

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 953 OF 2019

- 1 Sk. Akbar Sk. Bismillah
Aged about 30 years, Occ. Business
- 2 Sk. Ajju Sk. Bismillah
Aged about 26 yrs, Occ. Business
- 3 Raisabi Sk. Bismillah
Aged about 50 years, Occ. Household,
No.1 to 3 R/o Near Sub-Station, Balapur,
Tq. Balapur, Distt. Akola
- 4 Sk. Aman @ Gulam Aman S/O Gulam
Khawaja,
Aged about 45 years, Occ. Agriculturist
R/o Gaigaon, Tq. Balapur, Distt. Akola

APPLICANTS

VERSUS

- 1 State of Maharashtra, through Police Station :
Officer, Police Station Balapur, Tq. Balapur,
Distt. Akola.
- 2 Seema d/o Mahadev Survade @ Seema w/o
Dilip Uparwat @ Seema Parveen
Aged about 29 yrs, Occ. Not known,
R/o Lotnapur, Balapur, Tah. Balapur
District – Akola.

RESPONDENTS

Mr. A.M. Tirukh, Advocate for Applicants
Mr. M.J. Khan, A.P.P. for Respondent No.1 / State
Mr. Sunil Bhuyar, Advocate (appointed) for Respondent No.2

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, J.J.

DATE : 27th JULY, 2022

ORAL JUDGMENT

Heard.

2. ADMIT. Heard finally by consent of the learned counsel appearing for the parties.

3. By this application, the applicants (original accused) have approached this Court seeking quashing of First Information Report (FIR), registered against the applicants for offences punishable under Sections 294 & 506 read with Section 34 of the Indian Penal Code (IPC) and Section 3(1)(r)(s) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as the Act of 1989), as also the charge-sheet filed in pursuance of completion of investigation.

4. The FIR dated 05/11/2018, stood registered against the applicants on a report submitted by the respondent No.2 (original informant) alleging that the applicants visited her house and threatened her in abusive language, including abuses in the context of her caste, thereby committing the aforesaid offences. Upon registration of the FIR, investigation was launched and charge-sheet came to be filed for the aforesaid offences.

5. Mr. Tirukh, learned counsel appearing for the applicants

submitted that according to the applicants, the respondent No.2 was having an affair / relationship with the husband of applicant No.3 and that the alleged incident may have taken place in the backdrop of the aforesaid relationship. It was submitted that other residents of the village also had grievance against the respondent No.2, for which they had approached the authorities raising grievances against the respondent No.2. Insofar as the specific incident is concerned, the learned counsel for the applicants submitted that no case was made out for the offences alleged under the Act of 1989. By inviting attention of this Court to the specific provisions invoked against the applicants, it was submitted that ingredients of the said offences were not made out, even if the contents of the FIR and the charge-sheet along with statements of the respondent No.2 and her father were taken into consideration. It was specifically submitted that since the incident, even according to the respondent No.2 had taken place inside her house, it could not be said to be a place in public view and that, therefore, there was no question of invoking Section 3(1)(r)(s) of the Act of 1989.

6. Insofar as Section 3(2)(v-a) of the Act of 1989, is concerned, it is submitted that although offence under Section 506 of IPC invoked in the present case is an offence mentioned in the schedule to the Act of 1989, in the context of the aforesaid provision, the basic

ingredient pertaining to the said offence is also not made out on the basis of the material available on record. On this basis, it is submitted that at least insofar as the offences alleged under the Act of 1989, are concerned, the same deserve to be quashed.

7. Reliance is placed on the judgments of the Hon'ble Supreme Court in the cases of **Hitesh Verma Vs. State of Uttarakhand and another** reported in (2020) 10 SCC 710 and **Khuman Singh Vs. State of Madhya Pradesh** reported in (2020) 18 SCC 763.

8. On the other hand, Mr. Sunil Bhuyar, learned counsel appointed for appearing on behalf of respondent No.2 submitted that if the oral report, leading to registration of the FIR, given by the respondent No.2 and her statement during the course of investigation is to be considered, this Court at this stage, may not be interfere with the offences registered against the applicants. It is submitted that the statement of father of the respondent is also on record, which may be taken into consideration.

9. Mr. M.J. Khan, learned Assistant Public Prosecutor appeared on behalf of respondent No.1 – State submitted that as regards offences under Section 3(1)(r)(s) of the Act of 1989, this Court may take a view on the basis of the law laid down by the Hon'ble Supreme

Court in the aforesaid judgments. But, it was strenuously submitted that insofar as Section 3(2)(v-a) of the Act of 1989, is concerned, a perusal of the report leading to registration of the FIR would show that the threats advanced by the applicants against the respondent No.2 were coupled with specific statements in the context of her caste and that, therefore, whether the offence under Section 506 of IPC, which is a scheduled offence, could be invoked in the context of Section 3(2)(v-a) of the Act of 1989, is a matter for trial and that this Court may not interfere at this stage.

10. Having heard the learned counsel for the rival parties and upon perusal of the material placed on record, we are of the opinion that the oral report leading to registration of the FIR, the statement of respondent No.2 recorded during the course of investigation and the statement of her father, would be relevant to consider the rival contentions.

11. A perusal of the oral report submitted by the respondent No.2 would show that even according to her, the incident took place inside her house, when the applicants allegedly visited her and indulged in the aforesaid activities. In her statement recorded during the course of investigation also, the respondent No.2 reiterated the aforesaid

statement as regards the incident having taken place inside her house. This is further fortified by a sketch available on record, which was prepared during the course of investigation. It clearly shows that the place of incident was inside the house of respondent No.2.

12. In this context, it would be relevant to refer to Section 3(1) (r)(s) of the Act of 1989. The said provisions read as follows :

“(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;

(s) Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;”

13. The crucial words in the aforesaid provisions are “in any place within public view”. The said words fell for consideration of the Hon’ble Supreme Court in a number of judgments, including recent judgment in the case of **Hitesh Verma Vs. State of Uttarakhand and another** (supra). After considering the aforesaid provision and earlier judgments of the Hon’ble Supreme Court in that regard, it was held that the aforesaid words are significant and mere utterance of such expressions in the context of caste of the victim would not *ipso facto*, lead to prosecution and conviction for offences under the said provisions. The Hon’ble Supreme Court quoted from an earlier judgment in the case of **Swaran Singh Vs. State** reported in (2008) 8

SCC 435. The relevant portion from the said judgment reads as follows.

“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.”

14. After having quoted the above portion from the judgment in the case of **Swaran Singh Vs. State** (supra), in the case of **Hitesh Verma Vs. State of Uttarakhand and another** (supra), the Hon’ble Supreme Court held as follows :

“15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is

not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.”

15. Applying the aforesaid position of law to the facts of the present case, it is found that the contents of the oral report leading to registration of the FIR and the statement of respondent No.2 recorded during the course of investigation, in no manner indicate that the applicants had indulged in insults or intimidation or abuses with intent to humiliate the respondent No.2, in a place within public view. Insofar as the statement of father of respondent No.2 is concerned, it is hearsay and in any case, even according to his own statement, he was not present when the incident took place inside the house of respondent No.2. There is no other statement of any person having witnessed the said incident. Therefore, applying the aforesaid position of law to the facts of the present case, we are convinced that, not even a semblance of a case is made out against the applicants insofar as offences under

Section 3(1)(r)(s) of the Act of 1989 are concerned.

16. Insofar as Section 3(2)(v-a) of the Act of 1989, is concerned, the learned counsel for the applicants relied upon judgment of the Hon'ble Supreme Court in the case of **Khuman Singh Vs. State of Madhya Pradesh** (supra), wherein after referring to section 3(2)(v) of the Act of 1989, which pertains to a more serious offence, the Hon'ble Supreme Court held as follows :

“13. In Dinesh alias **Buddha v. State of Rajasthan** (2006) 3 SCC 771, the Supreme Court held as under:-

“15. Sine qua non for application of **Section 3(2)(v)** is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

14. As held by the Supreme Court, the offence must be such so as to attract the offence under **Section 3(2)(v)** of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar”-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under **Section 3(2)(v)** of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act is not sustainable.”

17. It was strenuously submitted on behalf of the applicants that when, in the context of more serious offence under Section 3(2)(v) of the Act of 1989, the position of law was clarified in the above manner by the Hon’ble Supreme Court, in the present case invoking Section 3(2)(v-a) of the Act of 1989, was not justified.

18. We have perused the material available on record, particularly the oral report of respondent No.2 and her statement recorded during the course of investigation. We find that the allegations pertaining to threat and intimidation, including a threat to commit murder of respondent No.2 were all made *prima facie* in conjunction with reference to the caste or community of respondent No.2 in a condescending manner. At this stage, it would not be appropriate for us to reach a conclusion that not even a *prima facie* case is made out for proceeding against the applicants in respect of offence under Section 3(2)(v-a) of the Act of 1989. We are of the opinion that it would be a matter for trial.

19. Insofar as offences under Sections 294 and 506 read with 34 of IPC are concerned, the learned counsel for the applicants did not

advance submissions seeking quashing of the FIR and charge-sheet in that context.

20. In view of the above, we are of the opinion that the present application can be partly allowed, so as to quash the FIR and charge-sheet in respect of offences only under Section 3(1)(r) and (s) of the Act of 1989.

21. Accordingly, the application is partly allowed.

22. The FIR dated 05/11/2018 and the charge-sheet filed pursuant thereto are quashed only in respect of offences under Section 3(1)(r) and (s) of the Act of 1989.

23. The matter shall now proceed against the applicants as regards other offences registered against them.

(VALMIKI SA MENEZES, J.)

(MANISH PITALE, J.)

MP Deshpande