



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.343 OF 2022

1. Sau. Mangala W/o Manish Karemore
Aged about 40 years, Occ: Sarpanch,

2. Manish s/o Ghanshyam Karemore
Aged about 45 years, Occ: Business,

Both R/o Plot no.20 Ramkrushna
Society, New Yerkheda, Tahsil Kamptee,
District Nagpur.

..Applicants

...VERSUS...

1. State of Maharashtra,
Through PSO, Kamptee,
District Nagpur.

2. Smt. Prema W/o Siddarth Sonare
Aged about 41 years, Occ: Private work
R/o Yerkheda, Tahsil, Kamptee,
Dist. Nagpur.

... Non-applicants

Shri M.V. Rai, Advocate for applicants.
Shri M.J. Khan, APP for non-applicant no.1.
Shri B.M. Kharkate, Advocate for non-applicant no.2.

CORAM :- VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED :- 01.12.2023.

ORAL JUDGMENT (PER : VINAY JOSHI, J.):

1. Heard. **Admit.**

2. By consent of the learned counsel for the parties, the matter is
taken up for final disposal.

3. This is an application seeking to quash Charge-Sheet no.87/2020 arising out of Crime No.344/2020 registered with Police Station, Kamptee, District Nagpur for the offence punishable under section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and under Sections 294, 504, 506 read with section 34 of the Indian Penal Code (IPC).

4. The applicants have challenged the very tenability of the prosecution on account of inadequacy of the material. It is submitted that the allegations made in the First Information Report (FIR) and the material collected during investigation, even if taken at their face value and accepted in their entirety, it do not *prima facie* constitute any offence or make out the case against them. Particularly, it has been submitted that provisions of Section 3(1)(r) and 3(1)(s) would not attract since the police paper does not disclose that the alleged occurrence took place within the public view. To substantiate said contention, reliance is placed on the decision of Supreme Court in the case of ***Hitesh Verma Vs. State of Uttarakhand and another***¹. Moreover, it is submitted that the provisions of section 294 of the IPC would not attract as there is no material to infer that there were utterances or obscene acts, which has annoyed the others.

5. Learned APP as well as learned counsel appearing for the informant resisted the application by contending that the informant

1 (2020) 10 SCC 710

has specifically stated three instances in the report. Moreover, our attention has been invited to the statement of witnesses recorded during course of investigation. It is argued that, at the time of considering the application under section 482 of the Code of Criminal Procedure, the evaluation of material is not warranted, which is essentially a matter of trial.

6. At the instance the report lodged by the informant dated 30.07.2020, the crime has been registered. The informant as well as the applicants are resident of village Kamptee, Tahsil Kamptee, District Nagpur. The applicant no.1 – Mangala is Village Sarpanch whilst applicant no.2 is her husband. Parties are in rival terms on local issues. The informant stated that on 09.06.2020 around 2 pm while she was passing from Ambedkar Square, applicants accosted her. She stated that at the relevant time the applicant no.2 – Manish abused the informant in the name of caste. It is informant's case that all the time both applicants were referring the informant by her caste in the presence of villagers. The informant further stated that on 18.09.2020 around 6 pm a meeting was held at her house, at that time, the applicant no.1- Mangala gave threats and therefore the report.

7. We have examined the statement of several witnesses recorded during the process of investigation. The allegation about giving abuses in the name of caste is about the incident allegedly occurred on 09.06.2020. Though the occurrence took place at public road, however, the informant nowhere stated that any member of public was present at the relevant time. In the case of *Hitesh Verma* (referred *supra*), it is observed by the Supreme Court that the basic ingredient to constitute offence under section 3(1) (r) and 3(1)(s) is that the incident must occurred “in any place within public view.” To meet said requirement, the occurrence must be at public place that too in presence of members of public. The FIR is totally silent regarding presence of any member of public. With the assistance of both sides, we have gone through the statement of witnesses, which are totally of hearsay nature. None of the witness has stated that on 09.06.2020 at Ambedkar Square he was present when alleged abuses in the name of caste were given.

8. As regards to the offence punishable under section 294 of the IPC is concerned, there is no material to infer that the act of applicants has caused annoyance to the others. The police report is silent to make out a case that the applicants did any obscene act in public place. Besides that the allegations are only about threats which is non-cognizable nature. Having regard to the entire material

it is apparent that the allegations even if accepted at their face value it does not make out a *prima facie* material to constitute the offence. The case squarely falls within criterial no.1 and 3 as set out in para 108 in the decision of Supreme Court in the case of ***State of Haryana Vs. Bhajan Lal***¹. Continuation of such prosecution amounts to abusive of process of the Court. In view of that, the application is allowed and disposed of.

9. We quash and set aside Charge-Sheet no.87/2020 arising out of Crime No.344/2020 registered with Police Station, Kamptee, District Nagpur for the offence punishable under section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and under Sections 294, 504, 506 read with section 34 of the Indian Penal Code with Sessions Case No.25/2021 pending on the file of Special Judge (Atrocity), Nagpur.

(M.W. CHANDWANI, J)

(VINAY JOSHI, J.)

Wagh

1 AIR 1992 SC 629