

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2926 OF 2009

1. Rajendra s/o. Gangadhar Thombre,
Age 45 years, Occu. Agril.,
R/o. Bhagatsingh Nagar, Harsul,
Aurangabad,
President of Zilla Parishad,
Aurangabad.
2. Mansub s/o. Sampat Jadhav,
Age 36 years, Occu. Agril.,
R/o. Waregaon, Tq. Phulambri,
District Aurangabad.

....Applicants.

Versus

1. The State of Maharashtra,
Through Superintendent of Police,
(Rural), Aurangabad.
2. Dy. Superintendent of Police,
Phulambri, Tq. Phulambri,
District Aurangabad.
3. Shashikant s/o. Kushaba Pattekar,
Age 27 years, Occu. Doctor,
R/o. At present Vidyut Colony,
Begumpura, Aurangabad.

**....Respondents.
(Ori. Resp. No.3 is
Ori. Complainant)**

Mr. S.S. Thombre, Advocate for applicants.

Mrs. V.S. Choudhary, APP for respondent Nos. 1 and 2/State.

Mr. V.M. Jaware, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 17, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) The proceeding is filed for relief of quashing of F.I.R. No.

90/2009 dated 18.8.2009 registered with Phulambri Police Station, Tahsil Phulambri, District Aurangabad. The crime is registered for the offences punishable under sections 395, 353, 332 etc. of Indian Penal Code and section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Both the sides are head. During arguments, the learned counsel for applicants submitted that he is pressing the matter only to the extent of registration of crime for the offence punishable under section 3 (1) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. He submitted that this Court has granted stay to the extent of this section only and police must have completed the remaining investigation.

2) The papers of investigation were made available to this Court. The F.I.R. was given by one Medical Officer working in Rural Hospital, Phulambri. The incident took place on 17.8.2009 in the noon time. Along with the first informant, other doctors and staff nurses were present in Rural Hospital. Allegations are made that at about 2.00 p.m. one Manoj Chitte of Phulambri came to the first informant with files and he requested to issue certificates with regard to age of some persons. It is contention of the first informant that he asked Manoj Chitte to bring those persons before him. According to the first informant, Manoj Chitte said that he will not

bring those persons and he said that the President of Zilla Parishad Rajendra Thombre had asked him to do such work. Manoj Chitte then gave a call to Rajendra Thombre and asked the first informant to talk with Rajendra Thombre. As the first informant was not sure that Rajendra Thombre was on other side, he did not agree to have talk with the person on other side of phone.

3) After some time, present applicants came to Rural Hospital along with 10-15 workers. Allegations are made that present applicants gave abuses and threats and they said that when it was his work, the first informant ought to have issued the certificates. Allegations are made that in the incident to insult him, Rajendra Thombre caught hold of shirt of the first informant and gave 4-5 slaps. Allegations are made that two registers of Rural Hospital were taken away by these persons and threat of life was given.

4) In the F.I.R., it is mentioned by the Medical Officer that he belongs to "Mahar" caste, scheduled caste and Rajendra Thombre belongs to "Teli" caste which is not scheduled caste and due to these circumstances, he felt insulted. Due to these contents of F.I.R., the crime is registered under the aforesaid Special Act also.

5) This Court has carefully gone through the papers of investigation. The statements of staff members of Rural Hospital do not show that they felt that the first informant was of scheduled caste and Rajendra Thombre was not of scheduled caste. There is no whisper about the caste of both in the statements given by the staff members. The statements were recorded immediately. It can be said that only the first informant has contended that he belongs to a particular caste and he felt insulted due to the incident as he belongs to particular caste. It can be said that Rajendra Thombre would have done the same thing to any other Medical Officer and that was his approach on that day. It can be said that Rajendra Thombre had become angry and he wanted to create fear in the mind of the officer as officer had refused to issue certificates in favour of workers of Rajendra Thombre. The other offences including the offence punishable under section 353 of IPC can be made out from the allegations. But considering the requirement for commission of the offence punishable under section 3 (1) (x) of the aforesaid Special Act, it can be said that there was no intentional insulting treatment from Rajendra Thombre and the incident was not committed with the previous knowledge that the first informant was belonging to scheduled caste. It can be said that only to create seriousness in the matter, such contents were given in the F.I.R. by first informant. Even abuses by taking the name of caste were not given by the first

informant. This Court holds that it will be misuse of process of law if prosecution is allowed for the offence punishable under section 3 (1) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. In the result, following order :-

ORDER

- (I) Application is allowed.
- (II) Relief is granted in terms of prayer clause "B" only to the extent of offence registered under section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and F.I.R. is quashed and set aside only to that extent.
- (III) Trial to go on for remaining offences.
Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/