



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

CRIMINAL APPLICATION (APL) NO. 1079 OF 2022

**APPLICANT/
APPELLANT :**

Rajendra Gyandev Rajgire, Age: 48 years,
Occu.: Bank Employee, R/o Plot No.166,
Gopal Krushna Nagar, Wathoda Pandhan
Road, Nagpur.
Mob. No.9890425844

-Versus-

**NON-APPLICANTS/
RESPONDENTS :**

1. State of Maharashtra, through its P.S.O.
Mouda, Tah. Mouda, District Nagpur.
2. Rajani Kailas Wakade, Age : 36 years,
Occu.: Agriculturist, R/o Dhanla, Tah.
Mouda, Dist. Nagpur.

Mr.A. P. Raghute, Advocate for the applicant/appellant.
Mr. S.S.Doifode, APP for the non-applicant/respondent No.1.
Mr.Nitesh Dolas, Advocate h/f Mr. A.B.Moon,
Advocate for non-applicant/respondent No.2

CRIMINAL APPLICATION (APL) NO. 351 OF 2024

**APPLICANT/
APPELLANT :**

Shri Pranay Rajendra Rajgire, Age: 21
years, Occu.: Student, R/o Plot No.166,
Gopal Krushna Nagar, Wathoda Pandhan
Road, Nagpur.
Mob. No.7972772402

-Versus-

**NON-APPLICANTS/
RESPONDENTS :**

1. State of Maharashtra, through Station Officer Mouda, District Nagpur Rural.
2. Smt.Rajni Wd/o Kailas Wakade, Aged about 37 years, Occu.: Labour, R/o Indira Nagar, Post Dhanla, Taluka Mouda, District Nagpur.

 Mr.A. P. Raghute, Advocate for the applicant/appellant.
 Mr. S.S.Doifode, APP for the non-applicant/respondent No.1.
 Mr.Nitesh Dolas, Advocate h/f Mr. A.B.Moon,
 Advocate for non-applicant/respondent No.2

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

**CLOSED ON : 19TH JUNE, 2024
PRONOUNCED ON : 27TH JUNE, 2024**

J U D G M E N T (Per : Smt. Vibha Kankanwadi, J.)

Heard learned Advocate Mr.Raghute for the applicant and learned APP Mr.Doifode for the non-applicant-Police Station and Mr.Nitesh Dolas, Advocate for non-applicant No.2.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.

3. Both the applications have been filed by the original accused invoking inherent powers of this Court under section 482 of the Code of Criminal Procedure for quashing First Information Report

(FIR) vide Crime No.560 of 2021, dated 10/09/2021, registered at the behest of respondent No.2 for the offence punishable under sections 452, 354, 506, 427 and 201 read with section 34 of the Indian Penal Code (for short IPC) and sections 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act") with Mouda Police Station, District Nagpur and also the charge-sheet No.127 of 2022, which was registered as Special Case No.286 of 2022, pending before the Special Judge under the Atrocities Act, Nagpur.

4. It has been vehemently submitted on behalf of the applicants that the FIR has been filed on 10/09/2021, in respect of incident dated 07/09/2021. However, no explanation has been given for the delay in filing the FIR. The record would show that on the same day, i.e. 07/09/2021, when it is alleged that the husband of respondent No.2 went missing, the information about the same was given by respondent No.2 to the Police. It was possible for respondent No.2 to file such FIR in respect of the incident that had allegedly taken place at 3.30 pm inside her house. It is further vehemently submitted that perusal of the FIR would show that the incident has taken place inside the house and for that purpose offence that has been attracted or registered is under section 452 of the IPC, yet for the alleged abuses

in the name of caste, the offence has been registered under sections 3(1)(r) and 3(1)(s) of the Atrocities Act. One of the prime ingredients of the said offence under the Atrocities Act is that the said insult should be viewed in public or should occur within public view. Later on, in the supplementary statement that lacuna has been tried to be mitigated. But that supplementary statement has been belatedly recorded and therefore, it can be said to be an afterthought change in the circumstance made by respondent No.2, which cannot be considered at all and therefore, no offence can be said to have been made out under section 3(1)(r) and 3(1)(s) of the Atrocities Act. The learned Advocate for the applicants further points out that name of applicant Rajendra Dnyandeo Rajgire is not appearing in the FIR and it is brought in the supplementary statement dated 21/09/2021. Informant/respondent No.2 was not present when the alleged incident had taken place with her husband alleged to be done by applicant Rajendra, as it is then stated that he had slapped deceased Kailash. In fact, death of Kailash is purely accidental, but now the colour is given that the applicants are responsible for his death. It is an admitted position that offence under section 279 of the IPC came to be registered against the deceased, as he had caused accident and thereby causing injuries to one Rakesh Rajgire, who is the relative of

the applicants. Even for the sake of arguments, it is accepted that in such incident about giving slap by applicant Rajendra to deceased Kailash had occurred, it would have been in the fit of anger, as it is the usual reaction of public when an accident takes place, they would assault the driver of the vehicle, who causes the accident. There was no element of caste involved in the matter and therefore, Atrocities Act will not get attracted. He also submits that in respect of the FIR lodged by respondent No.2, she says that applicant Pranay entered the house by asking as to whether Kailash is and when informant told him that Kailash is not at home, he did not believe that and by pushing informant, he entered the house of the informant. This fact will not attract offence under section 354 of the IPC, as the intention in pushing is not to outrage the modesty of a woman. Lastly, the learned Advocate for the applicants submitted that no offence as alleged is transpired, yet only because the informant had approached this Court in the past and handed over the investigation to CID, it appears that the Police have filed the charge-sheet. It would be an abuse of process of law to ask the applicants to face the trial and therefore, the FIR and consequently, the criminal trial deserves to be quashed and set aside.

5. *Per contra*, the learned APP as well as the learned Advocate for respondent No.2 strongly opposed the applications and submitted

that now the charge-sheet is filed, after the investigation was handed over to the CID, Nagpur. The contents of the charge-sheet/material collected would show that two incidents had taken place; one was inside the house of the informant at around 3.30 pm on 07/09/2021 and another was outside, i.e. in the village with deceased Kailash. The learned APP submits that no doubt there is an FIR against deceased Kailash for the offence punishable under section 279 of the IPC, but that does not give any kind of right to applicant Rajendra to take the law in his hand. He had slapped deceased Kailash in public, but for that purpose the offence is registered, after the FIR is lodged on behalf of the State by CID Officer and it is vide Crime No.332 of 2022. There are eye witnesses to the incident and he points out that the statement of minor Bhushan taken on 08/02/2022. His statement was also taken on 06/12/2021. Though in the FIR much details have not been given, yet the FIR is not an encyclopedia and, therefore, in her supplementary statement on 21/09/2021, respondent No.2 has given all the details. She also explained the delay in lodging the FIR. Her statement is also corroborated by the statement of her mother-in-law Tulsabai. Statements of those witnesses have also been recorded under section 164 of the Cr.P.C. The other points raised can be dealt with by the Trial Court and this cannot be the fit case where either the

FIR or the charge-sheet needs to be quashed and set aside. The learned Advocate for respondent No.2 submitted that since the incident had taken place inside as well as outside the house of the informant, it cannot be said that the offences under the Atrocities Act are not made out. He reiterates the fact that the informant had stated in her earlier writ petition that the investigation was not properly done, this Court had intervened and then handed over the investigation to CID, Nagpur. The position stands that Kailash, the husband of respondent No.2 was found dead in the river on the next day of the incident and the cause of action is stated to be drowning. It was in the mysterious circumstance and if it is taken together with the allegations in the FIR that threat to kill Kailash was given, there ought to have been the proper investigation in that direction. He submits that this is not a fit case where the FIR and the charge-sheet needs to be quashed.

6. At the outset, we would like to say that taking into consideration of the scope of the present applications, the scrutiny of the material is permissible only to the limited extent, just to consider as to whether the material on record discloses any offence as registered by the Investigating Officer. Of course, even at the stage of framing charge, procedure contemplated under section 226 of the

Cr.P.C. has to be undertaken by the Special Court, which is with an intention to see which offences are transpiring. In the said process, the Trial Court is not bound to go with the sections those are quoted by the Investigating Agency. If any other offence is transpiring, then also the concerned Court would be at liberty to frame the charge and if it comes to the conclusion that the facts do not disclose offence under which the FIR is registered or charge-sheet is filed, then the concerned Court may not frame charge for that section. We are also aware that FIR is not an encyclopedia, but if basic facts are changed, e.g. the spot of the incident, then it needs to be seen or taken note of even at this stage. Only delay in lodging the FIR cannot be the ground for quashing the FIR, as the delay can be explained at any point of time; not necessarily by way of statement, it can be explained by placing on record the other evidence, which would show the reason for the delay. Further, mere delay is not fatal to the prosecution. It is deliberate delay that is fatal. In that case the accused will have to show that whatever delay has been caused was with a *mala fide* intention. Even in this case no doubt the supplementary statement of respondent No.2 contends that she had gone to Police Station to lodge report, but it is to be noted that it was in the background that Kailash was missing and they had taken extensive search. She states that since

identity documents of Kailash was not with them, when they had gone to Police Station, they came back. On the next day, they had again gone and then lodged the missing report. Whether the said explanation now given was sufficient to hold that there was *mala fide* intention and present FIR is nothing but a false or concocted version will have to be proved or shown by the accused at the time of trial. Therefore, we are not considering the said ground.

7. Another ground that is canvassed is that the FIR does not disclose the ingredients of the offence under section 3(1)(r) and 3(1)(s) of the Atrocities Act. The basic ingredient for attracting sections 3(1)(r) and 3(1)(s) of the Atrocities Act is that the insult should have been in the public view. Here the FIR would show that around 3.30 pm the present applicant along with another accused had come in front of the house of the informant, they entered the house by holding a stick in their hand and asked informant as to where Kailash is. She informed that he is not in the house. She then stated that they had manhandled her and by entering the house, they searched for Kailash and could not find him. At that time, both the accused threatened that “कैलाश महार धेड्या कुठं गेला आहे, आम्ही त्याचे खांद खांद करतो, तुम्ही त्याची मयतेची तयारी करा.” After giving the said threat, they left. If we consider this portion from the FIR, then it was tried to be posed

that all the incident had taken place inside the house and therefore, it could not be in “public view” as contemplated or required under sections 3(1)(r) and 3(1)(s) of the Atrocities Act. On the same day of FIR, statement of Tulsabai i.e. the mother-in-law of respondent No.2 was taken. It is on the same line as FIR depicting that the incident had taken place inside the house and she was present inside the house. They both are not showing that any third person was present inside the house at that time. However, when the supplementary statement of the informant is taken on 21/09/2021, she has changed the spot. Her FIR as well as statement of Tulsabai on 10/09/2021 does not mark the presence of applicant Rajendra. However, in the supplementary statement, they have even brought Rajendra with applicant Pranay and co-accused. It is said that they parked the motorcycle in front of the house, they were armed with sticks and started abusing Kailash in the name of caste from outside the house. The supplementary statement of Tulsabai has been taken on 04/12/2021 and that too after the investigation was handed over to CID. It is much in detail and she has also then changed the spot and introduced applicant Rajendra.

8. Statements of many witnesses have been taken. However, it is to be noted that there is no consistency in the approach and it

appears that the Investigating Officer had not restricted himself to the spot and the contents of the FIR, the statements of witnesses who had allegedly witnessed the incident at Bazar Chowk Dhanla have also been recorded, which shows that they have met Kailash and also seen the accident. We are not concerned with the same. Even as regards the statement of minor Bhushan also, there are two statements of Bhushan; one is taken by the earlier Investigating Officer and another is taken by the Investigating Officer from CID. He has not disclosed about the alleged incident as claiming to be witness that had taken place inside the house. But then there is a statement of one Dhiraj Sukhdeo Wakade, taken on 28/03/2022 by the Investigating Officer from CID, who says that he had heard all the three accused giving abuses to Kailash in the name of caste and giving threats. Important point to be noted is that he is the cousin brother of deceased Kailash. Dhiraj's wife Manisha's statement has been recorded on 25/03/2022, who says that she was present inside the house of deceased Kailash when the incident took place. Her presence is not stated by respondent No.2 and Tulsabai in their statements, but still she is also the relative of the deceased Kailash. We would like to rely on **Hitesh Verma v. The State of Uttarakhand and others; (2020) 10 SCC 710**, wherein Hon'ble Apex Court has taken a view that in order to prove

the offence under section 3(1)(r) or 3(1)(s) of the Atrocities Act, the abuses in the name of caste ought to have been heard by a third person, who should not be the member of scheduled castes or scheduled tribes and therefore, the prosecution cannot take advantage of the statements of these witnesses. It has been observed that -

“14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as *Swaran Singh v. State*⁴. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (*Sic*)*. The Court held as under: (SCC pp.443-444 para 28)

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged

4 (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527

* Ed.: This sentence appears to be contrary to what is stated below in the extract from *Swaran Singh*, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below:

“Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives of friends) then also it would be an offence since it is in the public view.”

offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A 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." (emphasis in original)

15. As per the FIR, the allegations of abusing the informant were within the four walls of her 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. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in *Swaran Singh*⁴, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

9. We, therefore, come to the conclusion that from the material that has been placed on record for the offence punishable

under section 3(1)(r) and 3(1)(s) of the Atrocities Act is not transpiring.

10. Turning to the offence punishable under section 3(1)(w)(i) of the Atrocities Act, the prosecution should prove that the intention of the accused, who is not a member of scheduled caste or scheduled tribe, was to outrage the modesty of a woman belonging to the scheduled caste and scheduled tribe. From the facts of the case, it can be seen that other two accused, i.e. the present applicant Pranay and co-accused Harshal or even for the sake of arguments applicant Rajendra entered the house by pushing respondent No.2 in order to see where Kailash is. It does not reflect that there was intention to outrage the modesty of respondent No.2 and therefore, on this count also the evidence is lacking.

11. As regards the offence punishable under section 3(2)(v-a) of the Atrocities Act is concerned, the intention to cause harm or offence is necessary and the evidence collected shows that accused Pranay went to the house of the informant with stick. Intention is always buried in the heart of an accused and therefore, it can only be gathered from the conduct. No doubt, in view of **Hitesh Verma** (supra) prosecution is bound to prove that said offence was committed by

accused knowing fully well about the caste of informant and with intention to cause hurt or injury only on the count that informant is member of Scheduled Caste or Scheduled Tribe. But, it will be premature in this case after noting the fact that applicant Pranay was armed, that he had no such intention. Therefore, we do not find that this case would be fit case to quash the FIR for the offence punishable under section 3(2)(v-a) of the Atrocities Act. Similarly, the material on record shows that applicant Pranay entered the house of the informant and gave threats. Therefore, it is *prima facie* showing that offence punishable under sections 452 and 506 read with section 34 of the IPC, however as aforesaid stated, it does not disclose the ingredients of section 354 of the IPC. As regard applicant Rajendra is concerned, he has been introduced later and it appears to be with an obvious motive. Hence, as against him the FIR as well as the charge-sheet deserves to be quashed and set aside.

12. For the aforesaid reasons, we pass the following order.

ORDER

- (i) Criminal Application (APL) No.351 of 2024 stands partly allowed.

- (ii) Criminal Application (APL) No.1079 of 2022 stands allowed.
- (iii) The FIR bearing Crime No.560 of 2021 and charge-sheet filed therein, i.e. Special Case No.286 of 2022 presently pending before the Special Judge under the Atrocities Act, Nagpur stands quashed and set aside as against Pranay Rajendra Rajgire for the offence punishable under sections 354 of the IPC and sections 3(1)(r), 3(1)(s) and 3(1)(w)(i) of the Atrocities Act.
- (iv) We clarify that the Special Case No.286 of 2022 to proceed against applicant Pranay in respect of other offences.
- (v) FIR bearing Crime No.560 of 2021 and charge-sheet bearing Special Case No.286 of 2022 stands quashed and set aside in entirety against applicant Rajendra Dnyandeo Rajgire.
- (vi) Pending application, if any, stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)

(SMT.VIBHA KANKANWADI, J)