

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 461 OF 2018

Kumar (Vivek) S/o Mohanrao Sirsat,
Age 26 years, Occ. Education,
R/o. Chakradhar Nagar, Pangri Road,
Beed, Tal. & District Beed.

... Appellant

Versus

1. The State of Maharashtra,
Through Police Station,
Shivaji Nagar, Beed.
Tal. & District Beed.
2. Prashant S/o Vishnu Sasane,
Age- 31 Yrs, Occ- Social Work,
R/o. Chakradhar Nagar, Pangri Road,
Beed, Dist. Beed.

... Respondents

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Mr. S. S. Thombre, Advocate for Appellant.

Mr. R. D. Sanap, APP for Respondent No.1 / State.

Mr. N. R. Thorat, Advocate for Respondent No.2.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 08th September, 2022.

PRONOUNCED ON : 12th October, 2022.

ORDER :

. Heard finally with consent of both the sides at admission stage.

2 This appeal is directed against the order of rejection of discharge application filed by the appellant / original accused below Exhibit-12 in Special (Atrocity) Case No.15 of 2016 dated 16th December, 2016.

3 Respondent No.2 / first informant put the criminal law in motion by filing FIR against the present appellant / accused with Shivajinagar Police Station, Beed on 22nd January, 2014. It is stated in the FIR by the first informant that on 22nd January, 2022 about 12:30 noon present appellant alleged to have abused to witnesses namely Ajay Gautam Bhalerao, Shrikant Sukhdeo Sarvade and Ashok Arun Humbre with reference to caste as to why they affixed wall posters of Dr. Babasaheb Ambedkar, Mahatma Phule and Chatrapati Shahu Maharaj on his wall and thereby intentionally insulted their religion. On that basis, C.R. No.16 of 2014 came to be registered against the appellant under Section 295 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act” for the sake of convenience). The investigation was completed and the investigation agency filed charge-sheet before the concerned Court, which is registered as Special (Atrocity) Case No.15 of 2016 and assigned to Additional Sessions Judge, Beed. The appellant moved an application under Section 227 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) and prayed for discharge from the said charges. That application came to be rejected by the learned Additional Sessions Judge, Beed.

4 Feeling aggrieved by the said order, the appellant / accused has preferred this appeal.

5 Heard Mr. S. S. Thombre, learned counsel for the appellant / original accused, Mr. R. D. Sanap, learned APP for respondent No.1 / State and Mr. N. R. Thorat, learned counsel for respondent No.2 / first informant.

6 Mr. Thombre, learned counsel for the appellant invited my attention to the copy of FIR and pointed out that the appellant / accused has not abused to the first informant with reference to his caste. He has not thrown away photos of Dr. Babasaheb Ambedkar,

Mahatma Phule and Chatrapati Shahu Maharaj. The first informant was not witness to the incident. On the basis of so-called narration given by witnesses Ajay Bhalerao, Shrikant Sarvade and Ashok Humbre (belong to scheduled caste), FIR came to be lodged. He submitted that Section 295 of the Indian Penal Code does not attract even if the allegations levelled in the FIR are taken at its face value.

7 Mr. Thombre, learned counsel for the appellant submitted that the appellant is running his Mangal Karyalaya in the area of Chakradhar Nagar, Beed. He was not at all knowing the caste of the witnesses referred above at the time of alleged incident. The appellant never abused to the above said witnesses with reference to caste. There may be simple altercation of words on account of affixing posters on the compound wall of Mangal Karyalaya. The first informant was not party or witness to the alleged incident. He pointed out that the FIR is felling short to attract the provisions of the Atrocities Act. It nowhere reveals that the appellant intentionally insulted or humiliated members of the scheduled caste in any place within a public view. Mr. Thombre, learned counsel for the appellant has placed his reliance on the decision in case of ***Hitesh Verma Vs. State of Uttarakhand and another, (2020) 10 Supreme Court Cases 710*** and submitted that ingredients of Section 3(1)(r) of the Atrocities Act are

completely missing in the FIR, which is foundation of the prosecution case. He submitted that the law expects that insult or intimidation with reference to caste must be in any place within public view. As such, Section 3(1)(r) of the Atrocities Act does not attract. On the same line, Mr. Thombre placed his reliance on the decision in case of ***Balu s/o Bajirao Galande Vs. State of Maharashtra & Anr., 2006 All.M.R. (Cri) 3197.***

8 Mr. Thombre, learned counsel for the appellant submitted that there is no sufficient material against the appellant to proceed with the case by framing charge. The learned Special Judge / Additional Sessions Judge, Beed did not consider all these aspects and position of law and erroneously rejected the application for discharge moved by the appellant / accused. He submitted that the impugned order is bad in law and liable to be quashed and set aside. The appellant / accused is liable to be discharged from the above said charges. There is no sufficient material to prosecute him.

9 Per contra, Mr. Sanap, learned APP for the State also invited my attention to the copy of FIR and relevant pages of the charge-sheet. He submitted that if the statement of witnesses namely Ajay Bhalerao, Shrikant Sarvade and Ashok Humbre are perused

carefully, all of them have narrated the incident and the role of the present appellant in commission of alleged offences. The witnesses referred above, have no reason to speak lie against the present appellant. The witnesses were affixing posters on the compound wall of Mangal Karyalaya of the appellant when the appellant has abused them with reference to caste and removed the posters of Dr.Babasaheb Ambedkar, Mahatma Phule and Chatrapati Shahu Maharaj affixed on the compound wall. There is sufficient evidence against the appellant to proceed with the case by framing charge. The defence tried to be put forth on behalf of the appellant cannot be taken into consideration. There is no merit in the appeal and the same is liable to be dismissed.

10 Mr. N. R. Thorat, learned counsel for respondent No.2 / first informant argued on similar lines. He submitted that the provisions of the Atrocities Act attract against the appellant. The investigation officer found sufficient evidence against the appellant. At this stage, the defence of the appellant cannot be taken into consideration. There is sufficient material to frame charge against the appellant. The learned Special Judge / Additional Sessions Judge, Beed has considered the material on record and rightly rejected the application for discharge. He submitted that there is no need to

interfere with the impugned order.

11 I have considered the submissions of the learned counsel for the appellant, learned APP for the State and the learned counsel for respondent No.2 / first informant. Perused the impugned order passed by the learned Additional Sessions Judge, Beed in Special (Atrocity) Case No.15 of 2016 below Exhibit-12 dated 16th December, 2016 whereby the application for discharge moved by the appellant / accused came to be rejected.

12 The appellant / accused has given an application for discharge vide Exhibit-12 in Special (Atrocity) Case No.15 of 2016 before the learned Additional Sessions Judge, Beed by taking aid of Section 227 of Cr.P.C. While considering the discharge application filed under Section 227 of Cr.P.C., a Trial Judge is expected to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial.

13 Section 227 of Cr.P.C. provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in

this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he may discharge the accused by recording reasons. While making that exercise, the Trial Judge is required to consider the material produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the Trial Court to discharge the accused. It is not open to the accused to rely on material by way of defence and persuade the Court to discharge him.

14 There cannot be any debate that this Court has inherent power under Section 482 of Cr.P.C. to quash the charge-sheet in part or completely if *prima-facie* no offence is made out in order to prevent abuse of process of Court. Certain guidelines have been laid down by the Honourable Supreme Court in the landmark decision in case of ***State of Haryana Vs. Bhajan Lal, 1992 AIR (SC) 604.***

15 In case of ***Hitesh Verma*** (supra), the Honourable Supreme Court has interpreted Section 3(1)(x) of the Atrocities Act and held in

paragraphs 11 to 14 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 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 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 2 is a member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as *Swaran Singh V. State, (2008) 8 SCC 435*. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place

within public view. It could have been a different matter had the alleged offence been committed inside a building, *and* also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.””

16 It is true that the first informant was not witness to the alleged incident. He seems to have lodged the FIR against the appellant on the basis of information given by three witnesses namely Ajay Bhalerao, Shrikant Sarvade and Ashok Humbre. According to Section 154 of Cr.P.C., any person can put the criminal law in motion if any cognizable offence is committed. Certainly, the statements of

three witnesses play important role. The foundation of the prosecution case is statements of these three witnesses, who had actually witnessed the incident and narrated the incident to the first informant as well as the role attributed against the appellant in the commission of alleged offence. If the statements of above referred stock of three eye-witnesses (Ajay Bhalerao, Shrikant Sarvade and Ashok Humbre) are perused, it would reveal that all of them have narrated in detail about the alleged incident and the role of the present appellant in the commission of alleged offence including provisions of the Atrocities Act.

17 The alleged incident had not taken place inside the premises of the Mangal Karyalaya. The alleged incident had taken place outside the premises of the Mangal Karyalaya, belonging to the appellant, in a public place on road in the area of Chakradhar Nagar, Beed. The copy of spot *Panchanama* is also placed on record (page No.39) alongwith rough sketch map. The copy of spot *Panchanama* of the scene of offence indicates that the alleged incident had taken place on a public road and in a public view. The police have also seized torn pieces of posters under the *Panchanama*. In the above factual scenario coupled with statements of the witnesses referred above, it cannot be said that there is no sufficient ground for

proceeding against the appellant.

18 In case of ***State of M.P. Vs. S. B. Johri, 2000 A.I.R. S.C.W. 189***, it is held by the Honourable Supreme Court that it is settled law that at the stage of framing the charge, the Court has to *prima-facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a *prima-facie* case is made out for proceeding further then a charge has to be framed. The Court may peruse the record for limited purposes to appreciate evidence *prima-facie* as to whether offence has been committed but it is not required to marshal with a view to decide the reliability thereof.

19 Having regard to the above legal position, if the impugned order passed by the learned Additional Sessions Judge, Beed is assessed, I do not see any legal defect. It is observed by the learned Additional Sessions Judge that there are sufficient grounds to frame charge against the accused by applying its judicial mind having regard to the facts of the case.

20 It is not a case of abuse of process of law. The offences which are enumerated under Sections 3 of the Atrocities Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

21 Having regard to the above reasons and discussion, I do not find any merit in the appeal. The appeal must fail. Hence, the following order is passed:

ORDER

- I. The criminal appeal stands dismissed.
- II. No order as to costs.

[SHRIKANT D. KULKARNI, J.]