



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1985 OF 2024

1) Nandu S/o Namdeo Lokhande,
Age-50 years, Occupation:Service
as Primary teacher,
R/o-Tisgaon, Taluka-Pathardi,
District-Ahmednagar,

2) Walmik S/o Rajaram Garudkar,
Age-54 years, Occupation:Agri.,
R/o-As Above.

...APPLICANTS

VERSUS

1) The State of Maharashtra,
Through Police Station -
Pathardi, District-Ahmednagar,

2) Popat Youvhan Shinde,
Age-40 years, Occupation:Agriculture,
R/o-Tisgaon, Taluka-Pathardi,
District-Ahmednagar.

...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.1987 OF 2024

Amol S/o Pandurang Bhadake,
(As per F.I.R., Amol Bhausahab Bhadake),
Age-35 years, Occupation:Business,
R/o-Tisgaon, Taluka-Pathardi,
District-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station -
Pathardi, District-Ahmednagar,
- 2) Popat Youvhan Shinde,
Age-40 years, Occupation:Agriculture,
R/o-Tisgaon, Taluka-Pathardi,
District-Ahmednagar.

...RESPONDENTS

...

Mr. Hemantkumar F. Pawar Advocate for Applicants in both the Applications.

Mr. A.D. Wange, A.P.P. for Respondent No.1 in both the Applications.

Mr. Umakant U. Wagh Advocate for Respondent No.2 in both the Applications.

...

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

DATE : 4th JULY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both these Applications have been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 79 of 2024, registered with Pathardi Police Station, District-Ahmednagar on 27th January 2024, and later on by way of amendment, for quashing the proceedings in Special Case No.179 of 2024, pending before the learned Special Judge, under the Atrocities Act, Ahmednagar, for the offence punishable under Sections 354-C, 504, 506 of the Indian Penal Code, Sections

3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. Heard learned Advocate Mr. Pawar appearing for the applicants, learned APP Mr. Wange for respondent No.1 and learned Advocate Mr. Wagh for respondent No.2, in both the Applications.

3. Learned Advocate appearing for the applicants has taken us through the entire charge-sheet and he submits that perusal of the FIR will not attract the offences under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The Sections under the Indian Penal Code are non-cognizable. It is the contention of the informant that on 27th January 2024, around 6.00 a.m., his mother had gone behind his house for answering the nature's call. The informant noticed that the applicants were making shooting with drone camera of the ladies who used to go for answering nature's call in the open space and therefore, he objected to the same and at that time all the three accused persons started abusing him in the name of caste and gave threat to kill him if he intervenes. The informant says that after he raised voice, certain other persons came there. By that time

the ladies who had gone for answering nature's call, came back and then the accused persons went away. If we consider the statements of the ladies who had allegedly gone for answering the nature's call, they have stated that they saw the drone camera due to which they became ashamed and therefore, they came back. They were not present when the alleged abuses were given in the name of caste. The statements of those persons who had gathered at the spot after the informant raised voice, would show that they had seen the drone camera and also people who had gathered in front of the shop of Wahab Iliyas Pathan and they made inquiry. But their statements are hearsay. Therefore, no independent witness was present when the alleged abuses were given in the name of caste. Under such circumstances, it appears that the FIR has been lodged with *mala fide* intention.

4. Learned Advocate appearing for the applicants submitted that original accused No.3 – Walmik Rajaram Garudkar had filed Public Interest Litigation No.4 of 2022 before this Court for removal of encroachment in Gat No.296 situated at village Tisgaon. In fact the informant and the witnesses now quoted, had made encroachment in the said Gat number. This Court by order dated 17th August 2023, directed the Block Development

Officer and Chief Executive Officer to initiate inquiry in respect of Gat No.296 within a period of 120 days and to initiate action against the concerned persons. In view of the said order, the inquiry officer had issued notices to the encroachers to remove their encroachment within the stipulated period. Those notices were also received by the informant and the witnesses. The informant and the witnesses have approached this Court by filing separate petitions challenging the notices. Again this Court had directed the authority to make inquiry and initiate steps for removal of the encroachments, per the procedure of law. Thus, it can be seen that the FIR is in retaliation and to avoid the removal of encroachment.

5. Learned Advocate for the applicants relies on the decision in *Gorige Pentaiah vs. State of Andhra Pradesh and others, (2008) 12 SCC 531*, wherein it has been observed that the informant ought to have alleged that the accused persons were not the members of the scheduled caste or a scheduled tribe and he was intentionally insulted or intimidated by the accused with an intention to humiliate in a place within public view. It is submitted that no such averments are there in the present case and therefore, it would be an abuse of process of law to ask the applicants to face the trial, when in fact the charge-sheet

appears to have been filed for the offence punishable under Sections 354-C, 504, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

6. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the Applications and submitted that though initially the FIR was only under Sections 504, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, taking into consideration the statements of the ladies, Section 354-C of the Indian Penal Code and Section 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, came to be added. In fact such an act of making shooting/videography of the ladies who had gone for answering the nature's call in the open area, certainly amounts to outraging their modesty. A memory card has been seized in the matter which was produced by accused – Krushna Nandu Lawande. Under such circumstances, it is now required to be seen by the trial Court, as to what is there in that memory card. Each and every witness is saying that they had seen the drone in that area and the informant says that he had seen that

the control of the drone was with the accused persons. Therefore, certainly the offences are made out.

7. At the outset, we would like to deal with the law point that has been raised that the caste of the accused is not mentioned in the FIR and the reliance has been placed on ***Gorige Pentaiah vs. State of Andhra Pradesh and others***, (supra). We would like to rely on Three Judge Bench decision of the Hon'ble Supreme Court in ***Ashabai Machindra Adhagale vs. State of Maharashtra and others***, 2009(3) SCC 789, wherein it has been held that the FIR is not an encyclopedia. The view taken by the High Court is not correct. Rules are framed under the Act and Rule 7 deals with investigation has to be done by the officer now below the rank of Deputy Superintendent of Police. Ascertainment of fact can be made by the investigating officer during investigation in respect of the caste of accused. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if the charge sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that the materials do not show that the accused does not belong to scheduled caste or scheduled tribe. Even if charge is framed at the time of trial materials can be placed to show that the accused either belongs or does not belong to scheduled caste

or scheduled tribe. Here, in the present case, from the charge-sheet we could find that statement has been made by the investigating officer that the accused persons are Hindu Mali and Hindu Maratha, especially the communication dated 27th January 2024, by the investigating officer would show that three accused persons are Mali by caste and one accused is Hindu Maratha. Therefore, there is evidence to the effect that the accused are not the members of either scheduled caste or scheduled tribe. Therefore, in view of the decision by the Larger Bench, we are of the opinion that the trial before the Special Court is justified.

8. Now, coming towards the facts of the case, though when the FIR was lodged, it was under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, but later on taking into consideration the statements of the ladies, Section 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, has been added. Section 354-C of the Indian Penal Code has also been added. The facts are clear that when the ladies had gone for answering nature's call, it is alleged that the present applicants have managed to get done the video recording of the same by a drone camera. Almost all the witnesses have stated that they have seen the drone camera in the sky around 6.00

a.m., on 27th January 2024. Statements of those ladies, specifically who had gone for the nature's call, have also been recorded and therefore, even if we consider that the accused persons might not be knowing as to which lady had gone for answering nature's call and her caste, yet the fact then would be covered under Section 354-C of the Indian Penal Code. At this stage when this fact is coming on record that there was a video shooting with the help of drone camera, it shows the mental sickness of the persons doing such activities. Even if for the sake of arguments it is accepted that one of the accused had filed the Public Interest Litigation for removal of encroachment in the village, yet the order that was passed by this Court and the law would have taken its recourse. Such act of making video recording of the ladies when they had gone for answering the nature's call, cannot be justified for anything and it cannot be said to be the allegation in retaliation. Certainly, trial is required when the entire investigation is over and charge-sheet is filed. This is not a fit case where the powers can be exercised in respect of quashing the FIR for the offence punishable under Section 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Sections 354-C, 504, 506 of the Indian Penal Code.

9. However, at the same time it is to be noted that for ingredients of offence under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, there has to be an independent witness who would have heard the abuses those have been given in the name of the caste for insulting the member of the scheduled caste or scheduled tribe and that is the requirement as held in *Hitesh Verma vs. State of Uttarakhand and another, 2021 CRI. L.J. 1*. We are of the opinion that to the extent of offence punishable under Section 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, case is made out for quashment of the FIR and the proceedings in the Special Case and therefore, we proceed to pass the following order:-

ORDER

(I) Both the Applications stand partly allowed.

(II) The proceedings in Special Case No.179 of 2024, pending before the learned Special Judge, under the Atrocities Act, Ahmednagar, arising out of the First Information Report vide Crime No. 79 of 2024, registered with Pathardi Police Station, District-Ahmednagar on 27th January 2024, stands

quashed and set aside, to the extent of offence punishable under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, as against the applicants i.e. - 1) Nandu S/o Namdeo Lokhande, 2) Walmik S/o Rajaram Garudkar in Criminal Application No.1985 of 2024, and applicant - Amol S/o Pandurang Bhadake in Criminal Application No.1987 of 2024.

(III) Matter to proceed for rest of the charges against the applicants in both the Applications, i.e. for the offence punishable under Sections 354-C, 504, 506 of the Indian Penal Code and Section - 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25