



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL APPLICATION NO. 2228 OF 2024

1. Babalu @ Siddharth Hanmant
Deshmukh
2. Pappu @ Akash Jadhav ...Applicants

Versus

1. The State of Maharashtra
2. Sanket Umakant Magar ...Respondents

Advocate for Applicants : Mr. Shomitkumar V. Salunke h/f Mr.
Y.L. Bidve

APP for Respondent No.1: Mr. A.R. Kale

Advocate for Respondent No.2 : Mr. Shankar Kendre
(appointed)

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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. 192 of 2024 registered with M.I.D.C. police station, Tq. and district Latur and later on by way of amendment for quashment of proceedings in special case No. 60 of 2024, pending before the learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Latur, for the offences punishable under Sections 323, 324, 504, 506 r.w. 34 of I.P.C. and section 3(1) (r) and 3(1)(s) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard learned advocate for the applicants, learned A.P.P. as well as learned advocate for respondent No.2, who has been appointed by us for representing the cause of respondent No.2, since respondent No.2 failed to appear inspite of service of notice. All of them have taken us through the contents of the F.I.R. and the charge sheet.

3. The first and foremost point that has been submitted on behalf of the applicants is that the contents of F.I.R. and the charge sheet do not show that the incident was within the public view, as appear from the informant's witnesses, who have been examined and they are his relatives. We do not appreciate said submission in view of the fact that the incident is stated to have been taken in Yatra i.e. fair organized at Chandpeer Baba, Khadgaon. Certainly, the fair is a public place and it should be within the public view.

4. The second point that was tried to be submitted is the political rivalry which also we are not approving for the sake of lack of details and the fact that the informant was aged 17 years 10 months at the time of lodging the F.I.R. and was not even competent to take

part in any political activity.

5. The third point that has been submitted is that the contents of the F.I.R. as well as the statements of witnesses under Sections 161 as well as 164 of Cr.P.C. would show that both the applicants had abused in the name of the caste to the informant in chorus. The abuses cannot be in chorus and when other four witnesses were cousin brothers of the informant how no injury was caused to them.

6. Learned A.P.P. as well as learned advocate appointed for respondent No.2 objected to these points and submit that it would be a matter of evidence as to who has exactly abused. But certainly the incident had taken place in view of the fact that immediately the informant has been medically examined and there is injury certificate. Four witnesses are supported him, who are eye witnesses. As regards this point, certainly abuses cannot be in chores and exactly in the same language or words at the same time.

7. Perusal of the F.I.R. and the statements of the witnesses would show that the other four witnesses are relatives of the informant i.e. his cousin brothers. The investigating officer has not recorded statement of any third person i.e. independent person. In view of paragraph No.14 from **Hitesh Verma vs State of**

Uttarakhand and another; (2020) 10 SCC 710, which we reproduce here as follows, there is necessity that those abuses ought to have been heard by independent witnesses:-

“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. 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.'"

8. It is stated that the incident had taken place in a fair, that too at 9.30 p.m. then certainly it would have been heard and seen by independent witnesses also. It is stated in the F.I.R. as well as statements that incident had happened near a joint wheel ticket counter. If that is so, then they ought to have been enquired with the person who was on ticket counter or other persons who were in the queue for taking tickets. Therefore, the said ingredient is not fulfilled as per requirement in ***Hitesh Verma vs State of Uttarakhand and another (supra)***; to attract the offences under sections 3(1)(r) and 3(1)(s) of Atrocities Act.

9. Now as regards the offence under Section 324 of I.P.C. is concerned, the informant says that he was assaulted by bracelet (*kada*). The witnesses are also saying the same thing. That *Kada*

has not been seized in the matter which is stated to be used as weapon. Even if it has taken as it is, it cannot be taken as instrument of shooting, cutting, stabbing etc. which is the basic requirement of Section 324 of I.P.C. Though the injury certificate states that the informant had sustained two injuries, which were simple in nature and probable weapon that was used is hard and blunt object, yet for the aforesaid reason that *Kada* is not an instrument of shooting, cutting, stabbing etc. or any other instrument, which is used as weapon of offence, likely to cause death, or by means of fire etc. The basic ingredients of Section 324 of I.P.C. are also then not attracted. Then whatever the offences remain are non cognizable offence and therefore, the F.I.R. under Section 154 of Cr.P.C. would not have been maintainable. Under these circumstances, it would be an abuse of process of law if the applicants are asked to face the trial. This is a fit case where we should exercise our powers under Section 482 of Cr.P.C. as the case is befitting the guidelines in ***Hitesh Verma vs State of Uttarakhand and another (supra)***. We therefore, proceed to pass the following order:-

O R D E R

- I. The application stands allowed.
- II. The proceedings in special case No. 60 of 2024 pending

before the learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Latur arising out of the F.I.R. vide C.R. No. 192 of 2024 registered with M.I.D.C. police station, Latur, Tq. and district Latur for the offences punishable under Sections 323, 324, 504, 506 r.w. 34 of I.P.C. and section 3(1) (r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside against both the applicants.

10. The fees of learned advocate appointed to represent the cause of respondent No.2 is quantified at Rs.7000/- (Rupees Seven thousand) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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