

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

40 CRIMINAL APPLICATION NO.1952 OF 2020

BAJIRAO SHANKAR DARADE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr. M.V. Salunke
APP for Respondents: Mr. P G Borade
Advocate for Respondent 2 : Ms. Manisha Dalave (Appointed)

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CORAM : SMT. ANUJA PRABHUDESSAI & R. M. JOSHI, JJ.
Dated: February 20, 2023

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PER COURT :-

1. Heard finally with consent of parties at admission stage.
2. This is an application under section 482 of the Criminal Procedure Code to quash the FIR in crime No.688 of 2020 registered with Akole Police Station, District Ahmednagar and Special Case no.8 of 2021 pending on the file of learned Sessions Court, Sangamner under sections 3(1)(r), 3(1)(S) and 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SCST Act) and under sections 323, 504, 506 of the IPC.
3. Heard learned counsel for the applicant, learned APP for the Respondent no.1-State and learned counsel for respondent

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no.2. We have perused the record and considered the submissions advanced by the learned counsel for respective parties.

4. The only question for consideration before us is ‘whether the FIR and other material collected during the course of the investigation, which forms part of the charge-sheet, makes out a prima facie case, as alleged against the applicant ?’

5. The aforesaid crime was registered pursuant to the FIR lodged by respondent no.2. The wife of the applicant is a Member of Zilla Parishad. Respondent no.2, who claims to be a social worker has alleged that in March, 2020 to wife of the applicant had inaugurated Public Water Tap scheme. Similarly, she had also inaugurated a road from Phata to Damsewadi and had assured that the work would be commenced within 15 days. He claims that the work had not commenced and the work was not commenced and the existing road was in poor condition. Respondent No.2 claims that on 11.10.2020 he and his friend Sagar had been to the house of the applicant to discuss these issues with his wife Sushama, since she was a Member of Zilla Parishad. It is stated that they met the

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applicant and while respondent no.2 was having conversation with applicant about repair of the road, his colleague and friend Sagar was recording the same on the mobile. Seeing this, the applicant got annoyed and abused him and his friend in filthy words. It is stated that applicant also abused respondent no.2 by caste name and intentionally insulted, intimidated and humiliated him. Applicant is also alleged to have snatched the mobile wherein the conversation was recorded and he compelled them to make a statement that they had entered the house under the influence of alcohol. It is stated that, subsequently, the applicant deleted the video recording and handed over the mobile. Based on these allegations the aforesaid crime has been lodged.

6. Before advertng to the facts, it would be relevant to note that Section 3(1)(r) and 3(1)(s) of the SCST Act prescribes punishment when a person not being a member of a Scheduled Caste or a Scheduled Tribe; intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; or abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

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7. In the case of **Hitesh Verma Vs. State of Uttarakhand and another** reported in 2020 DGLS 605 the Hon'ble Supreme court has held as under :-

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 & Ors. v. State through Standing Counsel & Ors.5. 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 5 (2008) 8 SCC 435 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.”

8. In the instant case, it is not in dispute that the alleged incident had taken place inside the house of the applicant. The only person allegedly present at the place of the incident was witness Sagar, who is stated to be the relative of respondent no.2. The statement of Sagar also does not indicate that the applicant herein had abused respondent no.2 in his presence by caste name or in any other manner. Hence, the contents of the FIR as well as the material collected during the course of the investigation do not indicate that the incident had taken at a place which was “within public view” or that there was any Member of the public not being the relative or friend of the respondent no.2 at the time of the incident in the house of the applicant. Therefore, the basic ingredients i.e. words uttered within public view are not made out. The offences under sections 323, 504, 506 of IPC are non-cognizable. Under the circumstances, in our considered view, the case is covered by illustrations 1 and 3 in the case of ***State of Haryana and others Versus Ch. Bhajanlal reported in 1992 SCC (Cri) 426***. Hence,

this is a fit case to exercise powers under Section 482 Cr.P.C. to prevent an abuse of the process of Court.

9. In the result, the application is allowed in terms of prayer clauses “B, B-1 and B-2”. Consequently, the FIR No.688 of 2020 registered at Akole Police Station, District Ahmednagar and Special Case No.8 of 2021 pending on the file of Sessions Court, Sangamner stands quashed.

10. Fees of Advocate Ms. Manisha Dalve, appointed to espouse cause of respondent no.2 is quantified to Rs.6,000/- (Rs. Six Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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