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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.162 OF 2022

Dr.Pritam Gidumal Rachwani,
aged about 67 years,
occupation medical
practitioner, r/o main road,
Karanja Lad, taluka Karanja,
district Washim. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Karanja Lad,
district Washim.

2. Vinod s/o Pramodrao Wankhede,
aged about 32 years,
r/o Gautam Nagar, near
Railway Station, Karanja
(Lad), taluka Karanja (Lad),
district Washim **Respondents.**

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Shri Y.J.Chandurkar, Counsel for the Appellant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the
State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 06/07/2023

PRONOUNCED ON : 08/08/2023

JUDGMENT

1. By this appeal, under Section 14-A of The
Scheduled Castes and the Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (for short, "the said Act"), the

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appellant (accused) challenges order dated 24.1.2022 passed by learned Additional Sessions Judge, Link-court, Mangrulpir, in Special Atrocity Case No.28/2013 whereby an application filed by the accused for discharge was rejected.

2. The facts in a nutshell are as under:

The accused is a medical practitioner and running his clinic along with his wife at Karanja Lad. The offence, vide Crime No.3057/2013, was registered against him on the basis of report lodged by Vinod Pramod Wankhade, who belongs to community "Scheduled Castes", on 31.1.2013.

3. As per the informant and the report, he was engaged by the accused to paint building and clinic of the accused few months ago prior to incident. On 31.3.2013, he visited the clinic of the accused to collect his charges for the work done. However, instead of paying him the charges, the accused abused and humiliated him by using filthy language and made casteist remarks and assaulted him.

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4. On the basis of the said report, the police registered the crime against the accused. The accused preferred an application before learned Additional Sessions Judge contending that no offence is made out against him as merely because the informant was referred on his caste. It is further contention that the alleged incident has occurred in a building and not within a public view and, therefore, ingredients of the offence are not made out. The panchanama drawn by the investigating officer also shows that the alleged incident has taken place inside a clinic and, therefore, the incident is not audible to anybody. Thus, as the alleged incident is not within a public view, no offence is made out against him and, therefore, he prays that he be discharged.

5. The trial court, after hearing both the sides, observed that the offence committed is within a public view as there are witnesses who stated before the police in their statements that they have heard the abuses. The trial court had not accepted the contentions of the accused that the

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alleged incident is not within a public view. Being aggrieved with the same, the present appeal is preferred.

6. Heard learned counsel Shri Y.J.Chandurkar for the accused and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State.

7. Learned counsel for the accused submitted that recital of the First Information Report, statements of witnesses, and panchanama drawn by the investigating officer shows that the alleged incident has taken place inside a clinic and, therefore, it is crystal clear that the alleged incident has not occurred within a public view. Moreover, mere referring the informant on his caste is not an offence under the provisions of the said Act. From the chargesheet, the case is not made out to attract the ingredients of Section 3(1)(r) and 3(1)(x) of the said Act and the trial court has not considered the same and erroneously rejected the application for discharge.

8. In support of his contentions, learned counsel for the accused placed reliance of the Honourable Apex Court in

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the case of **Gorige Pentaiah vs. State of Andhra Pradesh and ors¹** wherein it is held that when the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

He further placed reliance on the decisions in the cases of

Vasant Waman Pradhan vs. Dattatraya Vithal, Salvi and anr²;

Hitesh Verma vs. State of Uttarakhand and anr³;

Vikram Johar vs. State of Uttar Pradesh and anr⁴;

Sujoy Sen Alias Sujoy Kr.Sen vs. State of W.B.⁵, and

Union of India vs. Prafulla Kumar Samal and anr⁶

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that 'public place' and 'public view'

1 (2008)12 SCC 531
2 2004(1) Mh.L.J.487
3 (2020)10 SCC 710
4 (2019)14 SCC 207
5 (2007)6 SCC 32
6 (1979)3 SCC 4

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are two different expressions. There is a clear distinction between two expressions if private place, such as courtyard of residential house, can be seen by someone and incident occurred is audible, ingredients of the said Act are attracted.

In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Shri Mahesh Sakharam Patole and ors vs. State of Maharashtra**⁷.

10. The short question arising for consideration is, whether the accused is entitled to be discharged of the proceedings initiated against him under the said Act.

11. In exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the courts have to consider broad probabilities of cases, total effect of evidence and documents produced before the courts, any basic infirmities appearing in cases while considering question of framing charges, it has to be seen whether *prima facie* case is made out or not.

⁷ 2009 ALL MR (Cri) 1601

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12. It is necessary to reproduce Section 227 of the Code of Criminal Procedure, which is in respect of discharge, as under:

227. Discharge. - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

13. Thus, threshold scrutiny is required to adjudicate applications under Section 227 of the Code of Criminal Procedure and also to consider broad probabilities of cases of evidence and documents produced before the courts.

14. The Honourable Apex Court, in the case of **Union of India vs. Prafulla Kumar Samal and anr** the cited *surpa*, noted that

"Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) that the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding

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out whether or not a prima facie case against the accused has been made out;

(2) where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial;

(3) the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused, and

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15. The Honourable Apex Court, in the case of **Sajjan Kumar vs. Central Bureau of Investigation**⁸, has held that at the time of framing of the charges, the probative value of

8 2010) 9 SCC 368—

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the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. It is further held that at the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

16. In the light of the legal principles, the facts and the material collected during the investigation are concerned, recital of the First Information Report shows that the informant was engaged by the accused to paint his clinic. Accordingly, the informant and his brother completed the said work and when they demanded their charges, at the relevant time, the accused abused in a filthy language and

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made casteist remarks i.e. "dhedge", "mahare". During the investigation, the investigating officer has drawn spot panchanama which shows that the alleged incident occurred in a clinic of the accused. As per the map of the spot of the incident, there were two rooms, one is used as a waiting hall by the patients and another is patients' examination room. The informant had also initially filed application wherein he stated that at the relevant time he was accompanied by two persons namely Sunil Bhise and Nitin Wankhade.

17. The statement of Nitin Wankhade is recorded, in which he stated that the accused abused the informant in a filthy language by making casteist remarks.

The statements of one Abdul Majjit Dawoodbhai Punjani and Mohd.Idris Dawoodbhai Punjani are recorded, in which they have also stated that they are residing in the same locality wherein the clinic of the accused is situated. On 31.3.2013, they have heard the quarrel between the accused and the informant. They have also heard the abuses hurled by the accused.

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18. Thus, the allegations made by the informant is supported by the witnesses who heard the abuses. The application for discharge is filed mainly on the ground that the alleged incident has occurred inside a clinic. Thus, the incident has not occurred in a public view and, therefore, the provisions are not attracted.

19. In the case of **Gorige Pentaiah vs. State of Andhra Pradesh and ors** cited *supra*, placed by learned counsel for the accused, facts of case show that ingredients were missing and, therefore, the Honourable Apex Court held that it would be unjustified to ask the accused to face the trial.

As far as the decision in the case of **Hitesh Verma vs. State of Uttarakhand and anr** cited *supra*, is concerned, it is held that the offence under Section 3(1)(4) of the said 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 insult or intimidation to a person will not be an offence under the Act

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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. It is further held that as per the First Information Report, the allegations of abusing the informant were within the four walls of building. It is not the case of the informant that there was any member of the public not merely relatives or friends at the time of the incident in the house and, therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out.

20. The Honourable Apex Court in the case of **Swaran Singh and ors vs. State, thr. Standing Counsel and anr⁹** held that one must not confuse expression 'place within public view' with the expression 'public place'. A

9 (2008)8SCC 435

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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.

21. Considering the decisions, the material collected during investigation shows that the informant was accompanied by two persons at the time of the incident. Moreover, the alleged abuses were heard by the persons staying in the locality.

22. Section 3(1)(r) of the said Act, reads as, "intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

23. The basic ingredients of the offence can be classified as (i) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (ii) in any place within public view. The offence

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under Section 3(1)(r) of the said Act would indicate the ingredients of intentional insult and intimidates with an intent to humiliate and that is also within the public view.

24. Thus, the offence in the present case though occurred inside the clinic, which is not the public place, the place was audible and visible to the people and, therefore, it would constitute an offence under Section 3(1)(x) and 3(1)(r) of the said Act.

25. Learned Additional Public Prosecutor for State has rightly placed reliance in the case of **Shri Mahesh Sakharam Patole and ors vs. State of Maharashtra** cited *supra* wherein the issue is dealt by this court and it is observed that if a private place, such as the courtyard of a residential house, can be seen by someone from road or lane outside the boundary wall, and if the incident occurred at such a place is audible and visible to the people, it would, indubitably constitute an offence under section 3(1)(x) of the Act, it being a place within public view. In other words, a place of offence can be a private place, but if the remarks

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made, with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, are audible and/or if members of public have viewed the incident, even if the incident occurred at a private place, such as the courtyard of a house, in my opinion, it would constitute an offence.

26. The Honourable Apex Court also held in the case of **Swaran Singh and ors vs. State, thr. Standing Counsel and anr** cited supra that even if it is private place, but some members of the public are there and it would be an offence since it is in the public view.

27. Recital of the First Information Report and the statements of various witnesses shows that the alleged incident though occurred in a private place, it was audible to persons. Moreover, the informant was accompanied by two persons who heard the said abuses which is sufficient to show that the ingredients of the offence are made out.

28. It is evident from the statements of objects and reasons of the said Act that it was enacted to prevent humiliation and harassment to the members of the

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Scheduled Castes and the Scheduled Tribes Communities and, therefore, the expression within public view is to be interpreted in such a manner and, therefore, while interpreting the expression 'public view', it is to be held that the incident was viewed by the public.

29. For the reasons stated above, I have no hesitation to hold that chargesheet and various statements recorded by the investigating officer attract ingredients of the offence and *prima facie* case is made out at its face value to frame the charge against the accused and, therefore the order passed by the trial court deserves to be maintained as no error is committed by learned Judge of the trial court.

30. In this view of the matter, as the appeal has no merit and liable to be dismissed, the same is dismissed.

(URMILA JOSHI-PHALKE, J.)