



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.932 OF 2023

1. Sharifkhan Shabbirkhan Pathan,
age 45 years, Occ. Labourer.
 2. Sardar Khan Babu Khan,
age 31 years, Occ. Mechanic,
Both R/o N-13, Hudco,
Mujafarnagar, Aurangabad
- Applicants.

Versus

1. The State of Maharashtra,
through its police inspector,
Jalna Police Station,
Tq. & Dist. Jalna.
 2. Shobha Sudam Salve,
age 60 yrs, Occ. Household,
R/o Kadwanchi, Tq & Dist. Jalna.
- Respondents.

...

Advocate for Applicants : Mr. V P Patil

APP for Respondents : Mr. B B Bhise

Advocate for Respondent no.2 : Ms. Preeti R. Wankhede

...

CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Dated : September 12, 2024.

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. The applicants have approached this Court under section 482 of the Criminal Procedure Code, thereby praying to quash and set aside the charge-sheet no.203 of 2022 in Special Case No.204 of 2022 arising out of FIR in crime no.352 of 2022 dated 11.6.2022, registered with police station, Jalna for the

offences punishable under section 354, 324, 323, 504, 143, 147, 148, 149 and section 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC & ST Act).

2. Respondent no.2 lodged a report dated 11.6.2022 with police station, Jalna alleging that her family is engaged in agriculture labour. Land bearing gat no.193 admeasuring 36 acres is in possession of her family within vicinity of Kadvanchi. All brothers of respondent no.2 are residing in separate houses constructed in the land. One Aminabi has raised claim over the said land. Litigation is pending before the Civil Court.

3. On 11.6.2022 at about 1.30 p.m. while informant with other ladies was in her dwelling house, accused persons arrived with motorcycles and auto-rickshaw and asked her and others to hand over vacant possession of the land to them. Since male members were not present in the house, she asked accused to wait for some time. However, accused persons manhandled her and other ladies. One of the accused threatened them with knife held in his hand. Daughter-in-law of informant namely Rama Ishwar Salve suffered bleeding injury of knife. Some of the accused persons entered in the house and assaulted her. It is further alleged that although accused persons were knowing that informant belongs to scheduled caste, they raised dispute over the land and assaulted ladies present in house and outraged their modesty. On the basis of aforesaid information, crime no.352 of 2022 came to be registered against accused Sharif Khan, Sardar

Khan and other 4 to 5 unknown persons for the offences punishable under sections 354, 324, 323, 504, 143, 147, 148, 149 and section 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Investigation progressed. Finally, charge-sheet no.203 of 2022 in Special Case No.204 of 2022 came to be filed which is pending for trial.

5. Mr. Patil, learned advocate appearing for the applicants submits that the applicants have been falsely implicated in the aforesaid crime. Although, informant and her family members have lost civil litigation up to High court in respect of land survey no.76 (block No.193) situated at village Kadvanchi, still they are raising claim over the property. The false and frivolous complaint has been filed only with intention to deter the applicants from cultivating the land. He would submit that from contents of FIR, offence under section 3 (1)(w)(i)(ii) of the SC and ST Act can not be made out against the applicants. He would therefore urge to quash and set aside the FIR and consequential criminal proceeding pending before the Sessions Judge, at Jalna.

6. Per contra, Mr. Bhise, learned APP for State and Ms. Priti Wankhede learned advocate appearing for respondent no.2 vehemently opposed application contending that FIR is lodged in the year 2022. Present proceeding is filed in 2023. Special Judge took cognizance against accused persons vide order dated 11.8.2022. Contents of the FIR and statements of witnesses depicts complicity of applicants in commission of

offence. There is triable material against the applicants, therefore, at this belated stage, exercise of inherent powers under section 482 of the Cr.P.C. would not be necessary.

7. We have considered the submissions advanced by learned advocates appearing for the respective parties. We have perused the FIR and statements of the witnesses recorded during course of investigation as well as medical evidence which is made part of the charge-sheet.

8. Apparently, there is civil dispute between family of the informant and accused persons over land gat no.193 situated at Kadvanchi. The Judgment of Appellate Court upholds claim of the applicants for possession of the property. Second appeal filed before this Court against said order is dismissed long back for want of prosecution. In execution of the decree as passed by the District Court, measurement of the land was directed. In this factual background, we considered contents of the FIR and material in the charge-sheet. The FIR states that accused persons arrived in land gat no.193 while the informant and other ladies were present in the dwelling house. Accused persons asked them to vacate the premises. One of the accused threatened them using knife. One Rama Salve suffered bleeding injury due to assault of knife. Accused persons forcibly entered in the home, assaulted informant and dragged her out of the home. The 161 statement of injured Rama Ishwar Salve also give similar version of the incident. In last part of the FIR, stipulation is made that accused persons were knowing that informant belongs to schedule caste; inspite of

that they raised dispute over land, entered into the house and beaten informant.

9. Plain reading of FIR would depict that inception of the incident is on account of civil dispute between the parties. Even assuming contents of the FIR are true and correct, there is nothing to infer that accused persons raised dispute or committed offence against informant and others because they were belonging to scheduled caste. There is nothing to depict that action of the accused persons was designed or motivated against informant or others because they belong to schedule caste. Apparently, quarrel was on account of rival claims as to possession of the suit land.

10. So as to find out veracity of contents in the FIR, we have perused medical evidence and noticed that Rama Salve, who allegedly suffered bleeding injury due to assault on knife, on examination found to have suffered simple injury, probable weapon used is blunt and hard object. Therefore, narration in the FIR is apparently inconsistent to the medical record. Injury certificate issued by Medical Officer nowhere depicts bleeding injury caused by sharp edged weapon like knife. Prima facie, it appears that contents of the FIR do not narrate true and correct version of the incident.

11. We are conscious that veracity of contents of the FIR will have to be tested during course of the trial, hence, we are not inclined to entertain the application in respect of charged offences under Indian Penal Code. However, we deem appropriate to examine if offences under Atrocities Act would

attract on the basis of alleged offences in the FIR and charge-sheet. Section 3(1)(w)(i)(ii) reads as under.

Section 3(1) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 :-

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

w(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation. For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act: Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity: Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

12. The plain reading of sub-section w(i)(ii) would depict the intentional touching of sexual nature by accused is required to make out offence, but from contents of the FIR or charge-sheet, such intentional touch of sexual nature by any of accused against victim cannot be gathered. Therefore, we are of the considered opinion that ingredients of offence punishable u/s 3(1)(w)(i)(ii) are not fulfilled. Further, even

informant belongs to Schedule Caste; unless material in the charge-sheet indicates that she was victimized owing to her caste or inception of the dispute was motivated to insult or oppress the victim belonging to schedule caste or schedule tribe, the offences under atrocities Act may not attract. As discussed above, in the present case, inception of the quarrel is in chequered civil dispute which has nothing to do with caste of respondent no.2. Even, FIR do not allege that respondent no.2 or others were victimized because of their caste.

13. The Supreme Court of India in case of ***Hitesh Verma Vs. The State of Uttarakhand and another reported in (2020) 10 SCC 710*** has recently considered the aforesaid legal position and observed as under :-

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under [Section 3\(1\)\(r\)](#) of the Act is not made out.

14. Keeping in mind the proposition of law espoused by the Supreme Court of India in the aforesaid judgment, we are of the considered view that offences of Prevention of Atrocities Act does not attract in the facts of the present case particularly, keeping in mind long standing civil dispute between the parties, possibility of false implication of the applicants in

serious offences under Atrocities Act cannot be ruled out. Further, in view of inconsistency of medical evidence and contents of the FIR, the incident as stated appears to be inherently improbable.

15. At this stage, reference can be made to guidelines by the Supreme Court of India. The Supreme Court of India in case of **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors** reported in **AIR 1992 SC 604** has laid down guidelines for exercise of powers under section 482 of the Cr.P.C., which reads thus :-

“108 .In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of*

the same do not disclose the commission of any offence and make out a case against the accused.

4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

16. We find that clause nos.3 and 7 of the aforesaid guidelines squarely covers the present case. Hence, this is a fit case to exercise jurisdiction under section 482 of the Criminal Procedure Code to the extent of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, we pass the following order. :-

ORDER

- i. Criminal application is **partly allowed**.
- ii. The impugned FIR in crime no.352 of 2022 dated 11.6.2022, registered with police station,

Jalna and consequential proceeding Special Case No.204 of 2022 pending before the Special Court at Jalna, to the extent of offence punishable under section 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside as against the applicants/accused herein.

iii. Criminal application stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

...

aaa/-