



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1000 OF 2024

- 1) Jagannath Asaram Dagade,
Age-47 years Occu:Service,
- 2) Avinash Vasant Chormale,
Age-22 years Occu:Agri.,
- 3) Sagar @ Sandeep Kadubal Chormale,
Age-32 years Occu:Agri.,
- 4) Navnath S/o Asaram Dagade,
Age-41 years Occu:Agri.,
- 5) Shubham S/o Uttam Dagade,
Age-25 years Occu:Agri.,
- 6) Chandabai Jagannath Dagade,
Age-42 years Occu:Household,
- 7) Chetan S/o Rambhau Chormale,
Age-37 years Occu:Agri.,
- 8) Santosh S/o Maruti Najan,
Age-40 years Occu:Agri.,
- 9) Shashikant S/o Dattatraya Chormale,
Age-24 years Occu:Agri.,
- All R/o-Lakhmapur, Tq-Gangapur,
Dist-Aurangabad,
- 10) Sachin S/o Madhukar Maharnavar,
Age-25 years, Occu:Agri.,
- 11) Mauli @ Dnyandeo S/o Madhukar Maharnavar,
Age-20 years Occu:Agri.,

Petitioner Nos. 10 and 11 Both R/o-Dhamangaon,
Tq-Jamkhed, Dist-Ahmednagar,

12) Indubai Shridhar Thorat,
Age-35 years, Occu:Household,
R/o-Markadwadi, Tq-Shirur,
Dist-Beed.

...PETITIONERS

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Gangapur Police Station,
Tq-Gangapur, Dist-Ahmednagar,

2) Laxmibai Annasaheb Chitte,
Age-45 years, Occu:Labourer,
R/o-Paper Mill, Old Kaygaon,
Tq-Gangapur, Dist-Chh. Sambhajinagar.

...RESPONDENTS

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Mr. Abasaheb D. Shinde Advocate for Petitioners.

Mr. V.K. Kotecha, A.P.P. for Respondent No.1.

Mr. Kuldeep Kumar Choudhary Advocate for Respondent No.2.

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

DATE : 17th FEBRUARY, 2025

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

1. Present Writ Petition has been filed for quashing the proceedings in Special Case No.342 of 2024 pending before the

learned Additional Sessions Judge, Vaijapur, District-Aurangabad, arising out of the First Information Report (for short "the FIR") vide Crime No.10 of 2024 registered with Gangapur Police Station, Taluka-Gangapur, District-Aurangabad for the offence punishable under Sections 143, 147, 148, 149, 324, 323, 452, 427, 504, 506 of the Indian Penal Code read with Section 3(1)(r), 3(2)(v-a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the S.C. and S.T. Act").

2. Heard learned Advocate Mr. Shinde for the petitioners, learned APP Mr. Kotecha for respondent No.1 and learned Advocate Mr. Choudhary for respondent No.2.

3. Learned Advocate for the petitioners submits that as per the chronology of events, daughter of petitioner No.1 went missing and therefore, report was lodged about her missing, on 3rd January 2024. It was then revealed that son of the informant had abducted the daughter of petitioner No.1 and got married. It appears that the informant was apprehending that her son and the family members would be roped in a criminal case and therefore, present FIR has been lodged. When the FIR was lodged, it was not under the provisions of the S.C. and S.T. Act

and it was only under the Sections of the Indian Penal Code. The S.C. and S.T. Act came to be inserted on 6th January 2024. However, if we peruse the FIR, there is absolutely no mention of utterances of any such words which will amount to insult of the informant being member of the scheduled caste. Even the ingredients of 3(2)(v-a) of the S.C. and S.T. Act will not get attracted, as the alleged incident is unnecessarily exaggerated. The same can be demonstrated from the statements of the witnesses, because what has not been stated by the informant, that has been stated by the witnesses and therefore, when the incident has not occurred in the way the prosecution story tries to project, it would be unjust to ask the petitioners to face the trial.

4. Per contra, the learned APP as well as learned Advocate for respondent No.2 submitted that as petitioner No.1 got annoyed with the fact that his daughter had ran away with the son of the informant, all the petitioners had barged in the house of the informant, caused damage to the property, assaulted her, abused her and threatened her. This fact is supported by the spot panchnama, which shows that damage has been caused to the property of the informant. Petitioners and respondent No.2 are from the same village and therefore, the petitioners had

knowledge that the informant is a member of scheduled caste. When the offence against the informant has been caused, which is the offence punishable under the Sections of the Indian Penal Code then definitely the ingredients of Section 3(2)(v-a) of the S.C. and S.T. Act would get attracted.

5. The first and foremost fact is that when the FIR was lodged on 5th January 2024, there was absolutely no mention of utterance of any such fact which will get attracted the offence under the S.C. and S.T. Act. The informant has not even given her caste at the time of lodging the FIR. Mere knowledge of the caste of the informant as member of scheduled caste or scheduled tribe is not enough. It should be shown by the prosecution or the investigating agency that the act which is alleged to have been done by the accused was with knowledge and to cause injury or damage to the member of the scheduled caste or scheduled tribe and / or to their property.

6. No doubt, the FIR and the evidence collected in the charge-sheet would show that prima facie offence is made out under the Sections punishable under the Indian Penal Code. We are concerned with the ingredients of the offence which are made punishable under the S.C. and S.T. Act. The FIR does not

show that there was an insult in the name of the caste of the informant by the utterances uttered by anybody. However, it appears that later on, when the statements of the witnesses were recorded, this addition has been shown. The FIR has been lodged on 5th January 2024 and the statement of the first witness i.e. son of the informant has been taken on 11th January 2024. Witness Ganesh is the son of the informant and he was present at the time of lodging of the FIR. His statement under Section 161 of the Code of Criminal Procedure has not been recorded on the same day, but as aforesaid, it has been recorded after six days and then he says about the utterances of such words, which according to him, were insulting them in the name of caste. Still, another fact to be noted is that he says that the accused persons had come to the house, caused damage to the house and the utterance appears to be in the house. Therefore, it was not in the public view also.

7. Even as per the FIR, the incident is stated to have taken place at 1.00 p.m. on 5th January 2024 when informant was in the house along with her son Ganesh, daughter-in-law Priyanka, daughter Archana and nephew Vikas Subhash Chitte. Thus, even as per the FIR, the incident had taken place inside the house. Therefore, in view of the decision in ***Hitesh Verma vs. State of***

Uttarakhand and another, 2021 CRI. L.J. 1, as the incident had not taken place in the public view and it has not been heard by a third person (not being the relative or friend), the ingredients of offence under Section 3(1)(r) of the S.C. and S.T. Act are not made out.

8. As regards the offence under Section 3(2)(v-a) of the the S.C. and S.T. Act is concerned, the prosecution will have to prove that the said offence has been committed by the accused persons with the knowledge that the victim or informant is a member of scheduled caste or scheduled tribe. Further, the *mens rea* will have to be proved that such damage or such injury has been caused so that a member of scheduled caste or scheduled tribe should suffer. Here the background of the case is that daughter of petitioner No.1 had gone along with another son of the informant and all the petitioners went to the house of the informant and started saying that since her son had taken away the daughter, their daughter should be returned. Then it is stated that the threats were given. That means the main intention of the petitioners was to get back the daughter of petitioner No.1. When such situation arises, when daughter of someone is taken away by a son of the other, it would be, sometimes natural reaction on the part of either daughter's side

or the son's side to react and the resultant reaction was to cause damage and cause injury to the informant and the family members, as alleged. The intention behind such act, even if we consider the facts as it is, does not appear to be only because the informant was of a particular caste, and therefore, it would be a futile exercise to ask the petitioners to face the trial before the Special Court for the offence punishable under the S.C. and S.T. Act.

9. We reiterate that taking into consideration the contents of the FIR, statements of the witnesses under Section 161 of the Code of Criminal Procedure and other material in the form of panchnama, certainly gives prima facie case under the provisions of the Indian Penal Code. Therefore, the Petition deserves to be partly allowed. Hence the following order:-

ORDER

(I) The Writ Petition stands partly allowed.

(II) The offence vide Crime No.10 of 2024 registered with Gangapur Police Station, District-Aurangabad and proceedings in Special Case No.342 of 2024 pending before the learned Special Judge under the Atrocities Act, Vaijapur

are quashed and set aside to the extent of the offence punishable under Section 3(1)(r), 3(2)(v-a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, as against petitioner Nos.1 to 12 - i.e. 1) Jagannath Asaram Dagade, 2) Avinash Vasant Chormale, 3) Sagar @ Sandeep Kadubal Chormale, 4) Navnath S/o Asaram Dagade, 5) Shubham S/o Uttam Dagade, 6) Chandabai Jagannath Dagade, 7) Chetan S/o Rambhau Chormale, 8) Santosh S/o Maruti Najan, 9) Shashikant S/o Dattatraya Chormale, 10) Sachin S/o Madhukar Maharnavar, 11) Mauli @ Dnyandeo S/o Madhukar Maharnavar and 12) Indubai Shridhar Thorat.

(III) We clarify that the charge-sheet would remain in respect of Sections 143, 147, 148, 149, 324, 323, 452, 427, 504, 506 of the Indian Penal Code.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE