

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

**953 CRIMINAL APPLICATION NO.2151 OF 2019**

- 1     Vaijinath Venkatrao Jadhav,  
      Age 56 yrs., Occ. Agri.,
  - 2     Parvati w/o Vaijinath Jadhav,  
      Age 46 yrs., Occ. Household,
- Both are r/o Vinayak Nagar, Nanded,  
Tq. & Dist. Nanded.

... Applicants.

... **Versus** ...

- 1     The State of Maharashtra,  
      Through Police Inspector,  
      Police Station, Shivaji Nagar,  
      Nanded, Tq. & Dist. Nanded.
- 2     Sangam Tukaram Kaletwad,  
      Age Major, Occ. Service,  
      R/o Vinayak Nagar, Nanded,  
      Tq. & Dist. Nanded.

... Respondents.

...

Mr. M.V. Salunke, Advocate for applicants

Mr. S.J. Salgare, APP for respondent No.1

Mr. R.N. Chavan, Advocate h/f Mr. T.V. Kamble, Advocate for respondent No.2

...

**CORAM :   SMT. VIBHA KANKANWADI AND  
              ABHAY S. WAGHWASE, JJ.**

**DATE :       01<sup>st</sup> DECEMBER, 2022**

**ORDER :**

1 Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report vide Crime No.187/2019 dated 31.05.2019 registered with Shivaji Nagar Police Station, Nanded, Tq. & Dist. Nanded, for the offence punishable under Section 323, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and by way of amendment the applicants also seeking quashment of the entire proceedings in view of the submission of charge sheet.

2 Applicants are the husband and wife, whereas respondent No.2 is serving as Assistant Teacher in Trishaladevi Primary School run by Lokshikshan Prasarak Mandal, Nanded, Bijur, Tq. Biloli, Dist. Nanded.

3 Heard learned Advocate Mr. M.V. Salunke for applicants, learned APP Mr. S.J. Salgare for respondent No.1 and learned Advocate Mr. R.N. Chavan holding for learned Advocate Mr. T.V. Kamble for respondent No.2.

4           It has been vehemently submitted on behalf of the applicants that the First Information Report lodged by respondent No.2, even if taken as it is, will not attract the ingredients of offences under the Atrocities Act as well as the offences under the Indian Penal Code. The informant has stated that he is member of Scheduled Caste. He was in search of job and through his maternal uncle he went to applicant No.1. He offered the job as Assistant Teacher in Trishaladevi Primary School, but it was impressed that it would be given if he gives donation of Rs.12,00,000/- and then the salary would be given. It is thereafter stated in the First Information Report that the Government grant-in-aid was received in 2014. At that time, the applicant No.1 told the informant in May, 2014 that if he pays amount of Rs.12,00,000/-, then only the permanency would be given to his appointment, otherwise they would appoint another person. The informant then says that he along with his maternal uncle went to the house of applicants and handed over cash of Rs.12,00,000/- to applicant No.2. Thereafter, informant was taken as permanent Teacher. Dispute arose between Teachers and applicant No.1 in October, 2018. Therefore, in all six persons went to the house of applicants. When they were outside the house of applicants on 15.05.2019, the applicants were in the process of sitting in the car. They stopped after they saw the Teachers including the informant and at that time, the informant says that he made request that his amount of

Rs.12,00,000/- should be returned as well as applicant No.1 should not harass him as well as other Teachers. Then applicant No.2 abused him by saying that he has tried to become smart by coming from jungle (जंगलातून येवून तु लई माजलास का आदिवास्या). Thereafter applicant No.1 insulted informant by saying that informant has come from jungle as 'Aadiwasi', applicant No.1 has given him opportunity to wear clothes, informant is not of that caliber but applicant No.1 has made him to wear proper clothes (तु जंगलात राहणारा आदिवासी मी तुला कपडे घालायची संधी दिली तुझी काय औकात होती, मी तुला कपडे घातले.) By saying so, he slapped on the neck of informant and told all of them that they should leave the place, otherwise they would be killed. Learned Advocate for the applicants further submitted that these contents of the First Information Report do not absolutely say as to what was the case of the informant and if we consider the charge sheet, then, it can be seen that he is Mannerwarlu by caste, which is a Scheduled Tribe. It cannot be equated to an Aadiwasi caste/tribe. Therefore, the provisions of Atrocities Act are not attracted here. Further, the alleged incident is stated to have taken place on 15.05.2019, however, the First Information Report has been lodged on 31.05.2019. The delay has not been explained. Learned Advocate for the applicants has then pointed out that applicant No.1 had lodged First Information Report vide Crime No.170/2019 on 14.05.2019 at about 3.47 hours with Shivaji Nagar Police Station, Nanded, for the offence punishable under Section 454, 380

read with Section 34 of the Indian Penal Code against one Dattatraya Rajegore, Chakradhar Padole, Navnath Abadar. All these three accused persons in that First Information Report are the eye witnesses in this case, and intentionally then the date of incident has been stated as 15.05.2019 in the present First Information Report. Thereafter, it has been pointed out that those three accused persons in that case filed application for anticipatory bail before the Sessions Court, Nanded and I/c Additional Sessions Judge-5, Nanded rejected their application on 31.05.2019 and then on the same date the present First Information Report has been filed. Therefore, it is a clear concoction of the story and in order to give a counterblast to the First Information Report, that was lodged by the applicant No.1, those three accused persons, who are the witnesses herein, might have instigated the informant by taking advantage of his caste. These events are required to be considered in this case.

5           It has been further submitted on behalf of the applicants that the place of incident is stated to be the parking area of the house of applicants. There was no other public present at that place and those six named persons in the First Information Report cannot be taken as public, since they were interested witnesses and, therefore, the ingredients of Section 3(1)(r), 3(1)(s) of the Atrocities Act will not be attracted. In order to buttress his

submissions he has relied on **Balu B. Galande vs. State of Maharashtra and others, MANU.MH/1421/2006**, the Single Bench of this Court has observed that the humiliation made in public should be audible and visible to attract provisions of the Act. Test of audibility and visibility could be satisfied if independent person would be actually present. Further, in the said decision reference has been taken to a decision by Hon'ble Delhi High Court in the case of **Daya Bhatnagar vs. State** [2004 (109) Delhi Law Times 915] and the objects and reasons of the enactment. It was then observed -

“The Legislature required intention as an essential ingredient for the offence of insult, intimidation and humiliation of a member of the Scheduled Castes or Scheduled Tribes in any place within public view. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be accepted. Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in Section 3(1)(x) of the Act [present 3(1)(r) and 3(1)(s)] has to be interpreted to mean that the public persons present, (however, small number it may be), should be independent and impartial and not interested in any of the parties. In other words, the persons having any kind of close relationship or association with the complainant, would necessarily get excluded.”

5.1 He further relied on **Hitesh Verma vs. State of Uttarakhand and another, AIR 2020 SC 5584**, wherein it has been observed that “*All insults or*

*intimidations to a person would not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.”* As regards the key ingredient of provision in insult or intimidation is that it should be ‘any place within public view’. It has been held that if the allegations are made within the four walls of the building and there was no member of public at the time of incident, then, the basic ingredients of the offence are not attracted. Note was taken of the decision in **Swaran Singh and others vs. State through Standing Counsel and others [JT 2008 (9) SC 60]**, wherein the Hon’ble Apex Court had drawn distinction between 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.”*

6           The learned Advocate for the applicants has thereafter drawn our attention to the spot panchnama, wherein it is shown that the said spot is below the apartment in parking and the public road is at a distance from the said place. He further stated that the statements of the witnesses would

show that some different story has been given by those persons and also the abuses. Therefore, with this kind of evidence it would be injustice to ask the applicants to face the trial. There was no question of taking any money from the informant as the applicant No.1 is not on any Body of appointment of staff, though he is managing the school. The approval to the services of the informant as well as other witnesses was granted by letter dated 29.03.2014 by the Education Officer. The word that has been used in the First Information Report in respect of payment of amount of Rs.12,00,000/- is “donation”, which would have been definitely given to the school, if at all it is taken to be as it is and, therefore, there is no question of asking refund of that amount in October, 2018. The First Information Report is filed just to take revenge and, therefore, it needs to be quashed and set aside.

7           Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that perusal of the First Information Report as well as the entire charge sheet would definitely show that there is ample evidence against the applicants. Applicant No.1 cannot blow hot and cold at the same time. He cannot say that he is not concerned with the school. If that is to be accepted, then applicant No.1 had no authority to lodge First Information Report. Rather in his First Information Report applicant No.1 has specifically stated his

occupation as agricultural as well as Sanstha Chalak and he has stated that he is looking after the management of the school. He had taken amount of Rs.12,00,000/- from the informant for giving him employment. The maternal uncle of the informant in his statement under Section 161 of the Code of Criminal Procedure has stated as to how he had collected the amount and the said amount was handed over to applicant No.2. So, she had the knowledge about the same. Both the applicants had the knowledge about the caste of the informant and, therefore, the utterances were with insult to informant. The place is within public view, as it was the parking and the spot panchnama does not show that it is in any way closed. All the basic ingredients have been fulfilled and the delay can be explained even at later stage. Therefore, this cannot be taken as a fit case where the discretionary relief should be granted.

8           At the outset, even if we accept that delay can be explained at the time of trial; yet, the basic fact remains, as to why it was not explained at the first given opportunity. The explanation thereafter tendered will not have any kind of importance. Here, there is absolutely no reason as to why any such First Information Report was not given immediately on 15.05.2019. Definitely, the said point will have to be taken into consideration while deciding this application.

9           What has been uttered which according to the informant is attributable the caste is the word 'आदिवास्या'. It is by itself a caste. Further, there is substance in the say of the applicants that taking into consideration the caste of the informant as 'Mannerwarlu', which is different from Aadiwasi, though it is also a tribe, it cannot be said that utterance of word 'आदिवास्या' would be an abuse to the person belonging to Mannerwarlu tribe. As aforesaid, in **Hitesh Verma** (supra) all insults or intimidations to the person would not be an offence. No doubt, the intention then will have to be considered. Whether there was such intention in the mind of the applicants can even be gathered from considering the entire evidence in the charge sheet and the contents of the First Information Report. The first and the foremost fact, that is, required to be noted is that the alleged donation of Rs.12,00,000/- was given by the informant, as per his own story, in May, 2014, for his permanency. If we consider the documents collected which are part of charge sheet, one of the documents is the Manyata Prapatra and it says that the informant was appointed on the post of Assistant Teacher on 25.06.2012. Thereafter, the approval for his service appears to have been received on 29.03.2014 itself. All the three witnesses out of six witnesses whose names are mentioned in the First Information Report have stated that the informant had received permanency by the said order dated 29.03.2014, then, what was the occasion for informant to give amount of Rs.12,00,000/-

in May, 2014 to the applicants. Another fact to be noted is that if we consider the statements of witnesses Chakradhar Shivaji Padole, Ashish Panditrao Chavan, Munjaji Madhavrao Rajegore, who were also appointed and received permanency in 2012 and 2014 respectively along with the informant, have not stated that they had given any amount as donation to applicants. Then, the question arises, why the informant could have been asked to give amount of Rs.12,00,000/-. Informant does not say that why he agreed to give that amount. Even if for the sake of argument we accept that, that amount was given to the applicants, then at that time itself the informant would have had realized that the same is not an amount which can be asked to be repaid by the applicants. We reiterate that the word used is 'donation' and not bribe. There was no such occasion, as per the evidence that has been gathered in the charge sheet, which can be said that in October, 2018 the informant would have had opportunity to ask for the refund of that amount of Rs.12,00,000/- from the applicants. The basic purpose for which the informant is alleged to have gone to the house of applicants itself doubtful. If we consider those statements of witnesses under Section 161 of the Code of Criminal Procedure we can see the discrepancies on the face of record. Those persons have stated that the applicant No.1 used to threaten them. Witness Rajegore is in fact the Headmaster, but then still he also says that the applicant No.1 used to visit the school and used to ask for money from them.

He does not say that he or others had succumbed to the illegal demand of applicant No.1, but then says that they had decided that they would go to the house of applicant No.1 and persuade him from not to trouble them. That means, when they had decided to visit the house of applicants, it was not in the mind of the witnesses that the informant would ask for refund of amount of Rs.12,00,000/-. Further, if we consider the statements of those witnesses under Section 161 of the Code of Criminal Procedure, it is silent as regards the alleged harassment by the applicant No.1 prior to 15.05.2019. Witness Navnath Abadar in his statement under Section 164 of the Code of Criminal Procedure states that both the applicants had sat in their car when these persons had gone there. Witness Chakradhar states that the applicants met them in the parking. Each one has improved the story. None of them have stated any reason for the delay.

10           As regards the ingredients of Section 3(1)(r) and 3(1)(s) of the Atrocities Act is concerned, the place of offence is shown to be the parking area of the building. The said parking is below the building as per the spot. The distance between the area in the parking to the public road has not been stated in the spot panchnama. Neither the informant nor the witnesses have stated that there was any other person from public who had heard whatever the applicants had uttered. If we consider the statements of those six

witnesses, it can be seen that all of them are 'Maratha' by caste and the informant was the only person from Scheduled Tribe. The possibility of lodging the First Information Report with ulterior motive, taking advantage of the caste of the informant that too after 15 days delay, cannot be ruled out. Further, taking into consideration statements of those witnesses, especially the fact that all had decided to go together, it cannot be stated that they were the independent witnesses and definitely, we agree with the observations by the Single Judge in **Balu B. Galande** (supra).

11 For the above discussion, case is made out to exercise our discretionary and inherent powers under Section 482 of the Code of Criminal Procedure, as the case falls in category Nos.1, 3, 7 enumerated in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604**. Hence, the following order.

### ORDER

1 Criminal Application stands allowed.

2 First Information Report vide Crime No.187/2019 dated 31.05.2019 registered with Shivaji Nagar Police Station, Nanded, Tq. & Dist. Nanded, for the offence punishable under Section 323, 506 read with Section

34 of the Indian Penal Code, 1860 and under Section 3(1)(r), 3(1)(s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Special (Atro.) Case No.26/2019 pending before the Special Judge, under the Atrocities Act, Nanded vide Charge Sheet No.43/2019 stand quashed and set aside.

( Abhay S. Waghwase, J. )

( Smt. Vibha Kankanwadi, J. )

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