to seek a sanction. The act attributed to the applicant is far more serious. He was aware of the complaint against Mr. Bhise and Mr. Burade

and the F.I.R. registered pursuant thereto. He was aware of the fact that he cannot be termed as a sanctioning or competent authority insofar as grant of sanction under Section 197(1) of Cr.P.C. Yet, he assumed the powers of the sanctioning authority and acted at the behest of these two officers. He was acting in collusion with them. Hence, he is also guilty of the offence alleged. It is in these circumstances that it is demonstrated by the complainant and by filing an affidavit-in-reply as to how the harassment continued. Mr. Anturkar relied upon the affidavits filed in this Application in October, 2016 and in January, 2017 so as to buttress his submissions. He has also placed reliance upon certain decisions of the Hon'ble Supreme Court.

23. With the assistance of both the senior counsel and the learned APP, who supported the complainant, we have perused this Application and all the annexures thereto.

24. This Application invokes Section 482 of the Cr.P.C. The parameters governing exercise of this power which is inherent and conferred in order to secure the ends of justice or to prevent the

abuse of process of the Court, reveal that the power has to be exercised not as a matter of course. No accused can, as of right, contend that this Court's inherent powers be exercised so as to quash the prosecution merely because he is reluctant to face it. No applicant/accused, all the more, can contend that because the criminal trial is a long drawn process, the other two accused having retired from service, he should not be subjected to and forced to face a trial. He should not be forced to face trial merely because in his opinion no offence is committed. We must at the outset, dispel this impression of all the applicants-accused. We have found that this Court is flooded with applications seeking to quash criminal prosecution essentially on the ground that the criminal justice delivery system in our country moves at a crawling pace. It takes years and sometimes decades together in order to establish the guilt or prove one's innocence. That itself cannot be a factor to quash the criminal prosecution. Crime is against the society and it is public at large which is adversely affected. If the necessary ingredients and enabling the exercise of this inherent power are lacking, then, we must not exercise it. The categories of cases in which such power has to be exercised have been

summarized exhaustively but illustratively in the case of ***State of Haryana and Others vs. Ch. Bhajan Lal and Others***, reported in ***AIR 1992 SC 604***. Further, the Hon'ble Supreme Court of India, in a reasoned judgment, has summarized these principles as under :

“108. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though 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 of 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 F.I.R. 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no 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 ground 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 proceeding 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.”

25. In paragraph 109 of this decision, the Hon'ble Supreme Court sounded a note of caution in the following terms:

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

26. Further, in the case of *State of Rajasthan vs. Dr. Rajkumar Agarwal and Another*, reported in *AIR 2013 Supreme Court 847*, at page 850, the Hon'ble Supreme Court explained the ambit and scope of the inherent power by observing that "It is against this background that in *Shiji alias Pappu*, this Court held that exercise of power under Section 482 of the Code was justifiable. However, this court added that the plentitude of the power under Section 482 of the Code by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. We feel that in the instant case, the High Court failed to appreciate that the wholesome power vested in it under Section 482 of the Code has to be exercised with circumspection and very sparingly."

27. The duration of a criminal trial is not a factor to quash the investigation or compliant simply because crime is against the society. Social crimes like corruption and bribery, atrocities on

women, children and Scheduled Castes and Scheduled Tribes ought to be punished severely in order to curb them. In the case of ***Niranjan Hemchandra Sashittal and Another vs. State of Maharashtra***, reported in ***AIR 2013 Supreme Court 1682***, the Hon'ble Supreme Court held thus:

“19. It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to be impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corruptions are allowed to

continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

20. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder; destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.

21. It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding.....”

28. It is these guiding principles which would enable us to consider the request of the applicant-Dr. Mahajan before us.

29. As far as the other Application is concerned, it is common ground that the prosecution is under way. It is set out in Application No. 673 of 2016 itself that as far as the first F.I.R. is concerned, that has proceeded and we will indicate as to how it has progressed till date a little later.

30. Further, the applicant Dr. Bhise states that the second F.I.R., namely, C.R. No.164 of 2016 has to be quashed and set aside because the earlier complaint, which was taken cognizance of in the year 2009 and which was investigated by the investigating officer, resulted in a "C" Summary report under Section 169 of Cr.PC. being submitted before the learned Magistrate. Thus, pending adjudication of the "C" Summary Report filed in the earlier case on the same set of allegations and facts, the investigating agency cannot entertain a fresh complaint. The whole emphasis, therefore, is on the contention that the foundation for the second F.I.R. is the same. It is not a fall out but

necessarily the same incident or allegation which is made subject matter of this second F.I.R.

31. However, we are called upon to go into a larger question and posed for our consideration by Dr. Mahajan.

32. Before we proceed to analyze and interpret the relevant provisions, we must at once clarify that we were hesitant to enter into this issue and at this stage. The reason for the same is obvious.

33. None has disputed the factual background as set out in the additional affidavit of the 2nd respondent. He has filed the additional affidavit on 9th January, 2017 which indicates that the investigations in F.I.R No. 164 of 2016 dated 28th March, 2016 have been completed on 18th August, 2016. A charge sheet was prepared. At this stage, an application was made by the investigating authority to the State Government seeking permission under Section 197 (1) of the Cr.P.C. to file a charge sheet against all the three accused. On 24th October, 2016, the Desk Officer, Department of Higher and Technical Education, State

of Maharashtra wrote to the investigating authority/ Superintendent of Police, Satara and replied to the application for sanction dated 18th August, 2016 recording that it will not be advisable to take further steps at this stage including considering the request for grant of sanction to prosecute the above three accused till this criminal Application is disposed of.

34. Then, what is stated is that on 17th December, 2016, the Judicial Magistrate First Class, Karad rejected the prayer for grant of “C” Summary in F.I.R. No. 3122 of 2009 and directed the Investigating Officer to re-investigate the case, apply for sanction under Section 197(1) of the Cr.P.C. and then submit a report. Annexure R-2 is the copy of this order dated 17th December 2016 of the trial Court.

35. It is then pointed out that because the “C” Summary report has been rejected, there is a *prima facie* case against the accused. There is no question of quashing the F.I.R.

36. It is stated that in the case of F.I.R. 164 of 2016, the

investigations are complete but the Investigating Officer is awaiting the outcome of this Application.

37. We do not wish to enter into the controversy particularly about 'whether for prosecution of the accused, obtaining of sanction was necessary or otherwise'. We are not called upon to decide that issue. We are only called upon to consider whether the ingredients of the offence, and alleged to have been committed within the meaning of the Atrocities Act, are fulfilled or satisfied or not.

38. For that purpose, we would have to refer to the Atrocities Act.

39. The Act has now been extensively amended. What the Act envisages, and right from the time it was enacted is that in spite of various measures adopted to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they have remained vulnerable. They are subjected to various offences, indignities, humiliations and harassments. Through spread of education some awareness has been created amongst them and

they have been trying to assert their rights. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. Of late, there has been an increase in the disturbing trend of commission of certain atrocities. The normal provisions of the existing laws like the Protection of Civil Rights Act, 1955 and the Indian Penal Code have been found to be inadequate to check these atrocities. Under these circumstances, it was found necessary to enact a special legislation to check and deter crimes against the Scheduled Castes and Scheduled Tribes. To achieve this objective, a Bill was introduced in the Parliament, i.e. “The Scheduled Tribes (Prevention of Atrocities) Bill”.

40. The 'Statement of Objects and Reasons' to the Act 33 of 1989 reads thus:

“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

2. *Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.*

3. *The term 'atrocities' has not been defined so far. It is considered necessary that not only the term 'atrocities' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoin on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.*

4. *The Bill seeks to achieve the above objects."*

41. A perusal of the above would indicate that the Act has a preamble, namely, to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. This is, thus, a social and welfare legislation. Its provisions must receive an interpretation and ought to be construed in a manner conducive to and achieving its objective. It is a legislation seeking to deal with and suppressing crimes against the oppressed classes styled as untouchables. They are known as “Harijans” and “Dalits”. Atrocities on these classes is a social crime and adversely affects peace, harmony, unity and brotherhood amongst diverse sections of the society. Thus, the mischief has to be suppressed by advancing the remedy.

42. Chapter I of this Act contains preliminary provisions, namely, the definitions. The term “atrocities” is defined in Section 2(1)(a) to mean an offence punishable under Section 3. The term

“Code” is defined in Section 2(1)(b) to mean the Code of Criminal Procedure, 1973 and the term “public servant” is now defined by insertion of clause (bg) in Section 2(1)(b) by Act 1 of 2016. Thus, a public servant means a public servant as defined under Section 21 of the Indian Penal Code (45 of 1860), as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be. As per Section 2(1)(c), the term “Scheduled Castes and Scheduled Tribes” shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution of India. The words and expressions “social boycott” and “victim” also have been inserted and defined by exhaustive amendments made in 2016.

43. We are not concerned with any larger or wider aspect. Suffice it to note that the object and the purpose of the Act, as aforesaid, was not achieved and there are serious complaints and grievances insofar as its implementation and enforcement is concerned. Recently, in a decision reported in *(2017) 2 Supreme*

Court Cases 432 (National Campaign on Dalit Human Rights and Others vs Union of India and Others), the Hon'ble Supreme Court of India had before it a complaint or grievance as to ineffective implementation of the Act and indifferent attitude of authorities in implementation of the Act. In highlighting once again the object and purpose of the Act, the Hon'ble Supreme Court held thus :

“3. The Preamble to the Constitution of India provides for social, economic and political justice and equality of status and opportunity to all its citizens. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Untouchability is abolished and its practice in any form is forbidden by Article 17 of the Constitution. The enforcement of any disability arising out of untouchability as per Article 17 shall be an offence punishable under the law.

4. Article 46 reads as under:

“46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

5.

6.

7.

8.

9.

10.

11.

12. *To give effect to Article 17 in its true letter and spirit, Parliament enacted the Untouchability (Offences) Act, 1955. Sections 3 to 7 of the said Act prescribed punishments for enforcing religious, social and any other kind of disabilities on the ground of untouchability. There were several complaints from various quarters of the society about the lacunae and loopholes in the said Act. Several amendments were made to the said Act which was rechristened as the 'Protection of Civil Rights Act, 1955'. In spite of a major overhaul, it was noticed that the Protection of Civil Rights Act, 1955 and the Indian Penal Code, 1860 were inadequate to check the atrocities committed on Scheduled Castes and Scheduled Tribes. The fact that the Scheduled Castes and Scheduled Tribes remained a vulnerable group in spite of the introduction of several measures to improve their socio- economic condition was a matter of deep concern to Parliament.*

13. *Parliament acknowledged that the Scheduled Castes and Scheduled Tribes were subject to various offences, indignities, humiliations and harassments perpetually. Numerous incidents of brutalities and atrocities depriving the Scheduled Castes and Scheduled Tribes of their life and property were a cause of concern for the Parliament. Considering the fact that there was an increase in the disturbing trend of commission of atrocities against the Scheduled Castes and Scheduled Tribes, the Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Preamble to the Act reads as under:*

“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”

14. *The Act enlarges the scope of criminal liability by including several acts or omissions of atrocities which were not covered by the Penal Code or the Protection of Civil Rights Act, 1955. The Act also provides protection to the Scheduled Castes and Scheduled Tribes for various atrocities affecting social disabilities, properties, malicious prosecution, political rights and economic exploitation. The Act also provides for enhanced punishment for commission of offences against the Scheduled Castes and Scheduled Tribes. The minimum punishment for neglect of duties committed by a public servant was also increased. Provisions were made for granting minimum relief and compensation to victims of atrocities and their legal heirs. The other salient features of the Act include externment of potential offenders from Scheduled Areas and Tribal Areas as well as attachment of the properties of the accused. The Act prohibits the grant of Anticipatory Bail to the accused and the Probation of Offenders Act, 1958 was also made inapplicable to the Act. Certain preventive measures provided in the Act include cancellation of arms licences of potential offenders and even grant of arms licences to Scheduled Castes and Scheduled Tribes as a means of self defence.*

15.

16.

17. *The Act was made in 1989 because Parliament found that the provisions of the Protection of Civil Rights Act, 1955 were inadequate and did not curb the evil practice of atrocities against Dalits. The grievance of the Petitioners has been that though the Act is comprehensive enough to deal with the social evil, its implementation has been painfully ineffective. The ever increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the Petitioners sought a mandamus from this Court for effective implementation of the Act and the Rules.*

18. *We have carefully examined the material on record and*

we are of the opinion that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time, the Central Government has an important role to play in ensuring the compliance with the provisions of the Act. Section 21 (4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before the Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so. The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of the Scheduled Castes and Scheduled Tribes.”

44. Prior thereto, and in several decisions rendered from time to time, the Hon'ble Supreme Court had emphasized as to how the Scheduled Castes and the Scheduled Tribes have suffered at the hands of the non-Scheduled Castes and non-Scheduled Tribes throughout the country. In a decision reported in ***AIR 2011 Supreme Court 1859 (Arumugam Servai vs State of Tamil***

Nadu), the Hon'ble Supreme Court referred to the indignities, insults and injustice suffered by these communities. It referred to the curse and the social evil of casteism. The caste system has destroyed the peace and harmony and the mandate of the Constitution itself. The Hon'ble Supreme Court, in that regard, held thus:

“8. The word ‘pallan’ no doubt denotes a specific caste, but it is also a word used in a derogatory sense to insult someone (just as in North India the word ‘chamar’ denotes a specific caste, but it is also used in a derogatory sense to insult someone). Even calling a person a ‘pallan’, if used with intent to insult a member of the Scheduled Caste, is, in our opinion, an offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as the ‘SC/ST Act’). To call a person as a ‘pallapayal’ in Tamilnadu is even more insulting, and hence is even more an offence.

9. Similarly, in Tamilnadu there is a caste called ‘parayan’ but the word ‘parayan’ is also used in a derogatory sense. The word ‘paraparayan’ is even more derogatory.

10. In our opinion uses of the words ‘pallan’, ‘pallapayal’ ‘parayan’ or ‘paraparayan’ with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words ‘Nigger’ or ‘Negro’ are unacceptable for African-Americans today (even if they were acceptable 50 years ago).

11.

12. *In the modern age nobody's feelings should be hurt. In particular in a country like India with so much diversity (see in this connection the decision of this Court in Kailas vs. State of Maharashtra in Crl. Appeal No. 11/2011 decided on 5.1.2011) (reported in AIR 2011 SC 598 : AIR 2011 SC (Cri) 259) we must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong.*

13. *In Swaran Singh & Ors. vs. State thr' Standing Counsel & Anr. (2008) 12 SCR 132, this Court observed (vide paras 21 to 24) as under:*

"21. Today the word 'Chamar' is often used by people belonging to the so- called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person 'Chamar' today is nowadays an abusive language and is highly offensive. In fact, the word 'Chamar' when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects & Reasons of the Act. Hence, while interpreting section 3(1)(x) of the Act, we have to take into account the popular meaning of the word 'Chamar' which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use

the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity - so many religions, castes, ethnic and lingual groups, etc. - all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used".

14. We would also like to mention the highly objectionable two tumbler system prevalent in many parts of Tamilnadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practicing it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits."

45. We are, therefore, bound by these judgments and the principles laid down therein. These have to be applied to achieve the laudable object and purpose of the Atrocities Act. We must interpret the provisions in the light of the same and not contrary

to the legislative mandate. Before we proceed, we must also make reference to another judgment of the Hon'ble Supreme Court of India which would indicate as to what is the purpose achieved by the confidential reports. In the case of *S.T. Ramesh vs. State of Karnataka and Another*, reported in *(2007) 9 Supreme Court Cases 436*, the Hon'ble Supreme Court has emphasized that the confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. The performance appraisal through CRs should be used as a tool for human resource development and should not be used as a fault-finding process but a developmental one. Thus, the authorities ought to encourage the officials working under them and the superior officers have, therefore, been entrusted with a public duty so as not to discourage, unduly harass and completely demoralize those reporting to and working under them.

46. Keeping this backdrop as well in mind, if we peruse what are essentially projected before us, namely, two clauses, Clause (vi) and Clause (vii) of Sub-section (2) of Section 3, then, it is

evident that they advance or carry forward the object of the legislation. These provisions read as under:

“Section 3(2)

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

47. We must also reproduce Section 3(1)(ix) of the unamended Act which is identical to Section 3(1)(q) of the amended Act. It reads as under:

“3(1)(ix) *gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;”*

48. A bare perusal of these provisions would indicate that as far as Section 3(1)(ix) is concerned, giving of any false or frivolous information to any public servant and thereby causing such public

servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe shall be punishable under the provisions of this Act. Thus, to prevent injury or annoyance to the member of Scheduled Caste or Scheduled Tribe, which is an offence, if any one of the acts as enumerated in the sub-clauses are committed, then, they are punishable under the said Act. Hence, when the investigating officer (public servant) on registering the F.I.R. has proceeded to investigate the crime and found that because the complaint is lodged by a public servant against two other public servants, possibly, sanction under Section 197(1) of Cr.P.C. to prosecute them would be necessary from the Government. He then forwarded the requisite application in that behalf. The allegation is that the applicant-accused proceeded, though aware that he is not the sanctioning authority and the power in that behalf vests in the State Government, to inform this authority, namely, the investigating officer/Deputy Superintendent of Police, that he is empowered to grant such sanction and that the papers have been forwarded to him and that having considered the request, he is proceeding to reject the same.

49. It is, therefore, not an isolated act of passing an order, as is emphasized by Mr. Kumbhakoni, which has been made the basis of the allegation of atrocity against the applicant. It is his overall involvement in the alleged crime and from the inception. Since the intent allegedly was to protect and shield Mr. Bhise and Mr. Burade from facing a possible punishment under the previous F.I.R. that the moment the files were placed before him, the applicant, acting as In-charge Director and not as an alleged authorised official of the State Government, took upon himself the task of considering the request to grant or refuse sanction. It is elementary that such a power vests only in the Government, but it is this alleged illegal assumption of power by the applicant which points towards his intent from the beginning and that was to cause injury and annoyance to the complainant. It was to prevent a lawful exercise of power by another public servant, namely, the Deputy Superintendent of Police. Accordingly, if the sanction had been obtained from the State Government, the Deputy Superintendent of Police would have acted to prevent the injury or annoyance to a member of the Scheduled Caste like the complainant by bringing those guilty of the offence of atrocity to

book. However, the information that was given by the applicant, which is the basis for the offence. We are not prepared to accept the argument that an official act, as the applicant was performing, on that basis alone, no complaint of atrocity can be made. That is not a proper reading of the complaint. The complainant has also relied upon several documents to support his allegations. He has relied upon the communication from the Divisional Office of the Department of Technical Education, Pune dated 29th April, 2009. The complainant has also relied upon the Government Resolution dated 1st February, 1996. He has also, in the course of his complaint, referred to the communication dated 21st December, 2010.

50. Mr. Kumbhakoni would submit that this communication, copy of which is at page 24 of the paper book in Criminal Application No. 1015 of 2016, points out as to how the same was addressed to the Director, Technical Education, Government of Maharashtra, Mumbai. That makes a reference to the two letters, one dated 3rd November, 2010 from the Office of the Deputy Superintendent of Police, Office at Karad, and the latter dated 14th

December, 2010 from the Prabhari Sanchalak (In-charge Director) of this Department. This communication, therefore, refers to the whole complaint and its gist and states that in the light of the fact that the complainant has alleged that the offences of atrocity have been committed by a public servant, in the opinion of the then Deputy Superintendent of Police, sanction under Section 197(1) of Cr.P.C. would be necessary. That is why detailed correspondence was carried out and the records were forwarded to the Director's (Department of Technical Education) Office at Pune. However, that office has informed that it is not the competent authority to consider the request for grant of sanction. That is why the letter and the application was forwarded to the Director at his office at Mumbai.

51. The provisions of Section 197 of the Cr.P.C. are clear and according to the complainant, the power to grant sanction vests only in the State Government. That power could not have been usurped by anybody else, much less, the applicant-accused. In that regard, it is clear from the provisions of Section 197 of the Cr.P.C. that by Sub-section (1) thereof, when any person who is or was a

Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government. The words "Government", "State Government" and "Central Government" appear in various Sub-sections of Section 197. The accusation is that, intentionally, the applicant took up the application and on 20th January, 2011, informed the Investigating Officer/Deputy Superintendent of Police that the sanction is refused.

52. Once these documents are on record, then, we are not prepared to discard them straightway. If the allegations in the F.I.R. are perused and in their entirety, it would be apparent that the complainant alleges that as far as Mr. Bhise and Mr. Burade are concerned, they are guilty of the offence of atrocity. The applicant, acting as an In-charge Director, in order to shield and protect Mr. Bhise and Mr. Burade from facing criminal prosecution and possible punishment, took upon himself the authority or

power which he does not possess within the meaning of Sub-section (1) of Section 197. That was in order to shield and protect these officers. These are thus clear allegations and to be found in the F.I.R. The allegations also are that the applicant has given a false information within the meaning of the other clauses of Sub-section (2) of Section 3 of the Atrocities Act. That is how these two clauses have been invoked.

53. As far as Clause (vi) is concerned, it's first part has not been invoked, but we would prefer to read this clause in it's entirety. Therefore, "knowingly or having reason to believe that an offence has been committed under this Chapter (means the Chapter No.II of the Atrocities Act), causing disappearance of any evidence of the commission of that offence with the intention of screening the offender from legal punishment" is one part. It means, with the intention of screening the offender from legal punishment, giving of information, respecting the offence, which was known or believed to be false, attracts the punishment. Once the applicant is a public servant and he has allegedly acted with an intention of screening the offender from the legal punishment and with that

intention, he gave information vide the communication as if he is the sanctioning authority, then, *prima facie*, we cannot hold since an administrative power was exercised, he cannot be charged with this offence. The allegation is that no power to grant or refuse sanction vests in the applicant as he is not a Government which alone is endowed with the authority to refuse or grant sanction. In the garb of exercising an alleged administrative power this offence is committed, is thus the allegation.

54. It is the giving of the information respecting the offence, and *prima facie*, that information has been given by the communications and documents referred to by the complainant and which are part of the official records. That an application was made by the Deputy Superintendent of Police to the State Government but which application was directed to the applicant before us and who, as if he is empowered by law to grant or refuse sanction but aware that he was not authorized to do so, took upon himself the task or the job of informing the grant or otherwise of the sanction, is the precise allegation and flowing from the F.I.R. which should be read as a whole. In such circumstances, we do

not think that any interpretation, which runs contrary to the laudable object and purpose of the legislation and its social context, can be placed on the provisions. It is the giving of false or frivolous information to any public servant and causing such public servant to use his lawful power to the injury or annoyance of a member of the Scheduled Caste or Scheduled Tribe which is an offence and the nature of the power resorted to or exercised while giving false or frivolous information is not strictly relevant. Anybody including a public servant indulging in such act is *prima facie* covered by the expression “whoever”. It is the assumption of that power and erroneously and wrongfully, and thereafter providing information which, in the facts and circumstances, is false is the foundation or the basis of alleged atrocity. If a serious offence is committed by a public servant, all the more therefore, it should not be lightly interfered with when it is at the stage of investigation and filing of charge sheet. At such a stage, if the arguments, as canvassed by Mr. Kumbhakoni, are accepted, they are likely to defeat the object and purpose of the law itself.

55. We are, not for a minute, suggesting that exercise of official power, as Mr. Kumbhakoni projects, would bring the erroneous or assumed exercise thereof within the meaning of this particular clause. It is only in the facts and circumstances of this case and peculiar thereto, and only with a view to appreciate the submissions of Mr. Kumbhakoni, that we have elaborated as above. It is our *prima facie* and tentative opinion on the facts and circumstances of this case which we think suffices for the purpose of the disposal of this Application. Beyond this, we are not laying down any broader or wider principle. Therefore, there is no scope for the apprehension that in the case of a Scheduled Caste or Scheduled Tribe Government employee, every time his superior enters any adverse remark in the confidential reports, that he would be necessarily charged with the commission of the offence of atrocity. Further argument is that, if adverse remarks entered in the annual confidential reports of a Scheduled Caste or Scheduled Tribe employee are not deleted but confirmed, then, the superior/reviewing authority would have to face a trial for the offence of atrocity, which is entirely misconceived. Therefore, no public servant or a reporting or reviewing authority should

apprehend that there will be a prosecution the moment he impresses upon his colleague or junior level Scheduled Caste or Scheduled Tribe employee to improve his performance. If he acts *bonafide* in discharge of his duties as a superior officer, then, he need not fear any prosecution. Further, there are sufficient safeguards in the Act itself which guarantee protection against frivolous and false prosecution. Secondly, whenever applications seeking sanction are made to the State Government, if the State Government delegates that power to grant or refuse it to an officer like the Director or In-charge or Head of the Department, then, refusing sanction would amount to inviting prosecution for an offence covered by Clause (vi) of Sub-section (2) of Section 3 is a submission which is too far fetched and cannot be accepted. It is only in the facts and circumstances of each case that exercise of the above power would attract the penal provision and provided all the necessary ingredients are satisfied. Therefore, mere giving of information to any public servant, but which is not false or frivolous or even if it is so, the giving of such information does not result in the consequences enumerated in Section 3(1)(ix), then, no offence and punishable under Section 3(1)(ix) is committed.

With these clarifications, we do not think that the Act will be misused and abused as is the apprehension raised before us by Mr. Kumbhakoni. We do not think that we should thwart the enforcement or implementation of the Atrocities Act merely because there is a possibility of the law being abused. That way, every law or every provision is capable of being abused. In the case of **Sushil Kumar Sharma vs Union Of India and Others**, reported in **2005 (6) SCC 281**, the Hon'ble Supreme Court of India, while rejecting the challenge to the constitutional validity of a provision enacted so as to protect women from the offence punishable under Section 498A of I.P.C., held that mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, “action” and not the “Section” may be vulnerable. In paragraphs 13, 14, 15 and 16 of this decision, the legal position is enunciated with great precision and clarity. In the facts and circumstances of this case, and all the more, with the above clarifications, we do not think that we should exercise our inherent power to quash the prosecution as that would send a wrong signal and message to the downtrodden and backward sections of the society. As a result of the above

discussion, we dismiss both the Criminal Applications.

56. At this stage, Mr. Shetye appearing for the applicant in Criminal Application No. 673 of 2016, prays for a protection in the event if the investigations are to proceed and a charge sheet is filed, the applicant's liberty may be at stake. Hence, either there should be a restraint against investigation, or if that is allowed, to proceed against possible arrest.

57. This request is opposed and it is prayed by Mr. Deshmukh that sufficient time was available to the Applicant Dr. Bhise if he desired to apply for anticipatory bail. Now, having taken his chance, he should not be granted any protection.

58. We have noted that in the Criminal Application No. 673 of 2016, there was an order passed on 20th June 2016 which reads as under:

“1. Not on board. Taken on board.

2. Heard learned Counsel for the Applicant and learned APP for the Respondent No.1. Our attention is invited to C.R. No.3122 of 2009 registered with Karad City Police Station and 'C' Summary Report submitted by the investigating officer. The learned Counsel appearing for the Applicant on instructions

states that there is no final order passed on the said Report.

3. It appears that 2nd Respondent/Complainant filed an objection in writing on 2nd April 2016 to the report claiming 'C' Summary. An order is passed by the learned Judge on the said objection recording that recently second FIR is registered in connection with the same crime. Our attention is invited to the second F.I.R. registered on 28th March 2016. *Prima facie* it appears that the said F.I.R. is based on the same incident. *Prima facie* it appears to us that the second F.I.R. is abuse of process of law.

4. Issue notice to the 2nd Respondent returnable on 5th August 2016. By way of ad-interim relief, we direct that the 1st Respondent will not take any further steps on the basis of F.I.R. No.164 of 2016 dated 28th March 2016 as against the Applicant. We make it clear that pendency of this Application will not preclude the concerned Court from passing final order on the Report submitted by the investigating officer claiming 'C' Summary. In addition to the service through Court, private notice is permitted.”

That order, according to Mr. Shetye, is in force. Whereas, Mr. Deshmukh would submit that it was not in force on 13th January, 2017 and thereafter.

59. We do not wish to enter into this controversy, for this Court's order is clear and we have reproduced it above. We are of the opinion that when there is a substantive challenge raised by invoking the inherent powers of this Court, which has failed, then, we do not think that this is a fit case for granting any protection. Further, the “C” Summary Report and which was filed in the

earlier prosecution, namely, F.I.R. No. 3122 of 2009 has already been rejected by the trial Court by an elaborate order dated 17th December, 2016. In the circumstances, the request as made by Mr. Shetye is refused.

(PRAKASH D. NAIK, J.)

(S. C. DHARMADHIKARI, J.)