

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Amk

CRIMINAL APPLICATION NO. 491 OF 2020

VISHAL
SUBHASH
PAREKAR

Shankar Namdeo Gaikwad	]	
Age-51 years, Occ.- Business,	]	
R/at Tisgaon, Gaonthan,	]	
Kalyan (E), Thane	]	.. Applicant

Versus

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|----|--|---|----------------|
| 1. | The State of Maharashtra |] | |
| | At the instance of Mahatma Phule |] | |
| | Chowk Police Station |] | |
| 2. | Ramesh Waghmare |] | |
| | Age-57 yrs, Occ.- Medical Professional |] | |
| | R/at 406, Gokuldham, Sindhigate, |] | |
| | Murbad Road, Kalyan, Thane. |] | .. Respondents |

Mr. Abhishek Yende for the Applicant.

Mrs. S. D. Shinde, APP for the Respondent No.1-State.

Mr. A. M. Dube for Respondent No.2.

CORAM : **S. S. SHINDE AND N. J. JAMADAR, JJ.**

Judgment reserved on : 12.08.2021

Judgment pronounced on : 06.09.2021

JUDGMENT (Per N. J. Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels, heard finally.

2. This application, under Section 482 of the Code of Criminal Procedure, 1973 (the Code), is preferred to quash and set aside the FIR bearing No. 101/2020 dated 22.02.2020 registered with the Mahatma

Phule Chowk Police Station for the offences punishable under Sections 504, 506(2) r/w Section 34 of the Indian Penal Code, 1860 (Penal Code) and Sections 3(1)(r) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act), at the instance of the respondent No.2-first informant. The background facts leading to this application can be stated in brief as under:

(a) The first informant is a medical professional. He resides in a flat on the 2nd floor of Mira Apartment, Teesgaon Naka, Kalyan (E). The petitioner-accused owned a commercial premises on the 1st floor of Mira Apartment. The said premises was let out to the first informant by the accused in the year 1996. The first informant alleged that in March, 2011, he purchased the said premises from the accused. However, the accused did not execute the conveyance in favour of the first informant. Dispute arose between the first informant and accused resulting in multiple proceedings including lodging of FIRs by the first informant against the accused for the offence punishable under sections of the Penal Code and SC & ST Act and a Civil Suit bearing No. 381/2012, which was subjudice before the Civil Court at Kalyan.

(b) The first informant alleged that on 18.02.2020 the said suit was posted for hearing before the learned Civil Judge, Senior Division, Kalyan. He and his witness Mr. Pankaj Hanumant Babar appeared before the Court. Evidence of his witness Pankaj Babar was recorded. At about 2.00 p.m., when the first informant and the said witness left

the court room and came in the precinct of the Court premises, defendant No.1-accused came from behind along with his brother Sitaram. The accused abused and intimidated the first informant by uttering the words, "take the case back (xxxx) else you will be killed". The accused knew that the first informant is a member of Scheduled Caste and in order to intentionally humiliate the first informant, he abused and intimidated the first informant in the aforesaid fashion. Hence, the first informant approached the Mahatma Phule Police Station, Kalyan and lodged a report leading to registration of C. R. No. 101/2020 for the aforesaid offences.

3. The applicant has invoked the inherent jurisdiction of this Court to quash and set aside the subject FIR and the consequent proceedings on the ground that in the wake of dispute over the premises which was let out to the first informant, the accused had lodged a private complaint bearing No. 485 of 2012 against the first informant for the offences punishable under Sections 463, 464, 468, 471 r/w 34 of the Penal Code. The first informant with a view to give counterblast to the said complaint started lodging false and frivolous FIRs against the accused by taking undue advantage of the fact that, the first informant is a member of scheduled caste. The allegations in the instant FIR, even if taken at par, do not make out offences for which the accused had been arraigned. The allegations are patently false and mala fide. In fact, the

first informant was not present in Court, on the alleged date of occurrence as is evident from the copy of *roznama* in Special Civil Suit No. 381/2012 dated 18.02.2020. In any event, the allegations in the FIR do not disclose that the accused had abused the first informant with reference to his caste. The invocation of the provisions contained in SC & ST Act have been actuated by malice. The applicant asserts that continuation of the proceedings arising out of FIR 101/2020, thus, constitutes a gross abuse of the process of the Court and, therefore, the FIR and consequent proceedings deserve to be quashed and set aside.

4. An affidavit-in-reply is filed on behalf of respondent No.2-first informant. Respondent No.2 has referred to the dispute between the parties and the various proceedings pending adjudication including Special Civil Suit No. 381/2012. The accused had been exerting pressure upon the first informant to withdraw the said suit. The first informant reiterates that on the date of occurrence, the accused abused and intimidated the first informant, with a view to intentionally humiliate the first informant knowing fully well that, the first informant is a member of Scheduled Caste. It was denied that the allegations in the FIR do not make out any offence *prima facie*. On the contrary, statements of the witnesses have been recorded under Section 164 of the Code which substantiate the allegations in the FIR. Eventually post completion of the investigation, charge-sheet has been lodged. The first

informant further contends that despite registration of multiple FIRs resulting in the prosecution of the accused for the offences punishable under the SC & ST Act, the accused has been persistently harassing the first informant for being a member of the scheduled caste and, thus, the application for quashing of the FIR does not deserve countenance. In any event, the question as to whether the accused insulted, intimidated and intentionally humiliated the first informant is rooted in facts and such questions cannot be legitimately decided in exercise of the extraordinary power under Section 482 of the Code. On these amongst other grounds, the respondent No.2 prayed for dismissal of the application.

5. We have heard Mr. Yende, learned Counsel for the applicant, Mr. Dube, learned Counsel for respondent No.2 and Mrs. S. D. Shinde, learned APP for the State at length. With the assistance of the learned Counsel for the parties, we have carefully perused the material on record including the report under Section 173 of the Code and its accompaniments. We have also perused the notes of arguments submitted by the learned Counsel for the applicant and for the respondent No.2 in elaboration of the submissions canvassed across the bar.

6. It may be apposite to note the facts which are by and large

uncontroverted. Firstly, the premises from which the first informant carries on his profession was indisputably let out by the accused. Secondly, the disputes arose between the parties over the alleged non-delivery of the possession of the said premises. Thirdly, the institution of various proceedings including FIRs filed by the first informant and the consequent proceedings is rather incontestable. Nor is it in dispute that the accused lodged private complaint in the Court of learned JMFC, Kalyan bearing Regular Criminal Case No. 485/2012. Institution of Special Civil Suit No. 381/2012 by the first informant against the accused is also undisputable. Lastly, though the parties are not in unison over the status of various FIRs lodged by the first informant against the accused, for the purpose of this application, we deem it appropriate to note the status of those FIRs as furnished by the first informant-respondent No.2.

No	FIR	Date	Police Station	Offences	Status
1.	47/2012	13/10/12	Kolsewadi	3(1)(i) (ii),(x) SC & ST Act	SC 95/2013
2.	14/2013	413/13	Kolsewadi	3(1)(i)(x)	SC163/ 2013
3.	7/2014	17/2/14	Kolsewadi	3(1)(i)(ii) (vii)(ix) & (x)	SC209/ 2015
4.	27/2014	3/7/17	Kolsewadi	3(1)(i)(vii) (ix), 3(2)(vi)(vii), 3(1) (v) and 4	'C' Summary
5.	101/2020 (Under considerat ion)	22/2/20	Mahatma Phule Chowk	3(1)(i), 3(1)(iii) & (va) SC & ST Act and 504 & 506(2) of IPC.	Special Case No.4/ 2021

7. In the backdrop of the aforesaid proceedings, the allegations in the instant FIR bearing No. 101/2020, the quashment of which is sought, deserve consideration. From the perusal of the FIR, it becomes evident that the first informant has narrated the historical backdrop of the dispute between the parties over the occupation of the commercial premises on the 1st floor of Mira Apartment and the alleged atrocities perpetrated by the accused in respect of which the first informant has lodged various reports. The gravamen of the indictment against the accused is that on 18.02.2020 Special Civil Suit No. 381/2012 was posted for hearing before the Civil Court, Kalyan. The first informant attended the proceeding in the said suit along with Mr. Pankaj Babar, his witness. The accused and his brother Sitaram also attended the said proceeding. At about 2.00 p.m., recording of evidence of the informant's witnesses was over. When they left the Court room, the accused and his brother Sitaram accosted them in the Court precinct. The accused asked the first informant to withdraw the said case lest, he would be killed and hurled abuses. The act which allegedly constitutes the offence is the utterance of the words (take the case back (XXXXX) lest you will be killed).

8. In the backdrop of the aforesaid nature of the accusation, coupled with inimical nature of the relationship, as is evident from multiple proceedings between the parties, Mr. Yende, learned Counsel for the

applicant strenuously urged that the allegations in the impugned FIR are false and malicious. The first informant has been resorting to the provisions contained in SC & ST Act to wreck vengeance against the accused. Even if the allegations in the FIR are taken at their face value, according to Mr. Yende, no offence, much less an offence punishable under SC & ST Act, can be said to have been, *prima facie*, made out. In any event, it is not the case of the prosecution that the accused passed any remarks with reference to the caste of the first informant. Instant prosecution case, thus, amounts to a gross abuse of the process of the Court.

9. Mr. Dube, learned Counsel for respondent No.2 joined the issue by canvassing a submission that the question as to whether the allegations in the FIR are true or false cannot be delved into at this stage. Veracity of the allegations is a matter for trial. Mr. Dube controverted the submission on behalf of the applicant that no offence punishable under the SC & ST Act is, *prima facie*, made out. It was further urged that the submission on behalf of the applicant that no offence under the SC & ST Act was made out is based on an incorrect impression of the provisions of the SC & ST Act. Notwithstanding the fact that the first informant was not abused with reference to his caste, according to Mr. Dube, the

offences punishable under Sections 3 (1) (2), 3 (1) (r) and 3 (2) (5) can be said to have been made out. The thrust of the submission of Mr. Dube was that to fall within the mischief of the offence punishable under Section 3 (1) (r), it was not necessary that the offender should have abused any member of the scheduled caste or scheduled tribe with reference to the caste or tribe, which is the requirement of Clause (s) of Section 1 of Section 3. Drawing the attention of the Court to the provisions contained in Section 8 of the SC & ST Act, which incorporate certain presumptions in prosecution for the offences punishable under the SC & ST Act, Mr. Dubey urged that the question as to whether the accused has committed the offence, for which he has been arraigned, must be left to be determined at the trial.

10. As the submissions revolved around the applicability of the provisions of the SC & ST Act, 1989, especially Clause (r) of sub-section 1 of Section 3, in the backdrop of undisputable position that the accused had not abused the first informant with reference to his caste, it may be apposite to note the provisions of Clauses (r) and (s) of sub-Section 1.

They read as under:

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

.....
 (r) *intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*

(s) *abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;*

11. From the phraseology of the aforesaid clauses, it becomes evident that Clauses (r) and (s) address different mischief, though in a given case where a member of scheduled caste and scheduled tribe is abused with reference to his caste/tribe, the case may be covered by Clause (r) as well. In the absence of the casteist abuses where the applicability of Clause (s) is firmly ruled out, to sustain a charge under Clause (r), the prosecution has to establish that:

- (1) The accused intentionally insulted or intimidated a member of a scheduled caste or a scheduled tribe;
- (2) With intent to humiliate him;
- (3) In any place within public view.

12. Mr. Yende, learned Counsel for the applicant urged with a degree of vehemence that, even a case under Clause (r) is not, *prima facie*, made out. The submission was premised on the fact that there is material to indicate that the accused and the first informant have been at loggerheads over the property disputes. The alleged act of insult and intimidation arising out of such disputes between two persons, one of whom is a member of scheduled caste or tribe and the other does not belong to such caste or tribe, cannot be attributed to have been made with an intent to humiliate the member of the scheduled caste or scheduled tribes in the absence of any material, for the only reason that the victim is a member of scheduled caste or scheduled tribes. To

bolster up this submission, Mr. Yende placed a very strong reliance on a three Judge Bench judgment of Supreme Court in the case of Hitesh Verma Vs. The State of Uttarakhand & Anr., (2020) 10 SCC 710.

13. In the case of Hitesh Verma (supra) the Supreme Court expounded the import of the penal provision contained in Section 3 (1) (r), the object which the legislature intended to achieve and the circumstances under which the ingredients of the said clause can be said to have been satisfied. Paragraphs 11 to 13 read as under:

“11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act No. 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is Section 3(1)(r) which reads as under: “3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.”

14. In the said case also, the dispute between the accused and the informant party therein had its genesis in the dispute over possession of an immovable property. After adverting to the facts in the said case, the Supreme Court, in terms observed that in the facts of the said case, the allegations of hurling of abuses was against a person who claimed title over the property. If such person happens to be a scheduled caste, the offence under Section 3 (1) (r) of the Act is not made out. The observations of the Supreme Court in paragraphs 16, 18 and 22 are material and hence extracted below:

“16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

22. The appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because respondent No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that respondent No. 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by way of a procedure established by law.”

15. In the light of the exposition of the aforesaid legal position reverting to the facts of the case, the following factors assume critical significance:

First and foremost, there is no allegation of hurling of abuses with reference to the caste of the first informant.

Second, the accused allegedly used cuss word and threatened the first informant out of his life, in the event the first informant did not withdraw the case.

Third, the statement of the witness Prakash is in consonance with the allegations of the informant in the FIR and does not add anything more to those allegations.

Fourth, the genesis of the alleged offences is the dispute between the parties over the immovable property.

16. If viewed through the aforesaid prism, coupled with the absence of any material to, *prima facie*, indicate that the alleged hurling of abuses and intimidation was with an intent to humiliate the first informant, for the reason that, he is a member of the scheduled caste, the offence punishable under Section 3 (1) (r) cannot be said to have been, *prima facie*, made out. Indisputably, the question as to whether the accused did hurl the abuses and intimidate the first informant is rooted in facts and a matter for trial. At this juncture, in exercise of extraordinary

inherent jurisdiction, this Court would not be justified in delving into those aspects of the matter. The accused can, therefore, be legitimately prosecuted for the offences punishable under the Penal Code. However, we are of the considered view that, there are no, *prima facie*, allegations in the FIR, even if construed as they stand, to make out any offence punishable under the SC & ST Act, 1989.

17. In the light of the aforesaid fact situation, the crucial question which wrenches to the fore is whether the resort to the extraordinary power under section 482 of the Code would be justifiable? Indubitably, the inherent powers of the Court are preserved with the avowed object of preventing the abuse of the judicial process and securing ends of justice. In a given case, the continuation of the prosecution, which is, *ex-facie*, actuated by a design to harass the accused and bring them to terms, would amount to abuse of the judicial process and, in that eventuality, the ends of justice would be secured by quashing such prosecution. Undoubtedly, inherent power is of wide amplitude. But, the plenary nature of the power warrants its resort sparingly and in deserving cases only.

18. The width and contours of the power of the High Court under section 482 of the Code was expounded by a Three Judge Bench of the Supreme Court in the case of State of **Karnataka V. L. Muniswamy**¹ as

¹ (1977) 2 SCC 699

under :

"7.....In the, exercise of this. whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

19. In exercise of the powers under section 482 of the Code, the Court would be justified to quash any proceeding if its continuance amounts to abuse of the process and its quashment serves the ends of justice. In the instant case, we find that the prosecution of the applicant for the offences punishable under SC and ST Act, 1989 would amount to an abuse of the process of the court. Undoubtedly, as indicated above, the prosecution can continue for the offences punishable under the Penal Code. This brings to the fore the question of quashing the proceeding to the extent of the offences punishable under the SC and ST Act, 1989.

20. There is no impediment in law for quashing the FIR/charge-sheet in part. A useful reference can be made to the judgment of the Supreme

Court in the case of **Ishwar Pratap Singh & Ors. Vs. State of Uttar Pradesh & Anr., (2018) 13 SCC 612**, wherein the legal position was enunciated as under :

“9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed.”

21. In the case of **Hitesh Verma** (supra), the Supreme Court after adverting to the aforesaid pronouncement in the case of **Ishwar Pratap Singh** (supra) quashed the charge-sheet to the extent of the offence punishable under Section 3 (1) (r) of the SC & ST Act. In the facts of the instant case, we are persuaded to follow the same course.

22. The upshot of aforesaid consideration and reasons is that the application deserves to be partly allowed.

Hence, the following order:

ORDER

- (i) The application stands partly allowed.
- (ii) FIR No. 101/2020 and the consequent proceeding, being Special Case No. 4/2021, stand quashed and set aside to the extent of the offences punishable under Sections 3 (1) (r) and 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (iii) The prosecution arising out of the said FIR in respect of offences punishable under the Indian Penal Code, 1860 shall, however, proceed before the Competent Court in accordance with law.
- (iv) By way of abundant caution, it is clarified that the consideration in this application is confined to the applicability of the provisions contained in the SC & ST Act, 1989 and the concerned Court shall not be influenced by any of the observations made hereinabove in adjudicating the guilt of the accused for the rest of the offences.
- (v) Rule made absolute to the aforesaid extent.

(N. J. Jamadar, J.)

(S. S. Shinde, J.)