

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.922 OF 2019

Vidhya Shrirang Mawale
Aged about 43 years, Occ. – Service,
R/o. Hiwarkhed,
Tq. Telhara, District Akola

...APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Hiwarkhed,
Tah. Telhara, District Akola
2. Chandrashekhar s/o Prakashrao Ilarkar,
Aged about 28 years, Occ. – Business,
R/o. Purvaj Colony,
Sarswati Nagar, Opp. Bus Stand,
Hiwarkhed, Tah. Telhara,
District Akola

...NON-APPLICANTS

Shri I.S. Charlewar, Advocate for the applicant.
Shri V.A. Thakare, Additional Public Prosecutor for
non-applicant No.1/State.
Shri A.B. Mirza, Advocate for non-applicant No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 20, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. By invoking the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.' for short) present applicant is seeking quashment of First Information Report (hereinafter referred to as 'the FIR' for short) bearing No.151/2019 registered at police station Hiwarkhed, Tah. Telhara, District Akola for the offences punishable under Sections 323 and 504 of the Indian Penal Code (hereinafter referred to as 'the Code' for short) read with Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act' for short).

3. Non-applicant No.2 lodged FIR against the present applicant at Hiwarkhed police station alleging that she is the resident of Hiwarkhed, Tah. Telhara, District Akola. On 18/07/2019, he was proceeding towards his home at about 10.30 p.m. when he was proceeding in front of the house of the applicant her pet dog came on his person and he was attempting to rescue himself from the said dog. At that time the applicant came there and slapped him and said that :

“खाटीक बच्चीच्या तुमच्या अंगाचा मटनाचा वास येतो तुम्ही कशाला इकडून येता तिकडून जा.”

4. It is further alleged by the informant that the present applicant-accused abused her on his caste by saying that he belongs to

‘Khatik’ community. On the basis of the said report police have registered the offence.

5. It is the contention of the applicant that the FIR would reveal that the said report is nothing but the abuse of process of law. The ingredients of the offence are not made out from the recitals of the said report. In fact, no such incident had taken place. He is implicated falsely. Even if the allegations are taken at its face value no offence is made out against the present applicant.

6. We have perused the FIR. The only allegation against the present applicant is that her pet dog went towards the informant. He stopped his two wheeler, at the relevant time the applicant called him by saying that he is from the ‘Khatik’ community. The recitals of the FIR shows that informant is running the Mutton and Chicken shop. The word ‘Khatik’ is used by the applicant relating to his profession or business. It is not in relation to his caste. If the Penal provisions are taken into consideration, the offence is registered under Sections 323 and 504 of the Code. The Penal provisions of Sections 323 and 504 of the Code do not come into play even if the entire FIR is taken at its face value. Section 323 and 504 of the Indian Penal Code are reproduced hereunder :

“323. Punishment for voluntarily causing hurt -

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

“504. Intentional insult with intent to provoke breach of the peace -

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

7. Section 504 of the Code is not attracted in as much as it is not even the case of the prosecution that there was any insult with an intention of provoking the first informant. It is also alleged that the present applicant insulted and humiliated the informant within the public view by calling him on his caste. Even if the allegation is taken as it is, it relates to the profession/business of the informant. From the said statement it can be inferred that the applicant has stated that being he is running the business of Mutton and Chicken shop and due to cutting of the meat and chicken the dog is attracted due to smell of flesh. From the recitals of the FIR nowhere it reveals that there was any insult by the applicant by referring the caste of the informant.

8. It is observed by this Court in the case of ***Sitaram s/o Mahadu Dhadve Vs. The State of Maharashtra and ors. 2012 ALL MR Cri. 1097***

that insult or abuse on the ground of Scheduled Castes or Scheduled Tribe must be with intention to insult or humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within the public view. Mere imputation of name of the caste while addressing the complainant cannot make out an offence punishable under section 3(i)(x) of the Act because simply addressing a person by his caste without intention to insult or intimidate does not constitute an offence under the said Section. Here in the present case also the allegation shows that the applicant had only addressed the informant by naming his caste. There are no allegations of abuse or insult on the ground of Scheduled Caste or Scheduled Tribe within the public view.

9. In the above said facts, we have no hesitation in allowing the application in so far as the present applicant is concerned.

10. In the result, we proceed to pass the following order :

- (a) The criminal application is allowed.
- (b) The First Information Report No.151/2019 registered at police station Hiwarkhed, Tah. Telhara, District Akola for the offences punishable under Sections 323 and 504 of the Indian Penal Code read with Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

11. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*