



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1459 OF 2020
WITH
CRIMINAL APPLICATION NO. 1775 OF 2024

1. Kalubai w/o Bhimrao Rathod
Age 68 years, Occ. Agri & Household
 2. Vasant s/o Bhimrao Rathod
(named as Ballu in FIR)
Age 32 years, Occ. Agril,
Both R/o. Kolpimpri, Tq. Dharur
District Beed
 3. Ashok s/o Bhimrao Rathod
Age 38 years, Occ. Service,
R/o. Lane No.11, Jai Bhavani Nagar
CIDCO, Aurangabad
- ...Applicants

versus

1. The State of Maharashtra
Through police station,
Dharur, district Beed
(Copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)
 2. Eknath Sadashiv Gaikwad
(since deceased, through his son)
Devidas Eknath Gaikwad
Age 52 years, Occ. Labour
R/o. Milind Nagar, Ambejogai
Tq. Ambejogai, district Beed
- ...Respondents

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Mr. S.J. Salunke, advocate for the applicants
Mr. N.R. Dayama, A.P.P. for respondent No.1
Ms. Sushma T. Jadhav, advocate for respondent No.2.
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**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 13th MARCH, 2025**

O R D E R (PER SANJAY A. DESHMUKH, J.) :-

1. Heard.
2. For the reasons stated in the criminal application No. 1775 of 2024, the same is allowed and disposed of.
3. In main criminal application No. 1459 of 2020, leave is granted to amend the prayer clause.
4. The Criminal application No. 1459 of 2020 has been filed, initially for quashing of F.I.R. vide C.R. No. 40 of 2020 registered with Dharur police station, district Beed and later on by way of amendment for quashment of proceedings in Special (Atro. S.C. and S.T.) case No. 44 of 2023, pending before the Special Court at Kaij i.e. District and Additional Sessions Judge at Kaij, District Beed for the offences punishable under Sections 323, 504 r.w. 34 of I.P.C. and sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, Atrocities Act).
5. The informant Eknath Sadashiv Gaikwad in his report averred that he belongs to Scheduled caste (Mahar). In the year 1988, he had taken an amount of Rs.10,000/- with interest from one

Shrihari Sakhare and in lieu of that, he had mortgaged his agricultural lands, situated at Pangri, bearing block Nos.105 and 107, totally admeasuring 3 Acres and 09 Are. After two years, the informant paid an amount of Rs.20,000/- to said Shrihari Sakhare and requested him to give back the said land (redemption of land) to him. The said Shrihari Sakhare entered his name to the record of rights of that land. The informant filed a suit against Shrihari Sakhare in the civil court at Kaij. The said suit was decreed in favour of the informant. However, Shrihari Sakhare sold the said land to one Shivaji Sonwane, resident of Undari. Shrihari Sakhare had filed an appeal in the Court at Ambejogai District court. The decision of said appeal was also rendered in favour of the informant. During pendency of the appeal, Shivaji Sonwane sold that property to one Kalubai Bhimrao Rathod, resident of Kolpimpri Tanda, who is applicant No.1 in this application.

6. It is further averred in the report that thereafter, the informant had filed an appeal in this Court. Even the said appeal was decided in favour of the informant. The informant applied to the Deputy Collector, Majalgaon requesting to record his name in the record of rights. The Deputy Collector, Majalgaon, directed the Tahsildar, Dharur to record his name to the record of rights of the said properties. In the year 2016, his name was recorded in the record of rights of the suit property. Thereafter, Kalubai filed appeals

in Ambejogai district court and thereafter in the High Court. However, both the proceedings were resulted in favour of the informant. Against that judgment, the appeal was preferred before the Minister for Revenue. The said judgment was delivered against the informant. Thereafter, name of applicant No.1 was entered in the record of rights of the suit property. The informant further averred that since 2017 he is in possession of that property. In the year 2020, he had sown Jawar crop in the suit property. On 01.03.2020 at about 9.00 a.m. when the informant alongwith his son went to harvest the Jawar crop, at that time, applicant No.1 alongwith her two sons i.e. applicant Nos. 2 and 3 with their respective wives and other 5-6 unknown persons were harvesting the Jawar crop. At that time, applicant Nos. 2 and 3 Ballu Rathod and Ashok Rathod respectively, told the informant “ये महारग्या आमचा सात बारा तयार झाला आहे” and a quarrel took place there. Son of the informant Devidas was throttled. Thereafter, informant's three sons and daughters-in-law reached in the agricultural land to harvest the Jawar crop. Thereafter, the informant came to his village in order to avoid the quarrel and lodged the report on 02.03.2020 against the applicants. Thus, the aforesaid crime was registered.

7. The learned advocate for the applicants submitted that the applicants are falsely implicated in the crime. No such incident took

place. Nobody was present at the spot of incident when the alleged incident took place. The applicants have not hurled the abuses. The applicants are booked only because of civil litigation in order to take revenge. Learned advocate for the applicants pointed out the statements of witnesses from the charge sheet. He also pointed out the documents of civil litigation between the applicants and the informant. It is lastly prayed to allow the application.

8. The learned A.P.P. for the State submitted that the quarrel took place on account of harvesting of Jawar crop in the agricultural land. In that incident, the abuses were hurled by the applicants on the caste of the informant. The applicants are involved in a serious and anti-social crime. The informant has no reason to implicate the applicants in the crime. It is lastly prayed to reject the application.

9. Learned advocate for respondent No.2 strongly opposed the application and submitted that the applicants are booked in a serious crime. By taking disadvantage of the revenue record against the decision of the Civil court, the applicants have beaten the informant and his family members. They hurled the abuses by saying that “ये महारग्या आमचा सात बारा तयार झाला आहे” in the public place i.e. the agricultural land. There are statements of witnesses supporting the informant, who have heard the abuses and seen that incident. It

is lastly prayed to reject the application, as there is sufficient material against the applicants.

10. On perusal of the report and the statements of witnesses, it is crystal clear that nobody was present at the spot when the abuses were hurled by applicant Nos. 2 and 3 to the informant on the caste by saying “ये महारग्या आमचा सात बारा तयार झाला आहे”. In view of the law laid down by the Hon’ble Supreme court in the case of **Hitesh Verma vs State of Uttarakhand and another; (2020) 10 SCC 710**, there is necessity that the abuses on cast must have been heard by independent witnesses. Paragraph No.14 of the said judgment reads as follows:-

“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 & Ors. v. State through Standing Counsel & 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.

11. Charge sheet shows only relatives were present. No independent witness nearby the spot. Though a public road passes through adjacent to the field yet where exactly the incident had taken place in the field has not been stated by any witness, including the informant. In case abuses in the name of caste, additional requirement to be proved by prosecution is that the independent witness should have heard those alleged abuses or imputations. In this case, there is no such evidence even *prima facie*.

12. We have perused the report and the charge sheet, particularly the statements of witnesses. It appears that the statements of witnesses are similar to the report in which allegations are made against the applicants in respect of hurling of abuses on the caste and throttling to the sons of the informant.

13. Admittedly, the civil litigation is going on between the parties on account of possession and title of the agricultural lands bearing block Nos.105 and 107 situated at village Pangri. There is chequered history of civil litigation and revenue entries in respect of the agricultural land. As to who is the owner and in possession of the disputed properties is a dispute of civil right and it has to be decided by the civil court.

14. In view of the law laid down in the case of ***Hitesh Verma vs State of Uttarakhand and another (supra)***, the essential ingredients of Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are not attracted against the applicants, as the alleged abuses are not heard by any independent witness other than the family members. Further, all of them cannot abuse at the same time. The allegations of abuses on caste are of general and not the specific. There is no injury certificate to support the alleged beating by the applicants to the informant, which establishes the offence under section 323 of I.P.C. As far as the offence under Section 504 of I.P.C. is concerned, no criminal intimidation is given by the informant. If all these factors are considered together, it does not establish that the essential ingredients of alleged offences against the applicants are made out for which the applicants are prosecuted. On such material, compelling the applicants to face the trial would be certainly an abuse of process of the court. We are, therefore, in the interest of justice, inclined to exercise our powers under Section 482 of Cr.P.C. in favour of the applicants for quashing the report and the charge sheet. The application, therefore, deserves to be allowed. Hence, the following order:-

O R D E R

I. The application stands allowed.

- II. The F.I.R. vide C.R. No. 40 of 2020 registered with Dharur police station, district Beed and the proceedings in special (Atro. S.C. and S.T.) case No. 44 of 2023 pending before the Special Court at Kaij i.e. District and Additional Sessions Judge at Kaij, district Beed for the offences punishable under Sections 323, 504 r.w. 34 of I.P.C. and sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands quashed against the applicants.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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