



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.307 OF 2021

1. Sopan s/o Mohan Bhagat
2. Mohan s/o Vitthal Bhagat

.. Applicants

Versus

1. The State of Maharashtra
For Newasa Police Station,
Tq. Newasa, Dist. Ahmednagar.

2. Sagar s/o Vasant Netke

.. Respondents

...

Mr. A. S. Gandhi, Advocate for the applicants.

Mr. A. D. Wange, APP for respondent No.1/State.

Mr. P. D. Biradar, Advocate for respondent No.2. **(Absent)**

...

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 17 FEBRUARY 2025

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.544 of 2020 registered with Newasa Police Station, District Ahmednagar and later on, by way of amendment, for quashing the proceedings in Special Case No.95 of 2021 pending before the learned Sessions Judge, Newasa, District Ahmednagar for the

offences punishable under Sections 323, 324, 504, 506 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act, under Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

2. Heard learned Advocate Mr. A. S. Gandhi for the applicants and learned APP Mr. A. D. Wange for respondent No.1/State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that allegations are made against the applicants that on 14.03.2020 around 3.00 to 4.00 p.m., when informant was relaxing on the raised platform (*Ota*) of the post office of village Devgaon, applicants came near the informant and abused him in the name of caste and told him that nobody can cause damage to them even if they are involved in 2-3 cases. They will not leave him alive. Applicant No.1 Sopan went to his house which was about 150 feet away, took out an iron rod and again by running towards the informant assaulted him on neck, stomach, right knee. In the meantime, even

applicant No.2 went running to his house and he brought a sword. By keeping the sword on the neck of the informant, threat to kill was given. When informant started shouting, his parents came running and then informant rescued himself from the clutches of the accused persons. Threat was given that since applicant No.1 is a press reporter, he has higher contacts and he will not suffer anything. The FIR does not show that the abuses though stated to be given in a public place, they were heard by any person. Perusal of the charge-sheet would show that there was a supplementary statement of the informant taken on 11.08.2020 i.e. on the next date. Even at that time also, he has not disclosed presence of a third person. Then statement of his mother and father has been taken. Interestingly, his statement under Section 164 of the Code of Criminal Procedure also does not contain name of a witness, but statement of one Mayur Narendra Sasane has been taken under Section 164 of the Code of criminal Procedure on 28.08.2020. In the entire charge-sheet, there is no statement of Mayur Sasane under Section 161 of the Code of Criminal Procedure and the learned APP confirms the same. In his statement under Section 164 of the Code of Criminal Procedure, said witness had stated that when he was

with the informant, sitting near the post office around 3.00 to 4.00 p.m. on 14.03.2020, at that time, applicant No.1 came and on account of previous quarrel, assaulted informant with wooden log. Witness then separated the informant. Thus, this statement does not even show the presence of applicant No.2. The relationship between the informant and this witness appears to be as friend. Reliance can be placed on the decision in **Hitesh Verma Vs. State of Uttarakhand and another, [(2020) 10 SCC 710]**, wherein it has been held that :-

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that

respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

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 and Ors. v. State through Standing Counsel and Ors. (2008) 8 SCC 435**. 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. The Court held as under:

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 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.

Such remarks/insult in the name of caste should be heard by witness (nor a relative or a friend). Therefore, it cannot be said that the offence under Section 3(1)(r), 3(1)(s) of the Atrocities Act have been made out.

4. In the FIR itself, another important fact to be noted is that the incident is stated to have taken place on 14.03.2020 and the FIR in this case has been lodged on 10.08.2020. There is huge delay of five months which has not been explained at all either in

the FIR or in the supplementary statement or in the statement under Section 164 of the Code of Criminal Procedure. In the charge-sheet we could find that at the behest of applicant No.1, FIR came to be lodged on 15.03.2020 vide Crime No.162 of 2020 for the offence punishable under Section 3 punishable under Section 25 of the Indian Arms Act, Sections 326, 504, 506 of Indian Penal Code, which was against the present informant/respondent No.2 and the said witness Mayur Narendra Sasane. Witness Sasane in his statement under Section 164 of the Code of Criminal Procedure has made a reference about filing of this FIR by applicant No.1 against him and informant. Thus, the present FIR appears to be afterthought as regards the allegations under the Atrocities Act. There appears to be some injury caused to the informant with the help of iron rod and, therefore, Sections under Indian Penal Code Sections are *prima facie* made out, but only on that basis it cannot be said that Section 3(2)(va) of the Atrocities Act will get attracted. We have already come to the conclusion that as regards Atrocities Act is concerned, the involvement is afterthought. The application therefore deserves to be partly allowed. Hence, the following order :-

ORDER

- I) Criminal Application stands partly allowed.
- II) The FIR bearing Crime No. No.544 of 2020 registered with Newasa Police Station, District Ahmednagar for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act, under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act as well as the proceedings in Special Case No.95 of 2021 pending before the learned Sessions Judge, Newasa, District Ahmednagar, stand quashed and set aside to the extent of offence under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act only, as against the present applicants.
- III) It is clarified that the matter to proceed for the other offences.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm