



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.4154 OF 2022**

1. Babasaheb Chandrabhan Galande,
Age: 53 years, Occu. Agri,
2. Ajinkya Babasaheb Galande,
Age: 32 years, Occu. Agri,
3. Parag Babasaheb Galande,
Age: 31 years, Occu. Private Service
4. Shubham Babasaheb Galande,
Age: 26 years, Occu. Private Service,
All R/o. Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar.

..Applicants
(Orig. accused)

Versus

1. The State of Maharashtra,
Through Police Inspector,
Shrirampur Police Station,
Tq. Shrirampur, Dist. Ahmednagar.
2. Ashok Mahadu Pawar,
Age: 37 years, Occu: Labour,
R/o. Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar..

..Respondents
(Resp. No.2 is Ori. complainant)

...

Mr. A. N. Barhate Patil, Advocate for the Applicants.
Mr. V. K. Kotecha, APP for Respondent No.1.
Mr. V. B. Giri, Advocate for Respondent No.2.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 20th SEPTEMBER, 2024.**

ORDER (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 FIR in Crime No.401/2022 dated 25.10.2022 registered with Shrirampur Taluka Police Station, Dist. Ahmednagar for

offences punishable under Sections 323, 324, 34 of the Indian Penal Code and Sections 3(2)(V-a), 3(1)(r)(s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 as well as consequential criminal proceeding pending before Special Court at Shrirampur.

2. The respondent no.2 lodged report with Shrirampur Taluka Police Station alleging that on 25.10.2022, he supplied milk at dairy and proceeded to Haregaon. At about 10.10 am while he was riding on motorcycle bearing Registration No.MH-17-CA-4645 and reached near old Curch, the accused Babasaheb Chandrabhan Galande and his three sons intercepted him and kicked on motorcycle. They raised assault on him, hit by iron article on his face and head. Consequently, he sustained injuries. He lost consciousness. The accused persons did not utter any word or without conversation left the spot after raising assault. He has been brought to the Sakhar Kamgar Hospital at Shrirampur. Consequently, the report is lodged.

3 On the basis of aforesaid report, Crime No.401/2022 was registered against accused Babasaheb Galande and his three sons for offences punishable under Section 323, 324 r/w 34 of the Indian Penal Code. The investigation progressed. Finally charge-sheet has been filed in the Court of Judicial Magistrate First Class at Shrirampur against accused persons with additional offences under Sections 3(2)(V-a), 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. along with offences punishable under Sections 324, 323, 504, 506, 201 r/w 34 of the Indian Penal Code and

4. Mr. Barhate Patil, learned Advocate appearing for the applicants submits that applicants have been falsely implicated in aforesaid crime owing to pending civil dispute between the parties.

Previously, complaints have been filed against informant regarding misappropriation of money of Adivasi community. The contents of FIR do not show stipulation constituting offence under Atrocities Act. Subsequently, such allegations are introduced by way of supplementary statement. Even the medical evidence is not in conformity with the allegations in the FIR. Absolutely false and frivolous report has been filed against applicants. He would further submit that present FIR is nothing but counter blast against FIR lodged by applicant no.1 against Rangnath Dahite and others as regards to property no.385. The respondent no.2 is in the habit of filing false criminal cases under Atrocities Act and extract amount from accused persons. Mr. Barhate Patil would submit that applicant nos.3 and 4 are employed in Information Technology sector. The applicant no.3 is employed as Engineer in Private Company at Bhopal. Although they were not present in the village, they have been falsely implicated as accused.

5. Per contra, Mr. Kotecha, learned APP appearing for the respondent-State and Mr. Giri, learned Advocate appearing for respondent no.2 vehemently opposes prayers in the application contending that first information report was recorded while respondent no.2 was hospitalized. His supplementary statement is recorded on 31.10.2022, wherein there are specific stipulation attracting offences under Atrocities Act. The falsity of allegations cannot be gone into while considering application under Section 482 of the Criminal Procedure Code. They would, therefore, urge to reject application.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely gone through the contents of FIR and charge-sheet. Apparently, alleged incident occurred on 25.10.2022 at about 10.10

am. The respondent no.2 was treated for injuries at Sakhar Kamgar Hospital, Shrirampur. His statement was recorded while he was hospitalized. Consequently, FIR in Crime No.401/2022 has been registered on the same day. Plain reading of FIR shows that there are omnibus allegations regarding assault by applicant no.1- Babasaheb Galande and his three sons. The FIR further stipulates that since informant suffered head injury, he lost his consciousness. All the applicants left the spot without uttering single word. Consequently, offence under Section 323, 324 r/w 34 of the Indian Penal Code had been registered against Babasaheb Galande and his three sons. The investigation progressed and finally charge-sheet has been filed for offences punishable under Sections 324, 323, 504, 506, 201 r/w 34 of the Indian Penal Code and added offences under Sections 3(2)(V-a), 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

7. The charge-sheet includes supplementary statement of respondent no.2, allegedly recorded on 31.10.2022 in the hospital. The first time reference is made regarding abuses or utterance of caste by accused Babasaheb/applicant no.1. Consequently, offences under Atrocities Act have been added. The third supplementary statement of respondent no.2 is recorded on 09.11.2022, wherein again allegations regarding utterance of caste or abuses referring to caste have been incorporated. Pertinently, entire charge-sheet do not include statement single eye witness to the incident. The contents of FIR do not stipulate any allegation that respondent no.2 was ever abused by accused persons. On the other hand, it stipulates that accused persons left the spot without uttering single word. In that scenario, supplementary statement recorded after seven days of incident, wherein first time reference is made

regarding abuses with utterance of caste cannot be believed. In FIR respondent no.2 states that because of assault, he lost his consciousness. If that is correct position, then allegations regarding utterance or abuses on caste brought after seven days of incident are palpably false and afterthought. Interestingly, incident occurred in the morning hours at about 10.10 am on a public road, but none of the witness cited in charge sheet supports contents of the supplementary statement. Even otherwise allegation regarding utterance of caste or abuses is omnibus. It is not discernible from the contents of the supplementary statement that such utterance was intended to humiliate respondent no.2.

8. In aforesaid background, reference can be made to the observations of Supreme Court of India in case of ***Hitesh Verma vs State Of Uttarakhand and another***¹, which reads thus:-

“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.”

9. If aforesaid preposition of law is applied in the facts of the present case alongwith parameters of law regarding exercise of jurisdiction under Section 482 of the Criminal Procedure Code as prescribed in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***², we are of the considered view that no offence under Section 3(2)(V-a), 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 can be made out against applicants. Hence, we proceed to pass following order:

¹ (2020) 10 SCC 710.

² AIR 1992 SC 604.

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.401/2022 dated 25.10.2022 registered with Shrirampur Police Station, Dist. Ahmednagar as well as consequential criminal proceeding pending before Special Court at Shrirampur is hereby quashed and set aside to the extent of offences punishable under Sections 3(2)(V-a), 3(1)(r)(s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, however, proceeding to the extent of offences under penal code may continue against accused in accordance with law.
- c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE