

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 553 OF 2021

1] Suresh Vishnu Gavare,
2] Govind Vishnu Gavare,
3] Rahul Jayram Gavare and
4] Amol Shankar Gavare. ...Applicants

Versus

1] The State of Maharashtra
2] Sakharam Amruta Avhad ...Respondents

Mr. Ajinkya Reddy for the Applicants
Ms. M. H. Mhatre, APP for the respondent State.
Mr. Kalpesh Patil i/by Pratik Rahade for respondent No.2.

**Coram : Nitin W. Sambre &
Sharmila U. Deshmukh, JJ.**

Date : June 15, 2023.

P. C. [Per Sharmila U. Deshmukh, J.] :

1. By this criminal application preferred under section 482 of Code of Criminal Procedure, 1973, the applicants seek quashing of the charge-sheet arising out of FIR bearing CR. No.127/2020 registered with Pimpalgaon Police Station, Tal-Niphad, Dist-Nashik for the alleged offences punishable under sections 323, 504 and 506 of the Indian Penal Code, 1860 and under sections 3(1)(r) & (s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "**SC/ST Act**").

2. Heard Mr. Ajinkya Reddy for the Applicants, Ms. M. H. Mhatre, APP for the respondent-State and Mr. Kalpesh Patil for respondent No.2.

3. Mr. Reddy, learned counsel for the applicants submits that dispute of civil nature is being given a criminal color which is evident from the fact of prior dispute over the measurement of boundaries between the applicants and respondent No.2-complainant. He points out that prior to the occurrence of the alleged incident on 24/06/2020, upon an application of applicants, notice was issued by the Deputy Superintendent of Land Records, Niphad on 18/06/2020 for measurement and fixation of the boundaries of lands of the applicants and respondent No.2 and the date was fixed on 23/06/2020.

4. He would question the delay of 10 days caused in lodging the FIR and submits that the same was lodged subsequent to the issuance of notice by the Deputy Superintendent of Police, Nashik (Rural) dated 30/06/2020 stating that there exists civil dispute over the measurement of land. He would further submit that taking the FIR as it is, no offences as alleged under the SC/ST Act are made out and as regards the offences under IPC, there is no medical evidence to support the case. He draws support from the decision of the Apex

Court in the case of ***Ramesh Chandra Vaishya Vs. The state of Uttar Pradesh & Anr., [judgment dated 19th May 2023].***

5. *Per contra*, Mr. Patil, learned counsel for respondent No. 2 submits that the delay in lodging the FIR has been sufficiently explained as it is stated in the FIR that after the incident, respondent No.2- suffered from health issue and he was admitted in Dhanwantari Hospital for two days and thereafter the FIR was lodged. He would further submit that the applicants had abused respondent No.2 in the field, which is a public place, and as such the offences under the SC/ST Act are made out.

6. Learned APP submits that at the time of alleged incident, respondent No.2- and his family members were present when the alleged abuses were hurled by the applicants. She points out that there are independent witnesses, who although not present at the time of the actual occurrence, have given a different version and have not clearly spelt out the alleged abuses made by the applicants.

7. Considered the submissions and perused the papers and proceedings with the assistance of learned counsel appearing for the parties.

8. The allegation in the FIR is that on the date of alleged

incident viz 24/06/2020 the respondent no.2 was seated outside his house and upon noticing that the applicant No.1 had come through their agricultural land questioned the applicant no 1. It is further alleged that upon being questioned, applicant No.1 abused the respondent No.2 in the name of his caste and slapped him, and, threatened to kill him. It is further alleged that at that time, respondent no.2's grand-daughters came outside the house and thereafter applicant no.1 went to his agricultural field, where applicant nos.2 to 4 were present and they abused respondent no.2 and his grand-daughters in the name of their caste, as such the FIR in question came to be lodged. Pursuant thereto investigation was carried out and charge sheet came to be filed and Special Case No 78 of 2020 is registered and pending before the Additional Sessions Judge cum Special Judge, Niphad.

9. Before adverting to the facts of the present case, it would be beneficial to reproduce Sections 3(1)(r) and (s) and Section 3 (2) (va) of the SC/ST Act which reads thus:

Section 3 Punishments for offences atrocities.

- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--
- (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;

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

10. Under Section 3(1)(r), an offence is committed if a person intentionally insults or intimidates with intent to humiliate a member of SC/ST *in any place within public view*. As regards Section 3(1)(s) an act of abusing a member of SC/ST in name of caste *in any place within public view* constitutes an offence. Section 3(2) (va) gets attracted upon the scheduled offence being committed against the person or property knowing that the person belongs to SC/ST caste. The Apex Court in the case of ***Hitesh Verma vs The State of Uttarakhand & Anr reported in (2020) 10 SCC 710*** has considered the distinction between the expression “public place” and “in any place within public view” and in facts of that case where the incident was alleged to have taken place inside the house which did not include members of the public held that it cannot be said to be a place within public view as none other was said to be present within the four walls of the building.

11. In the present case, if the allegations in the FIR are considered, it is not alleged that the agricultural land was a place within public view. The submission of learned counsel for Petitioner is that the agricultural land is a public place, however considering the decision of the Apex Court in the case of **Hitesh Verma vs The State of Uttarakhand** (supra), it is not sufficient that the alleged occurrence has taken place in public place and it must be shown to have taken place within public view. The FIR does not disclose the presence of any member of public apart from the family members of the Respondent No 2 Complainant. That apart the allegation in the FIR is that the Applicant No 1 came from the land of the Respondent No 2 and upon being questioned, a quarrel ensued. The basic ingredient i.e. "*in any place within public view*" to attract Sections 3(1)(r) and (s) is clearly lacking in the present case.

12. To invoke the provisions of Section 3(1)(s) against all the Applicants, the allegation in the FIR is that the abuses were hurled by the applicants on respondent No.2 and his family members. The FIR does not disclose which of the Applicants had hurled casteist abuses and the allegation is that all the Applicants abused the Respondent No 2 in the name of caste. It is improbable that all the Applicants abused the Respondent No 2 in chorus.

13. Pertinently, perusal of the statement of independent witness Narendra Dinkar Vatpade who is the chairman of the Tanta Mukti Committee indicates that on the same day of the alleged incident, applicant No.1 had gone to Gram Panchayat office and informed them that on that day, applicant No.1 was passing through the land in which the measurement was carried out. He was obstructed by respondent No.2 and his family members and they told him not to travel by that road, pursuant to which, there was altercation. The same statement has been given by other two other independent witnesses.

14. As far as Section 323 of IPC is concerned, the allegation is that the Applicant No 1 slapped the Respondent No 2. If we consider the the medical certificate of the Doctor dated 10/07/2020 which is on record, it discloses that there was no information of assault given by respondent No.2 to the Doctor and there was no medical history of assault and it is admitted that respondent No.2 had visited the Doctor for his regular treatment. The medical certificate records that during this period, he was not admitted to hospital for any assault or injury. As such there is no case made out to attract Section 323 of IPC.

15. What remains is Section 504 and 506 of IPC. The ingredients of Section 504 of IPC are intentional insult such as to give provocation to the person insulted with intention to cause another to break the

public peace or to commit any other offence. Even if it is accepted for sake of arguments, that there was a quarrel which ensued between the parties and there was abuse, the abuse by itself is not sufficient to attract Section 504 of IPC. As regards Section 506 of IPC, the offence of criminal intimidation is attracted upon a person being threatened with injury to any person, reputation or property with intent to cause alarm to that person or to cause the person to do any act not legally bound to do or omit to do any act which that person is legally entitled to as means of avoiding execution of such threat. The absence of *mens rea* in the facts of present case does not attract the offence under section 504 and 506 of the IPC.

16. It appears that the applicant's land is adjoining to the land of respondent no.2 and there arose a dispute as regards the boundaries, for which measurement was fixed on 23/06/2020. It appears that prior to the lodging of the FIR, the Deputy Superintendent of Police, Nashik (Rural) had issued notice dated 30/06/2020 stating that there exists a civil dispute over measurement of agricultural land. The delay in lodging the FIR casts a doubt on the genuineness of the occurrence of the alleged incident. As indicated above, the medical certificate certifies that the Respondent No 2 was not admitted to hospital for any assault or injury and no history of assault was given to the doctor.

In view of the above, we find considerable force in the submission of learned counsel for Petitioner that a civil dispute is tried to have been given criminal colour.

17. For the reasons indicated above, in our opinion, the continuation of the criminal proceeding would be an abuse of process of law as such, the charge-sheet arising out of FIR bearing CR No.127 of 2020 registered with Pimpalgaon Police Station, Tal-Niphad, Dist-Nashik is hereby quashed and set aside.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]