

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

CRIMINAL APPLICATION NO.2067 OF 2020

- 1 Dr. Ramesh Tukaram Bharate,
Age 48 yrs., Occ. Medical Practitioner,
R/o Gayatri, Hospital,
Opp. New Collectorate Building,
Barshi Road, Latur, Tq. & Dist. Latur.
- 2 Rajabhau Sonaji Shelke,
Age 44 yrs., Occ. Private Service,
R/o Government Colony, Latur,
Tq. & Dist. Latur.
- 3 Avinash Sanjay Padule @ Padole,
Age 19 yrs., Occ. Private Service,
R/o Govardhanwadi,
Tq. & Dist. Osmanabad.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Inspector,
M.I.D.C. Police Station, Latur,
Tq. & Dist. Latur.
- 2 Laxman Bhanudas Mavale,
Age 44 yrs., Occ. Private Service,
R/o Om Nagar, Renapur,
At present : Manthale Nagar,
Latur, Tq. & Dist. Latur.

... **Respondents**

...

Mr K.A. Kadam, Advocate for the applicants

Mr. B.V. Virdhe, APP for respondent No.1

Mr. G.G. Suryawanshi, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 13th SEPTEMBER, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the First Information Report as well as the entire proceedings against the applicants.

3 Present respondent No.2 is the informant, who had lodged First Information Report vide Crime No.389/2020 on 24.09.2020 with M.I.D.C. Latur Police Station, Dist. Latur, for the offence punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (In short, “the Atrocities Act”) in respect of an incident that had allegedly taken place on 19.08.2020.

4 Heard learned Advocate Mr. K.A. Kadam for the applicants, learned APP Mr. B.V. Virdhe for respondent No.1 and learned Advocate Mr. G.G. Suryawanshi for respondent No.2.

5 It has been vehemently submitted on behalf of the applicants that the applicant No.1 is a Medical Practitioner. He runs hospital by name “Gayatri Hospital” at Latur and he is reputed in the vicinity. Applicant Nos.2 and 3 are his employees. Applicant No.2 belongs to backward community and applicant No.3 belongs to N.T. community. Respondent No.2 was working in Gayatri Hospital for the month of May, 2020 and June, 2020. He had worked only for 20 days in the month of July, 2020. The State Government granted permission to the said hospital for treating the patients of Covid-19 and thereafter the respondent No.2 remained absent for about a month. According to the applicants, the respondent No.2 along with another person came to the cabin of applicant No.1 at about 1.00 p.m. on 19.08.2020 and started demanding amount of Rs.50,000/- for educational purpose of his children. The applicant No.1 told him that since he had not worked, he will not pay the amount to him. The respondent No.2 went outside the cabin of

applicant No.1 and returned after about five minutes along with stones kept in his handkerchief. He assaulted the applicant No.1 severely, as a result of which the applicant No.1 got his hand fractured and serious injury to his head. The applicant No.1 lodged First Information Report vide Crime No.352/2020 against the present respondent No.2 on the same day i.e. on 19.08.2020, for the offence punishable under Sections 325, 324, 504, 506, 188, 269, 270 read with Section 34 of the Indian Penal Code and under Sections 2, 3 and 4 of the Epidemic Diseases Act as well as Section 4 of the M.M.S. Act, 2010 with M.I.D.C. Police Station, Latur.

6 The learned Advocate appearing for the applicants has further submitted that in order to give a counterblast to the aforesaid First Information Report lodged by the applicant No.1 against the respondent No.2, respondent No.2 lodged the impugned First Information Report vide Crime No.389/2020. The allegations in the said First Information Report are false. There was no question of abusing the respondent No.2 in the name of caste by the applicant No.1. Another fact, that is, required to be noted is that even as per the said First Information Report the alleged incident had taken place in the cabin of the applicant No.1 and the cabin cannot be said to be a “place into public view” as contemplated under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. The delay in lodging the First Information Report has

not been explained at all, which is more than 1½ month. There was no eye witness to the incident, much less from a different community. As per the complaint, the son of the respondent No.2 was along with him and he was bound to support the father. Now, the charge sheet has been filed and if we consider the statements of the other witnesses viz. Sherkhan Gafarkhan Pathan, Uttam Shyamrao Chavan, then, it can be seen that after the informant as well as his son were allegedly running and it was found that they were in frightened condition, these two witnesses asked them, as to what had happened and then they had narrated. That means, their statements are hearsay. When the entire proceedings would show that no such incident as alleged has taken place and prima facie it is not attracting offences under Atrocities Act, much less under the Indian Penal Code, it would be futile exercise to ask the applicants to face the trial.

7 Per contra, the learned APP and the learned Advocate for respondent No.2 have strongly opposed the application and submitted that delay cannot be the sole criterion to exercise the powers of this Court under Section 482 of the Code of Criminal Procedure. Learned Advocate for respondent No.2 has relied on the decision in **Shantaben Bhurabhai Bhuriya vs. Anand Athabhai Chaudhari and others, 2021(4) R.C.R. (Criminal) 559**, wherein it has been observed that “*Even otherwise, on the ground of delay in*

lodging First Information Report/complaint the criminal proceedings cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure. Aspect of delay is required to be considered during trial and during trial when the complainant is examined on oath and a question is put to him/her on delay and he/she can very well explain the delay in his/her cross-examination. But on the aforesaid ground entire criminal proceedings cannot be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure.” It has also been submitted on behalf of the respondent No.2 that applicant No.2 is member of Scheduled Caste and, therefore, the provisions of Atrocities Act will not be applicable to him. However, he would be liable for the other sections. The respondent No.2 was serving with applicant No.1. It was agreed that he would be paid salary of Rs.25,000/- per month, but actually he was paid @ Rs.15,000/- per month. He was demanding his remaining amount of salary, time and again, but when applicant No.1 started avoiding, he left the job. He was in need of money and, therefore, he went to the hospital at about 1.00 p.m. on 19.08.2020 along with his son. He demanded the remaining amount of his salary but the applicant No.1 was insisting that he should work with him. He was treated in insulting manner and then started abusing in the name of caste. It is stated that he uttered, “मांगटया आम्हा मराठयांना तु पैसे मागतो का मायघाल्या मादरचोद.” Thereafter, he was manhandled, assaulted by fists and kicks by the applicant

No.1 and he was pushed out of the cabin. Thereafter, the applicant Nos.2 and 3 had thrown the respondent No.2 while assaulting him out of the hospital. Even the pet dog was made to run after respondent No.2 and his son and, therefore, they ran away from the said place. Due to fear he had not gone to Police Station, but taking advantage of the delay in approach by the respondent No.2 a false First Information Report has been lodged against the respondent No.2. Taking into consideration these facts, this cannot be a case where inherent powers should be exercised for quashing only one First Information Report i.e. filed by the respondent No.2.

8 At the outset, it is to be noted that the First Information Report lodged by applicant No.1 against the respondent No.2 is prior in time. The incident had taken place at about 1.00 p.m. on 19.08.2020 and the said First Information Report bearing Crime No.352/2020 came to be registered at 19.59 hours on the same date. Photographs have also been shown regarding the injuries sustained by applicant No.1, however, those cannot be considered at this stage. No doubt, the delay in lodging the First Information Report cannot be the ground for quashing the First Information Report as laid down in **Shantaben Bhuriya** (supra). But, it is then also to be noted that a complaint application appears to have been filed by present respondent No.2 with District Superintendent of Police, Latur on 19.08.2020 itself. The said

copy of the complaint application has been filed along with the affidavit-in-reply of the respondent No.2. In this complaint application it is stated that he had gone to demand his salary amount at about 11.00 to 11.30 a.m. on 19.08.2020 and at that time the applicant No.1 had abused him in the name of caste. He has not stated that he was along with his son, at that time. Now, in the present First Information Report vide Crime No.389/2020 the respondent No.2 contends that he had gone to Gayatri Hospital at about 1.00 p.m. along with the son on 19.08.2020 and then the incident has taken place. Therefore, even at this prima facie stage it can be considered that the said complaint application dated 19.08.2020, which he had tendered to District Superintendent of Police Office and it is received by that office on 20.08.2020, and the present First Information Report are not corroborating each other.

9 The second aspect, that is, required to be noted is that even if we take the contents of the First Information Report as it is and also the entire material in the charge sheet, whether it attracts the ingredients of the offences, is required to be considered. On the face of the First Information Report it can be noted that the incident has taken place in the cabin of applicant No.1 in his hospital. Cabin cannot be considered as a public place, though hospital may amount to. Further, what Sections 3(1)(r) and 3(1)(s)

of the Atrocities Act require is that the place should be in the public view. Definitely, that has been distinguished from the word “public place” in **Hitesh Verma vs. State of Uttarakhand and another** by Three Judge Bench decision reported in **(2020) 10 Supreme Court Cases 710**. In paragraph Nos.13 and 14 it has been observed thus -

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 : (SCC pp. 443-44, para 28)

“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.” (emphasis in original)

In **Hitesh Verma** (supra) also the abuses were given to the informant within the four walls of the building and it was stated that no

other member of the public (not merely relatives or friends) were inside the house was considered as “not a place within public view”. In this case also the incident has taken place in the cabin and as per the informant himself, except his son nobody else was present. As aforesaid, presence of his son is concerned, his own complaint application to police, which was given prior in time on 19.08.2020, is contradictory. Statements of the two witnesses i.e. Sherkhan Pathan and Uttam Chavan would definitely be hearsay as they both have stated that after they had seen the informant and his son in frightened condition, upon asking them, they had given the said facts. Again as regards the presence of the son is concerned, which is stated by these two witnesses, does not find support to the complaint application given by the informant to the police. All these facts lead to inference that the ingredients of the offence under Sections 3(1)(r) or 3(1)(s) of the Atrocities Act are not attracted.

10 At the time of charge sheet it appears that Section 3(2)(va) of the Atrocities Act has been added, because it was not appearing when the First Information Report came to be registered. As regards the Schedule attached to Section 3(2) of the Atrocities Act we can find Sections 323 and 506 of the Indian Penal Code. As regards the First Information Report in question is concerned, we can say that apparently it is giving rise to the ingredients of Section 323, 504, 506 of the Indian Penal Code and then

Section 3(2)(va) of the Atrocities Act. The First Information Report stands supported by the statement of son of the informant under Section 161 of the Code of Criminal Procedure. No doubt, we have already questioned his presence in view of absence of his name in the complaint application dated 19.08.2020, however, that cannot be the ground for quashing the entire proceedings. It would be for the Trial Court to consider and appreciate the evidence as to whether any such offence has been committed against the informant or not. In other words, it can also be said that when applicant No.1 is stating that respondent No.2 had come to his hospital, then, it is the same thing which has been stated by respondent No.2 in his First Information Report. Whether to treat the present First Information Report as cross complaint/cross case or not would be decided by the Trial Court. But, when there are recitals and there is some evidence, then, it will not be appropriate to quash and set aside the entire proceedings.

11 In **Hitesh Verma** (supra) reliance was placed on the earlier decision of the Hon'ble Supreme Court in *Ishwar Pratap Singh vs. State of U.P.*, (2018) 13 SCC 612, wherein it was held that - *there is no prohibition under the law for quashing the charge-sheet in part*. It was observed that - *"In a petition filed under Section 482 of the Code of Criminal Procedure, the High Court is required to examine as to whether its intervention is required*

for prevention of abuse of process of law or otherwise to secure the ends of justice.”

Under such circumstance, here, in this case, case is made out to quash the First Information Report and charge sheet in part by exercising our powers under Section 482 of the Code of Criminal Procedure.

12 For the aforesaid reasons, following order is passed.

ORDER

1 The application stands partly allowed.

2 The First Information Report bearing Crime No.389/2020 dated 24.09.2020 registered with M.I.D.C. Police Station, Latur, for the offence punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the charge sheet i.e. Special (Atrocities) Case No.2/2021 before Special Judge under the Atrocities Act stand quashed and set aside to the extent of offence punishable under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as against present applicants only.

3 It is clarified that the matter to proceed under other sections.

4 Rule made absolute in above terms.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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