



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 CRIMINAL APPLICATION NO. 1202 OF 2021

Ramesh Dhondiram Gaikwad

VERSUS

The State of Maharashtra and another

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Advocate for Applicant : Mr. Angad L. Kanade

APP for Respondent No.1: Mr. S.A. Gaikwad

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

DATED : 12th MARCH, 2025

PER COURT :-

1. The present application has been filed initially for quashing of F.I.R. vide C.R. No. 141 of 2020 registered with Gondi police station Tq. Ambad, district Jalna, dated 16.04.2020 and later on by way of amendment, for quashment of proceedings in S.C.C. No. 29 of 2022 filed before the learned J.M.F.C. Ambad, district Jalna, for the offences punishable under Sections 294 and 504 of I.P.C.

2. Heard learned advocate for the applicant and learned A.P.P. for respondent No.1. Respondent No.2, though served, failed to appear. In order to cut short, it can be stated that the learned advocate for the applicant as well as learned A.P.P. have argued the matter in support of their respective contentions.

3. We have gone through the F.I.R. and the charge sheet. In the F.I.R. respondent No.2-informant has submitted that the present applicant is Gramsevak of village Bangaon. The informant says that she had given an amount of Rs.1000/- to the applicant for the construction to be done through the Government. However, the construction has not been done. She used to remind the Gramsevak about the same and each time, the Gramsevak used to say that work will be done. On 15.04.2020 around 2.00 to 2.30 p.m. when the informant and her son had gone to ask the applicant to return the amount, which she had given to the Gramsevak, at that time, the Gramsevak asked that the informant should not come again and again and demand the amount, the informant has knowledge about the caste of the applicant, he would file the offence under the Atrocities Act against her and he gave abuses to the informant and her son and told that her work will not be done nor he would return the amount.

4. Perusal of the charge sheet would show that the statements of three witnesses have been recorded. All these witnesses are family members. Witnesses Krushna and Baliram are the sons and witness Sampat is husband of the informant. The witness Baliram was alongwith the informant when the alleged incident had taken place. Prior to lodging of the present F.I.R., it

appears that the present applicant had lodged F.I.R. vide C.R. No. 140 of 2020 with the same police station for the offences punishable under Sections 353, 504, 506, 188 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, against witness Baliram only. At the most, it can be said that some incident had taken place on that day. However, as regards present case is concerned, when the prosecution is coming with a case that offence under Section 294 of I.P.C. has been committed then in order to secure the conviction under the said section, two ingredients are required to be proved i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. In ***Pawan Kumar vs. State of Haryana and another; (1996) 4 SCC 17***, it has been held that if the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.

5. Here in the present case also there is no statement from any witness who might have been present at the said public place. The other two witnesses i.e. Krushna and Sampat were not at all present at the spot when the alleged incident took place. Whatever

has been uttered to be obscene is not in fact an abuse and cannot be considered as obscene by any stretch of imagination. Therefore, the basic ingredients of Section 294 of I.P.C. are not attracted. For Section 504 of I.P.C., it would be a non cognizable offence for which the F.I.R. under Section 154 of Cr.P.C. is not maintainable. Under the said circumstances, it would be an abuse of process of law if the applicant is asked to face the trial. Hence, we proceed to pass the following order:-

O R D E R

- I. The application stands allowed.
- II. The proceedings in S.C.C. No. 29 of 2022 pending before the learned Judicial Magistrate First Class, Ambad, district Jalna for the offences punishable under sections 294 and 504 of I.P.C. arising out of F.I.R. vide C.R. No. 141 of 2020 registered with Gondli police station, Tq. Ambad, district Jalna, dated 16.04.2020, stands quashed and set aside as against the applicant.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

rlj/