

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

CRIMINAL APPLICATION NO.1792 OF 2022

**LAXMIKANT SHRIDHARRAO MADHWARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Joydeep Chatterji, Advocate for the applicant
Mr. P. G. Borade, AGP for the respondent/State
Mr. Z. H. Farooqui, Advocate for respondent No.2 (appointed)

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 31ST JANUARY, 2023

PER COURT :-

1. With consent, heard finally at the stage of admission.
2. This is an application under Section 482 of Cr.P.C. to quash the first information report No. 0304 of 2021 registered at Udgir City Police Station, Udgir, Dist. Latur and Special Case No. 16 of 2021 pending before the Ld. District Judge-1 and Additional Sessions Judge, Udgir, Dist. Latur for the offences punishable under Sections 448, 504, 506 read with Section 34 of the IPC and under Sections 3(1)(g), 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. Heard learned counsel for the applicant, learned APP for the

respondent/State and learned counsel for respondent No. 2. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant the first information report lodged by the respondent No.2- Gautam Bhagwan Somwanshi, who he is a member of scheduled caste. The allegations in the first information report are that his cousin Annasaheb Maloji Banshelkikar had permitted him to use one shop, which was purchased from Somwanshi builder. On 18th October, 2021 at about 1.30 pm his friend Arun Ujedkar informed him that the shutter of the office was partly open and some persons were seen sitting inside the said office. The respondent No. 2 and two others went to the office and noticed four persons including the applicant herein sitting in the said office. When he questioned the applicant as to why he had open the lock, the applicant abused and humiliated him with reference to his caste. He, therefore, lodged the first information report pursuant to which the aforestated crime has been registered.

5. Learned counsel for the applicant submits that there is civil dispute between the co-accused and Somwanshi builder and that the Civil Court has granted interim relief in favour of the co-accused in

respect of the said office. He submitted that the applicant herein who is a lawyer by profession is representing the co-accused in the said civil proceeding. It is sought to be contended that the FIR has been lodged against the applicant only as personal vendetta, for representing the co-accused in the said civil proceedings. It is further submitted that the alleged incident was not within public view. Relying upon the decision of the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. The State of Uttarakhand and another** in **Criminal Appeal No. 707 of 2020** decided on 5th November, 2020 and learned single Judge of this Court in **Balu B. Galande Vs. The State of Maharashtra and Another** reported in **2006 All MR (Cri) 3197**, it is submitted that the first information report as well as the other material collected in the course of the investigation and which form part of the charge-sheet, even if accepted in the entirety, do not disclose cognizable offence as against the applicant. Hence this is a fit case to exercise discretion under Section 482 of Cr.P.C. to prevent an abuse of the process of court.

6. Per contra learned AGP and learned counsel for respondent No.2 submit that the allegations in the first information report as well as the the statements of witnesses who were present along with respondent No.2 *prima facie* indicate that the applicant herein had abused the responded No.2 with reference to his caste. It is submitted that though

the incident occurred inside the office, the said shop is abutting the road and is visible to the public. It is stated that the abuses were also hurled in presence of witnesses and this would attract the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***Swaran Singh & Ors. Vs. State through Standing Counsel & Ors*** reported in ***(2008) 8 SCC 435***.

7. Section 3(1)(g) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act prescribes punishment for wrongful dispossession of a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interfere with his rights, include forest rights, over any land or premises, irrigation facilities etc. Whereas Section 3(1)(r) and 3(1)(s) protect members of Scheduled Caste or Scheduled Tribe against intentional insult or intimidation with intent of humiliation and against abuse by caste name in any place with public view.

8. In the instant case, it is alleged that the applicant criminally trespassed in the office premises of the respondent No.2, who is a member of Scheduled Caste. He is therefore charged for offence under Section 3(1)(g) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. It is not in dispute that civil dispute in respect of the

office premises, between the builder and the co-accused, is pending before the Civil Court. The applicant is an advocate who is representing the co-accused in the said civil proceedings. The FIR appears to be an off shoot of the said civil dispute. Be that as it may, the object of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is to prevent atrocities and hated crimes against the members of Scheduled Caste and Scheduled Tribes. As it has been observed by the Apex Court in **Hitesh Verma** (Supra) the Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community. In the instant case, the FIR does not disclose that the applicant and co-accused had entered the premises with intent to dispossess or interfere with the rights of respondent No.2 since he belongs to a particular caste. On the contrary, the records reveal that they are claiming right over to said premises and the entry was in exercise of such right. Such entry will not constitute wrongful dispossession or interference particularly when the rights of the

parties are pending adjudication before the Civil Court. The FIR and other material on record does not disclose the intent to commit any offence or to dispossess or to interfere with possession of respondent No.2, for the reason that he belongs to a particular caste. Hence the essential ingredients of criminal trespass and Section 3(1)(g) of Act are lacking.

9. It would be relevant to refer to the decision of the Hon'ble Supreme Court in **Hitesh Verma** (supra) wherein it is observed thus:

"12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view".

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 No.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 No.2 is 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. 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:

"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)

10. In the instant case, the alleged incident had not occurred in a public place but occurred inside the office premises. The FIR as well as the other material on record does not indicate that the internal part of the office premises was visible from the road. It is stated that the alleged incident had occurred in presence of Arun Ujedkar, Gautam Kinwade and Rahul Kamble. The statement of Arun Ujedkar indicates that he is also a member of scheduled caste whereas Gautam and Rahul are childhood friends of the complainant. The FIR as well as the other records do not indicate that the incident was witnessed by any other person apart from these three witnesses. There was no other independent and impartial person present at the spot other than three witnesses who have close relationship and association with the complainant. Hence considering the ratio laid down by the Hon'ble Supreme Court in the case of **Swaran Singh & Ors** and **Hitesh Verma** (cited supra), we are of the considered view that the incident had not occurred at a place within public view, which is an essential ingredient to attract provisions of Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

11. Under the circumstances and in view of discussion supra in our considered view the present case is squarely covered by illustration (1) and (3) of judgment in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal And Ors. 1992 AIR 604***. In such circumstances, compelling the applicant to face criminal trial would be abuse of process of Court. Hence in our view this is a fit case to exercise the discretion and inherent powers under Section 482 of Cr.P.C. to prevent the abuse of process of Court. Hence the application is allowed in terms of prayer clause 'B'. Consequently, the FIR No. 0304 of 2021 registered at Udgir City Police Station, Udgir, Dist. Latur and Special Case No. 16 of 2021 pending before the Ld. District Judge-1 and Additional Sessions Judge, Udgir, Dist. Latur for the offences punishable under Sections 448, 504, 506 read with Section 34 of the IPC and under Sections 3(1)(g), 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands quashed qua applicant.

12. Fees of appointed Advocate are quantified @ Rs. 6,000/- to be paid by High Court Legal Services Authority.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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