



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPLICATION NO.2254 OF 2023

- 1 Yashpal Darbarsing Girase,
Age 36 yrs., Occ. Service,
R/o Plot No.35, Saundary Shrushti Nagar,
Shahada, Dist. Nandurbar.
At present r/o Shivaji Nagar,
Sakri, Tq. Sakri, Dist. Dhule.
- 2 Prashant Raghunath Dhavale,
Age 41 yrs., Occ. Service,
R/o Nehru Nagar, Sakri,
Tq. Sakri, Dist. Dhule.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Superintendent of Police,
Dhule.
- 2 Police Inspector,
Police Station, Sakri,
Tq. Sakri, Dist. Dhule.
- 3 Vasant Barku Jagtap,
Age 55 yrs., Occ. Service,
R/o Indira Nagar, Pimpalner,
Tq. Sakri, Dist. Dhule.

... Respondents

...

Mr. P.H. Patil, Advocate for applicants

Mr. A.M. Phule, APP for respondent Nos.1 and 2

Mr. A.D. Sonar, Advocate for respondent No.3

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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 28th NOVEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashing the proceedings of Atrocity Special Case No.193/2022 pending before learned Special Judge, under the S.C. & S.T. Act, Dhule arising out of First Information Report vide Crime No.310/2022 dated 26.08.2022 registered with Police Station, Sakri, Tq. Sakri, Dist. Dhule, for the offence punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. P.H. Patil for applicants, learned APP Mr. A.M. Phule for respondent Nos.1 and 2 and learned Advocate Mr. A.D. Sonar for respondent No.3.

3 It has been vehemently submitted on behalf of applicants that First Information Report which is lodged by respondent No.3 is out of vengeance and no such incident as stated had taken place. In fact, applicant

No.1 had lodged First Information Report vide Crime No.304/2022 on 23.08.2022 against the informant for the offence punishable under Sections 353, 323, 504, 506 of the Indian Penal Code with the same Police Station, which is earlier in point of time to the First Information Report lodged by respondent No.3. Therefore, the present First Information Report is a counterblast with an intention to create defence. There is delay of three days and eight hours in filing the First Information Report. The Deputy Executive Engineer, Sub Division, Sakri had submitted disciplinary action report against the informant to the Executive Engineer, Rural Division, Dhule. Thereafter, informant came to be suspended on 26.08.2022. With some fake allegations the First Information Report has been lodged, which deserves to be set aside so also the entire proceedings.

4 Learned APP as well as learned Advocate for respondent No.3 submitted that now, the investigation is complete and charge sheet is also filed. There are statements of witnesses, which support the First Information Report and, therefore, this will not be a fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised.

5 We have considered both the First Information Reports. It is to be noted that the First Information Report which is lodged by applicant No.1

was on the same day at 18.33 hours i.e. on the day of incident on 23.08.2022. However, the incident is stated to have taken place between 9.40 to 10.00 a.m. and, therefore, strictly speaking there is delay in lodging the said First Information Report also, but the present First Information Report is in respect of incident that had taken place at 10.00 a.m. on 23.08.2022 and has been lodged at 18.43 hours on 26.08.2022. Certainly there is delay but in both the cases the delay can be explained and that alone cannot be the ground for setting aside the First Information Report and the proceedings.

6 If we consider the First Information Report in question, respondent No.2 says that he had gone to Sakri Sub Division at 10.00 a.m. on 23.08.2022 with a request that he should not be transferred from Pinjarzadi. According to him, he had gone to meet Deputy Engineer of Sakri Sub Division Mr. Dhavale i.e. present applicant No.2. Interesting point to be noted is that in the First Information Report respondent No.3 says that he is not even aware about the full name of applicant No.2. He then says that after his arrival in the said office one Mr. Girase came, whose full name was not known to him. He is applicant No.1. Then he says that applicant No.2 had not considered his request. Therefore, he told applicant No.2 that he would go to Dhule Rural Division and would present his grievance. Then

applicant No.2 asked him to go to Dhule. According to applicant, when he was returning, he was called and, therefore, went ahead. At that time, applicant No.1 abused him and caught his collar and had uttered, “तुम्ही आदीवासी कोठ्यातून भरती झाले आहेत आणि फुकटचा पगार घेतला. तुम्ही काम व्यवस्थित करत नाहीत.” (You have been selected from Tribal quota and you took payment without work. You do not work properly.) When the informant told him that he had done proper work up till now, then applicant No.1 got annoyed and had hit him paper weight on his head and also assaulted him by fists. According to him, he became ill and, therefore, his wife admitted him to Sakri Rural Hospital and then he was transferred to Hire Medical College in Ambulance around 8.00 p.m. on 23.08.2022.

7 Thus, according to him, for attracting ingredients of Section 3(1) (r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, he says that he was abused and insulted in the name of caste. The First Information Report as well as entire contents of charge sheet would not disclose exactly where the incident had taken place. When he says that he had gone to meet applicant No.2 in his office, then certainly it will have to be presumed that applicant No.2 would have been sitting in his cabin. The sketch attached to the spot panchnama gives a clear picture of the same. Though it is then stated that it is a Sub Division office, the descriptive

part of the panchnama does not give the clear picture. Unless the said spot is a public place or a place within public view, the offence under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act will not get attracted. Further, as per the informant, he was abused by saying that he is Adiwasi. If we consider his caste certificate and certificate of validity, it is stated that he belongs to Kokani Tribe, which is a Scheduled Tribe. The list of Scheduled Tribes in Maharashtra states 'Kokani' as Tribe under the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1978 as well as 2002. There is no tribe by name 'Adiwasi'. The persons from all the Tribes which are scheduled as per the said list cannot be termed as 'Adiwasi' and word 'Adiwasi' *per se* cannot be taken as an insult. Therefore, certainly, the offence under Section 3(1)(r) and 3(1)(s) is not made out. The charge sheet also includes Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, but as aforesaid, there is nothing in the First Information Report as well as in the charge sheet to show that the present applicants were having knowledge that respondent No.2 was belonging to a Scheduled Tribe. There was no mention that at any earlier point of time the applicants had met informant and they were aware about the caste/tribe of informant. One another fact to be noted is that the First Information Report does not disclose that the said incident is witnessed by any independent witness. Therefore, taking the law laid down

by Hon'ble Supreme Court in **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 Supreme Court Cases 710] we hold that the ingredients of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are not made out and, therefore, on this count the proceedings as well as the First Information Report deserve to be set aside to that extent. As the First Information Report has been lodged by applicant No.1 against the informant i.e. respondent No.2, it is accepted that some incident had taken place. From the record it also shows that the informant was admitted to Hire Hospital on 23.08.2022 and the history that was given there was of assault and, therefore, we are of the opinion that there appears to be some case made out for the offence under the Indian Penal Code. Of course, those Sections would disclose the non cognizable offence, but, since we are quashing the First Information Report now, the applicants cannot take advantage of the fact that instead of lodging the NC complaint the offence is also registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. We leave it to the concerned Court to take further action. We, therefore, proceed to allow the application partly. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.

ii) Proceedings of Atrocity Special Case No.193/2022 pending before learned Special Judge, under the S.C. & S.T. Act, Dhule arising out of First Information Report vide Crime No.310/2022 dated 26.08.2022 registered with Police Station, Sakri, Tq. Sakri, Dist. Dhule stands quashed and set aside as against applicants viz. 1) **Yashpal Darbarsing Girase** and 2) **Prashant Raghunath Dhavale** to the extent of offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 only.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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