

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 CRIMINAL WRIT PETITION NO.1700 OF 2020

RUPESH RAMESH TANPURE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Z.H. Farooqui, Advocate h/f Mr. N.V. Gaware, Advocate for petitioners

Mr. A.M. Phule, APP for the respondent No.1

Mr. A.B. Jagtap, Advocate for the respondent No.2

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

DATE : 02nd AUGUST, 2022

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

1 Petitioners are the original accused persons who have filed present petition invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India together with inherent powers under Section 482 of the Code of Criminal Procedure, 1973, for quashing First Information Report vide Crime No.123/2020 dated 26.02.2020, registered with Rahuri Police Station, Tq. Rahuri, Dist. Ahmednagar, for the offence punishable under Sections 323, 504, 506 of the Indian Penal Code,

1860 and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by respondent No.2.

2 Heard learned Advocate Mr. Z.H. Farooqui holding for learned Advocate Mr. N.V. Gaware for petitioners, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate Mr. A.B. Jagtap for the respondent No.2.

3 The First Information Report alleges that informant is a member of Scheduled Caste. He has his agricultural land adjacent to the land of petitioners. According to him, there was Rasta proceedings before Tahsildar, Rahuri for getting road of 10 feet from the field of petitioners to the field of informant. The said proceedings was bearing Rasta Case No.4/2018 and it was decided in favour of petitioners. According to the informant, he has filed appeal challenging that decision to the Sub Divisional Magistrate, Shrirampur and there are some interim orders. He has filed suit in Rahuri Court. Informant has further stated that when around 10.30 a.m. on 15.02.2020 he and his mother were proceeding towards his field, at that time, both the petitioners came and petitioner No.1 started saying that when interim injunction has been granted against them, how they would go from his land

by saying that it is a road and then he uttered, “तुम्ही गावात कसे राहता. महार—मांगांना आमच्या शेतीजवळ राहू देणार नाही.” The informant was then assaulted by petitioner No.1 by kicks and fist blows and threat was given to him that he would kill him by running over a tractor on him. Petitioner No.2 had assaulted informant’s mother. The First Information Report came to be lodged on 26.02.2020.

4 The learned Advocate appearing for the petitioners submitted that the case has been investigated and charge sheet has been filed and the spot panchnama can be seen as at a distance of 5 feet from the common bandh of one Dinkar Bhaskar Adhav and Vishwanath Jaywant Adhav, which is near to Gat No.262, belonging to Vishwanath Jaywant Adhav. It cannot be a place which was in the public view. He relied on **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** for quashing the First Information Report and the proceedings. He has also relied on **Balu Bajirao Galande vs. State of Maharashtra and another, 2006 BCI 312 (Bombay High Court)**. The single Judge of this Court has observed that when the word “within a public view” has not been defined, then the dictionary meaning should be taken and clause (x) of Section 3 of Atrocities Act uses word “within public view” postulates the victim being insulted with reference to his caste in presence of members of public. Such insulting word should be

audible and visible to the public and the entire charge sheet in this case does not say so. He has also relied on **Patan Jamal Vali vs. State of Andhra Pradesh, 2021 DGLS (SC) 252**, wherein it has been held that in order to prove offence under Section 3(2)(v) of the Atrocities Act it should be proved by the prosecution that the offence was committed on the ground that the informant/victim belongs to Scheduled Caste. Here, the litigation is already going on between the parties before appropriate authority and when a road was not given to the informant and he was obstructed in view of the interim order, he has lodged false case with mala fide intention. The learned Advocate for the petitioners also submitted that since delay has not been explained, the entire proceeding deserves to be dismissed, as it would be the futile exercise to ask the petitioners to face the trial.

5 Affidavit-in-reply has been filed on behalf of respondent No.2, which is nothing but the replica of the complaint. Learned APP and learned Advocate representing respondent No.2 have strongly opposed the petition. It has been stated that the charge sheet contains statements of the eye witnesses under Section 161 of the Code of Criminal Procedure. By supplementary statement the informant has explained the delay. Whether that delay is to be accepted or not is within the prerogative of the Trial Court, but cannot be a point to quash the First Information Report and the

proceedings. When there is ample evidence against the petitioners, the constitutional powers as well as inherent powers cannot be used.

6 At the outset, it is to be noted that to the statement that such incident has taken place, there is eye witness. Statement of Dinkar Bhaskar Adhav would show that he is the owner of Gat No.261 and as per the rough sketch that has been included in the spot panchnama, his land is towards East to the spot of incident. In his statement under Section 161 of the Code of Criminal Procedure, he has stated that abuses in the name of caste were given to the informant, he and his mother were assaulted by the petitioners and the witness says that he had witnessed the same. Another statement is that of Vishwanath Jaywant Adhav, in whose land the alleged incident had taken place. He was also present in his field at the relevant time. Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act use word “any place” and, therefore, the said place can be a private place. Here, in this case, it is the field belonging to a person i.e. private property, but if we consider the rough sketch as well as the contents of the spot panchnama, it can be seen that the said field of witness Vishwanath Jaywant Adhav bearing Gat No.262 is abutting shivar road. In **Swaran Singh AND OTHERS VS. State THROUGH Standing Counsel AND ANOTHER**, 2008 Cri.L.J. 4369 (S.C.) it has been held -

“Where it was alleged in First Information Report that first informant was insulted by appellants by calling him a ‘chamar’ when he stood near car which was parked at gate of premises. This was certainly a place within public view, since the gate of a house is certainly a place within public view, and offence would be covered by Section 3(i)(x). One must not confuse the expression ‘place within public view’ used in Section 3(i)(x) 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.”

Therefore, when in 2008 Hon’ble Apex Court has explained the word “within public view”, the earlier decision by this Court in **Balu Bajirao Galande** (supra), that is, rendered in 2006 will not be applicable.

7 Now, coming towards the litigation, that is, pending at this stage, this Court cannot be jumped to the conclusion that the First Information Report is the result of mala fide intention. When material has been collected and the Investigating Officer had come to the conclusion that there is evidence against the accused persons to file charge sheet, then, only the charge sheet has been filed. Such First Information Report and charge sheet, without there being any evidence in such a way, cannot be quashed and set aside stating that the pendency of the other proceedings was the result.

Further, when there are eye witnesses to the incident, such conclusion cannot be jumped.

8 As regards the delay is concerned, there is supplementary statement of the informant as to why he had not approached the police earlier.

9 Taking into consideration all these aspects it cannot be said that a case is made out for exercise of the constitutional or inherent powers of this Court. Writ Petition stands dismissed.

(Rajesh S. Patil, J)

(Smt. Vibha Kankanwadi, J.)

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