

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

983 CRIMINAL APPLICATION NO.1863 OF 2021

1. Uddhavrao Marotirao Dusunge
2. Prashant Anil Dusunge
3. Mininath Eknath Dusunge
4. Amol Dattatray Kokate

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
2. Nikhil Ashok Kapse

..RESPONDENTS

...
Advocate for Applicants : Mr. Narwade Narayan B.
APP for Respondent/State : Mr.P.N. Kutti
Advocate for Respondent No.2 : Mr. R.S. Kasar

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CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 19th OCTOBER, 2023.

ORAL ORDER (Per Sanjay A. Deshmukh, J.) :-

1. This application is filed for quashment of First Information Report (FIR) and proceedings in Special Case No.287 of 2020 pending before the Sessions Court Ahmednagar in pursuance of FIR being Crime No.315 of 2020 registered with Nagar Taluka Police Station, Dist. Ahmednagar for the offences punishable under sections 143, 147, 148, 149, 324, 323, 504 of the Indian Penal Code and under section 3(1)(r)(s), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short, S.C. & S.T. Act).

2. Informant – respondent no.2 averred in the report that he was proceeding back along with his friend Akshay Pathriya from Pune-Nagar Highway by bullet at about 5.30 p.m. of 26.06.2020, the vehicle bearing No.MH-16-BH-5619 came from back side and tried to stop them. The informant did not stop the bullet. Thereafter, after some distance, the informant stopped his bullet, at that time, Uddhavrao Dusunge, Prashant Dusunge, Mininath Dusunge, Ashirwad Dhage and driver Amol Kokate came out of that vehicle and started to beat the informant by fist and kick blows. Applicant no.1 – Udhavrao Dusugne assaulted by iron rod to the informant, which was given by Ashirwad Dhage to him. He alleged that we have developed enmity with them by loving his daughter. He threatened to kill and assaulted on his head by iron rod. They also abused Akshay Pathriya and beaten him by fist and kick blows. Then, they all ran away. They also tried them to stop at Khedgaon Bypass but the informant and Akshay Pathriya succeeded in escaping themselves. The report was lodged accordingly.

3. The learned advocate for the applicants submitted that the report does not disclose the abuses hurled on the caste to Akshay Pathriya. After registration of the report, allegations are made about hurling of abuses on the caste to Akshay. He submitted that earlier to the incident, the complaints were made by daughter of applicant no.1

to the Police about some earlier incidents which shows their enmity. The applicants are falsely implicated in the crime. The injury certificate shows simple injuries sustained to the informant. There is no prima facie material against the applicants. The alleged abuses hurled on the caste were not hurled in the public view. He lastly prayed to quash the proceedings in pursuance of the report and charge-sheet.

4. The learned APP for the State strongly opposed the application. The learned advocate for respondent no.2 – informant submitted that the abuses were hurled at public place in presence of informant to Akshay. There is strong evidence against the applicants and other accused, which is supported by medical certificate. The learned advocate for respondent no.2 strongly opposed the application and prayed to reject the application.

5. Perused the FIR and charge-sheet. FIR discloses the names of the applicants that they participated in the incident of assault. There is injury certificate showing simple injuries sustained to the informant in the said incident. Therefore, this application cannot be allowed for quashing the report for the IPC offences.

6. The learned advocate for the applicants relied upon the

authority of Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand and another in Criminal Appeal No.707 of 2020 dated 5th November, 2020**. In para no.14, it is held thus :-

"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., (2008) 8 SCC 435**. 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.”

7. The learned advocate for the applicants submitted that the abuses as alleged by Akshay Pathriya were not hurled in the public view, therefore, he prayed to quash the report to the extent of offence punishable under sections 3(1)(r)(s), 3(2)(v-a) of the S.C. & S.T. Act.

8. The report does not show the abuses hurled to Akshay Pathriya on his caste. However, later on in the supplementary statement and the statement of Akshay Pathriya, it is alleged that he was abused on the caste. Why delay was caused for invoking provisions of S.C. & S.T. Act is not clarified. Further, only the informant was present there. Therefore, in the facts situation of the present case, it is prima facie established that abuses were not hurled in the public view. Therefore, in view of the ratio laid down in the authority of **Hitesh Verma (supra)**, there is prima facie no evidence that applicants abused Akshay Pathriya on caste. Thus to the extent of offence punishable under sections 3(1)(r)(s), 3(2)(v-a) of

the S.C. & S.T. Act, F.I.R. and charge-sheet deserve to be quashed as it is abuse of process of the Court. The application therefore deserves to be partly allowed to the extent of offences punishable under sections 3(1)(r)(s), 3(2)(v-a) of the S.C. & S.T. Act. Hence the following order :-

ORDER

- (i) The application is partly allowed. Special Case No.287 of 2020 pending before the Sessions Court, Ahmednagar on the basis of the FIR bearing C.R. No.315 of 2020 and consequential charge-sheet for the offence punishable under sections 3(1)(r)(s), 3(2)(v-a) of the S.C. & S.T. Act is quashed.
- (ii) The matter shall go to the learned Judicial Magistrate, First Class from the Special Court, Ahmednagar.
- (iii) No costs.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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