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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 461 OF 2021**

Vasant Krushna Kumbhare Petitioner.

V/s

The State of Maharashtra and Anr. Respondents.

Mr. Sanjay Shinde a/w Anjali Binjola for the Petitioner

Mr. Sugandh Deshmukh for Respondent No.2.

Mr. J.P. Yagnik, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
R.N. LADDHA, JJ.**

DATED : AUGUST 10, 2023

ORAL JUDGMENT (PER NITIN W. SAMBRE, J):

1] Petitioner is seeking quashing of FIR being Crime No.I-503 of 2020 registered with Respondent No.1, based on the complaint lodged by Respondent No.2, so also Special Case No.22 of 2021 initiated vide charge-sheet in aforesaid crime on the file of Special Judge.

2] Facts necessary for deciding present Petition are as under:-

3] Respondent No.2 on 15.09.2020 approached Respondent No.1 Police Station Officer, stating that she is residing with her mother, sister, step-brother Harshal, cousin Hemant and brother Jayesh. It is

alleged that on 13.09.2020 while she was carrying domestic duty of cooking food, she heard a loud noise and noticed that her brother Jayesh was quarreling with the Petitioner and the Petitioner was assaulting Jayesh. When Respondent No.2 tried to intervene, she was also threatened by the Petitioner by uttering caste based insulting words. According to her, because of the aforesaid act of the Petitioner, her brother Jayesh felt insulted and humiliated and he has disclosed the same to cousin Hemant. Jayesh thereafter expired.

4] Body of Jayesh was subjected to postmortem and it was noticed that he died of pulmonary oedema with bilateral pneumonitis (severe infection of corona). She has claimed that death of Jayesh resulted into delayed FIR and accordingly for an offence punishable under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC & ST (Prevention of Atrocities) Act”) and under Section 323 of the Indian Penal Code, Petitioner came to be chargesheeted.

5] Submissions of Mr. Shinde, learned Counsel for the Petitioner

are, offence against the Petitioner is not sustainable as same has not occurred in public view, as also the witnesses cited in support of the prosecution whose statements are recorded under Section 161 of Cr.P.C. are either relatives or friends of the complainant and deceased Jayesh. According to him, independent witness has not supported the case of the prosecution. He would further claim that deceased Jayesh in spite of suffering from corona infection was driving four wheeler which dashed the vehicle of the Petitioner, resulting into registration of NC complaint on 30.09.2020 for the offence punishable under Sections 323, 504, 506, 427 of the Indian Penal Code. Mr. Shinde would invite my attention to the narration by the Petitioner as to the accident occurred because of rash driving by deceased and when objected, deceased had assaulted him after damaging his vehicle.

6] Counsel for the Petitioner would further urge that even if alleged incident, as narrated in the FIR is accepted for the sake of arguments, no offence could be inferred as same has not occurred in public view. He would also invite attention of this Court to the postmortem report so as to claim that no injuries were noticed on the body of the

deceased that being so, narrations in the FIR are palpably false.

7] While countering aforesaid submissions, Mr Deshmukh while assisting learned APP would urge that at this stage Court is required to be very slow in causing interference, as according to him, complaint discloses cognizable offence of which cognizance was rightly taken by the police authorities. He would further urge that witnesses in categorical terms have stated not only about utterances of caste based insulting words by the Petitioner against the brother of complainant but also assaulted the deceased Jayesh. According to Counsel for Respondent No.2 and learned APP, once incident had occurred in public view and at public place, Court should be slow in causing interference as satisfaction of necessary ingredients of the offence alleged can be inferred. Merely because some of the witnesses are relatives or friends of the complainant and deceased that by itself will not vitiate the investigation or prosecution of the Petitioner. Mr. Deshmukh learned Counsel for Respondent No.2 and learned APP would urge that the Court has to be sensitive to the very aims, objects and reasons behind the enactment of the SC & ST (Prevention of Atrocities) Act. They

would further urge that Petition is liable to be dismissed as same lacks merit.

8] We have appreciated the rival submissions.

9] The admitted facts in the present case are (a) Jayesh expired due to pulmonary oedema with bilateral pneumonitis (severe infection of corona), (b) postmortem report does not confirm that deceased Jayesh suffered any injuries (c) Petitioner has lodged complaint prior in point of time than the FIR in question, alleging that on 13.09.2020 at around 7.00 p.m., deceased Jayesh dashed his stationary vehicle. (d) When objected for such conduct, he not only abused the Petitioner but also assaulted him. The police authorities have treated the petitioners complaint as N.C. vide registration No.2443 of 220 under Section 155 of Cr.PC., (e) Respondent-complainant belongs to reserved category based on the caste certificate is not disputed. (f) Jayesh was suffering from pulmonary infection [Covid] on the date of incident.

10] The offence of which quashing is sought by the Petitioner is made

punishable under Section 3(1)(i), 3(1)(s), 3(2)(v) of the SC & ST (Prevention of Atrocities) Act and under section 323 of the IPC. Respondent No.2-complainant claims to be “victim” within the meaning of section 2(1)(ec) of the SC & ST (Prevention of Atrocities) Act. Section 3(1)(r) provides for punishment for offence of atrocities and it is claimed that Petitioner intentionally insulted not only Respondent-complainant but also her brother who belong to scheduled caste category within the public view and under section 3(1)(s) by abusing Respondent No.2, a member of scheduled caste in the name of caste in public view. It is alleged that since the Petitioner has also committed an offence under Section 323 of IPC, he is liable for punishment under Section 3(2)(v) of the SC & ST (Prevention of Atrocities) Act. Since contention of Counsel for the Petitioner is, incident had not occurred in public view this Court is required to deal with said contention, as in case if incident had occurred in public view then only it amounts to offence as could be inferred from the language employed in Sections 3(1)(r) and 3(1)(s) of the SC & ST (Prevention of Atrocities) Act. Narration in the case is that of assault by the Petitioner to deceased Jayesh near the house of the Petitioner and

complainant. The spot panchanama depicts that spot of the incident is on the road of Laxminagar Colony, CIDCO, Nashik. On the East of spot of incident is a house of Shadesh Datta; on the West, house of Harikeyar Nair and on the South is, Laxminagar Colony Road. Admittedly, incident is claimed to have occurred at 6.30 p.m. If the spot panchanama is considered as it is, fact remains that the offence, as alleged, claim to have occurred on public road. Now the question is, whether offence could be said to have occurred in public view. Fact remains that though incident had occurred on 13.09.2020, FIR came to be lodged on 15.09.2020 i.e. after two days of the incident, as it is claimed that Jayesh has expired on the same night.

11] The Apex Court in the matter of *Swaran Singh vs. State*, reported in **(2008) 8 SCC 435** in para 28 has observed thus :

“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.”

12] Relying on the aforesaid observations, the Apex Court in the matter of *Hitesh Verma vs. State of Uttarakhand*, reported in **(2020) 10 SCC 710** after considering Statement of Objects and Reasons of the Act, while dealing with the offence under Section 3(1)(r) has observed that even if incident had taken place at public place, since the same was not in public view, had permitted quashing. In both these judgments, Apex Court, while dealing with the issue of “public view”

has considered that public view means witnessing the incident irrespective of the place of offence by the public. The Court appears to have incorporated a rider to mean that relatives and friends will not be considered to be a part of public to infer that offence has occurred in public view. The Apex Court in its judgment in the matter of *Hitesh Verma*, cited supra in para 14 has observed as under:-

“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* [(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 (*sic*)* [*Ed. This sentence appears to be contrary to what is stated below in the extract from *Swaran Singh*, (2008) 8 SCC 435, at p.736d-e, and in the application of this principle in para 15, below:

“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.”] The Court held as under: (SCC pp.443-44, para 28)

“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.”

13] In this background, if we appreciate the case in hand, fact remains that incident is claimed to have occurred on 13.09.2020 at around 7.00 p.m. when deceased gave dash to the stationery vehicle of the Petitioner and when objected, Petitioner claimed to have been assaulted by the deceased by giving him life threats. Such fact can be inferred from the record as N.C. issued under Section 155 vide Serial No.2443/2020 depicting offence under Sections 323, 504, 506, 427 of the Indian Penal Code is placed on record. The FIR which is lodged thereafter on 15.09.2020 narrates the incident at the behest of Respondent No.2 claiming to be sister of deceased Jayesh, stating that Petitioner uttered caste based insulting words on the spot of the incident which is a public place in the presence of witnesses. It is also argued that Petitioner assaulted deceased Jayesh in the presence of witnesses whose statements are recorded. The attributions are, the

words “Chamte Kuthle” were used coupled with the fact that Petitioner in response to the query of complainant uttered such insulting words. Statement of witness viz Mr. Rameshwar Nagare friend of deceased Jayesh came to be recorded on 15.09.2020. However, statements of other witnesses, Sou Supriya Sonawane who happened to be close relative of complainant and deceased Jayesh, Sou. Mangal Sonawane, relative of deceased, Hemant, cousin brother of deceased and complainant, Sandeep, maternal uncle of deceased, Satish, maternal uncle of deceased came to be record on 25.09.2020 i.e. after 12 days of the incident. Even if statements of these witnesses support the case of prosecution having witnessed the incident or based on hearsay, the evidence cannot be considered for securing conviction as (a) the said witnesses are relatives or friends of deceased Jayesh and complainant, (b) maximum statements were recorded after 12 days of the alleged incident for which no convincing explanation is placed on record. In view of the law discussed above in the matter of *Swaran Singh* and *Hitesh Verma*, cited supra, the statement of the witnesses, who are relatives and friends can not be relied on.

14] In view of the judgments of the Apex Court in the matter of *Swaran Singh*, cited supra particularly para 28 and in the matter of *Hitesh Verma*, cited supra, particularly para 14, it cannot be said that offence alleged against the Petitioner has occurred at public place. The independent witness Harikeyar Nair, opposite to whose house incident had occurred, claimed that deceased Jayesh, so also Petitioner were arguing against each other and both were physically aggressive against each other. He has stated that complainant along with three to four people took away Jayesh to home. He was unable to narrate as to whether any caste based insulting utterances were uttered by the Petitioner or not. As such, the statement of independent witness Harikeyar Nair is not supporting the case of the prosecution. In the light of aforesaid observations, what can be noticed is, offence alleged cannot be said to have occurred in public view, particularly when the same is witnessed only by relatives and friends of complainant and deceased Jayesh. The FIR was lodged after two days before which already Petitioner had lodged a complaint of deliberate accident and assault by deceased Jayesh. Narration in the FIR does not speak of motive of the Petitioner, particularly in the backdrop of the alleged

assault by deceased Jayesh on the Petitioner and damaging his vehicle by giving dash. In this backdrop, we are of the view that even if offence registered is punishable under the provisions of the SC & ST (Prevention of Atrocities) Act, it cannot be said that Petitioner had any motive to commit the offence and the offence was committed in public view. Apart from above, offence under Section 3(1)(r) is also punishable under the provisions of IPC for a term of ten years and more and as such necessary ingredients of offence alleged under sub-clause (v) of sub-section (2) of Section 3 cannot be inferred against the Petitioner. Apart from above, offence under Section 323 of IPC is non-cognizable offence. As such, it has to be held that case of the Petitioner is covered by the judgment of the Apex Court in the case of *State of Haryana and Ors vs. Bhajan Lal and others*, reported in **1992 (Supp) 1 SCC 335**, particularly para 102, as allegation does not prima facie constitute the offence against the Petitioner and the material evidence collected also does not disclose commission of offence so as to make out a case against the Petitioner. Even if it is appreciated that Respondent No.2 has lost her brother and as such complaint was lodged after two days, the said fact perhaps has prompted her to file

this complaint, though cause of death cannot be attributed to the Petitioner. The postmortem report also does not speak of any injuries suffered by deceased Jayesh. In such an eventuality, it will be appropriate in our opinion to allow the present Petition, thereby quashing the order impunged.

15] Accordingly Petition is allowed in terms of prayer clauses (b) and (bb).

(R.N. LADDHA, J)

(NITIN W. SAMBRE, J.)