



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

CRIMINAL APPLICATION (APL) NO.176 OF 2021

Vaishali D/o Sheshrao Charpe
Aged 36 Years, Occ: Government
Service (Police),
R/o. Plot No. 113, Near Shrikrushan,
Sabhagruh, Godhni Road, Nagpur
Dist- Nagpur.

Applicant

-Versus-

1. State of Maharashtra
Through PSO, P.S. Ajani
Dist - Nagpur
2. Mallika W/o Yogesh Chafekar
Age: 29 Years, Occ: ,
R/o : Godhani Road Zingabai Takli,
Rashtrasant Nagar, Near Pandurang
Hall, Nagpur, Currently at Dr.
Ambedkar Nagar, Kunjilal Peth, Nagpur.

**Non-
Applicants**

Mr. S.S. Sohoni, Adv. for the applicant.
Mr. U.R. Phasate, APP for Non-applicant No.-1.
Ms. Apurva Kolhe, appointed Adv. for Non-applicant No.-2.

**CORAM : VIBHA KANKANWADI AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 18/07/2024

ORAL JUDGMENT (Per :Vrushali V.Joshi, J.)

Heard.

2. By way of the instant application u/s 482 of the Code of Criminal Procedure, 1973, the applicant is praying for quashing of charge-sheet bearing (Special Case No.583 of 2020) arising out of Crime no.298/2020 registered at Police Station Ajani, Nagpur for the offences punishable under Sections 498-A r/w 34 of the Indian Penal Code and 3(1)(r),3(1)(s) and 3(1)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending before the District & Additional Sessions Judge-10, Nagpur.

3. The First Information Report No.0298 of 2020 in question was lodged by non-applicant no.2 on 09.06.2020 at Police Station Ajani, Nagpur, in respect of an incident alleged to have been occurred on 31.05.2020.

4. The facts of the case in brief are as under:-

The applicant is not the relative of husband of non-applicant No.2. The allegations are made against this applicant that the husband of non-applicant No.2 was having affair with the applicant and therefore her husband did not treat her properly. The non applicant No.2 is from the Scheduled Caste community and

the husband is of Mali community. Therefore, it is alleged that the family members and the husband used to torture her by passing comments on her as she is belonging to said caste. Prior to filing of the First Information Report, the complainant came to know about the fact that this applicant and her husband were having love affair. The non-applicant no.2 decided to caught him red handed and on 31.05.2020, she along with her cousin sister followed them and the applicant and the husband of non applicant No.2 were found near Futala lake. There, the cousin of the complainant has clicked the photographs. At that time, the quarrel took place between non-applicant No.2 and the applicant. At that time applicant abused the complainant humiliating her caste.

5. On the complaint, the offence under Section 498-A along with Section 3(1)(r), 3(1)(s) and 3(1)(z) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered.

6. The learned counsel for the applicant has stated that as the applicant is not the relative of the husband of the complainant, the offence under section 498-A will not be attracted. For the

incident of insulting the caste of the complainant in public, the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is registered.

7. The learned Advocate appearing for the applicant has relied on the judgment of Hitesh Kumar Vs. State of Uttarakhand and anr. (2020)10 SCC 710 in support of his argument that though the incident took place at Futala road it was not within the public view.

8. On the other hand, learned Advocate Ms. Apurva Kolhe, appointed for the non-applicant No.2, strongly opposes the submissions made by the applicant. She states that, the First Information Report dated 09.06.2020 is not an after thought, on the contrary it is in continuation of a pending case before the Bharosa cell prior to the alleged incidence of 31.05.2020, which was between the accused no. 1 and the non-applicant.

9. Heard the learned counsel appearing for the applicant and learned APP and the learned counsel appearing for the non-applicant No.2 appointed through legal aid.

10. Admittedly, the applicant is not the relative of the husband of the non-applicant No.2, therefore, the provisions of 498-A of the Indian Penal Code will not be attracted against this applicant. The offences under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are also registered.

11. Section 3(1)(r), Section 3(1)(s), Section 3(1)(z) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act speaks as under :-

Section 3(1)(r): intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within 'public view':

Section 3(1)(s): Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place with 'public view';

Section 3(1)(z): forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence.

12. These offences are registered against the applicant along with the family members. As per the complaint lodged by the non-

applicant No.2, the incident took place near Futala lake and the alleged abuses uttered by the applicant insulting her caste. Though it is in public place nothing is on record to show that the persons, who were present there heard said abusive language therefore, the intention to humiliate the person in public view will not be attracted. Section 3(1)(r) and Section 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act speaks about 'public view' the applicant relied on the Judgment in the case of **Daya Bhatnagar and ors. Vs. State reported in 2004 SCC OnLine Del.33**. It is observed that :-

“The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as

strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

13. In this case, though the words were allegedly used by the applicant on public road but there is no evidence that it was heard by anybody else than her cousin. There is no statement of any witness that they heard the said words. Intention is an essential ingredient for the offence of 'insult', intimidation and humiliation of a member of Scheduled Caste or Scheduled Tribe.

14. It is also observed by this Court in the case of Pradnya Pradeep Kenkare and anr. Vs. State of Maharashtra reported in 2005 SCC OnLine Bom. 574. It is observed by the Hon'ble Apex Court in paragraph No.8 as under :-

"However, the learned Advocate is justified in contending that the complaint nowhere discloses that the said expression was used in public view. In fact, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. It is nowhere stated by the complainant that at the time when the said statement was made by the petitioner No. 2, i.e.

on 15th August, 2004 at 9.30 a.m., there was any stranger to witness the said incident. The provisions of Section 3(i)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(i)(x) of the said Act. In the provision of law comprised under Section 3(i)(x) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(i)(x) of the said Act".

15. Hence, *prima facie*, no case is made out under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

16. The offence under Section 3(1)(z) will not be attracted against the applicant as she has not compelled the non-applicant No.2 to leave her house. As *prima facie* offences are not made out against this applicant, the Criminal Application is allowed.

17. Charge-sheet bearing (Special Case No.583 of 2020) arising out of Crime no.298/2020 registered at Police Station Ajani, Nagpur for the offences punishable under Sections 498-A r/w 34 of the Indian Penal Code and punishable under Sections 3(1)(r),3(1)(s) and 3(1)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending before the District & Additional Sessions Judge-10, Nagpur is hereby quashed and set aside.

18. Criminal application stands disposed of.

(MRS.VRUSHALI V. JOSHI, J) (VIBHA KANKANWADI, J)