



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 CRIMINAL APPLICATION NO.2547 OF 2024

Upasna d/o Vijaysingh Parihar,
Age 45 yrs., Occ. Advocate,
R/o Sadar Bazar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Ambajogai (City),
Tq. Ambajogai, Dist. Beed.
- 2 Anita w/o Bhanudas Bhalekar,
Age 50 yrs., Occ. Labour,
R/o Panchsheel Nagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

... Respondents

...

Mr. U.L. Telgaonkar, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. Akram Inamdar, Advocate h/f Mr. Y.B. Pathan, Advocate for respondent

No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 24th APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashing First Information Report vide Crime No.131/2024 dated 27.03.2024 registered with City Police Station, Ambajogai, Tq. Ambajogai, Dist. Beed, for the offence punishable under Sections 324, 323, 504, 506 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as “**the Atrocities Act**”) and later on by way of amendment for quashing the proceedings in Special Case No.42/2024, pending before learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ambajogai, Dist. Beed.

2 Heard learned Advocate Mr. U.L. Telgaonkar for applicant, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. Akram Inamdar holding for learned Advocate Mr. Y.B. Pathan for respondent No.2.

3 Learned Advocate appearing for applicant has taken us through charge sheet and First Information Report. He submits that applicant is a Legal Practitioner at Ambajogai Court. Informant's daughter-in-law is the domestic help with applicant and there is matrimonial dispute going on

between informant's son and domestic help of applicant. Said domestic help i.e. daughter-in-law of informant stays with applicant. Applicant is representing her domestic help in the capacity as Advocate before the Courts. Unnecessarily the informant and her son have taken it personally and they were indulging in lodging false report even against present applicant. In present case it is stated that informant is a member of Scheduled Caste. On 26.03.2024 informant, her son, daughter and informant's mother were present before Ambajogai Court, as the matter in respect of custody of the grandchild was for hearing. Informant states that they met their Advocate, however, since there was an adjournment, they were going out of the Court around 1.00 p.m. Applicant was standing near the gate and she asked informant and others, as to whether the date has been extended ? Informant told her that since the daughter-in-law and children have not come to the Court, she should make arrangement at least for the meeting between her and others with the grandchildren. According to informant, applicant replied that she will not make such arrangement. She then abused the informant in the name of caste. Informant told her that though they are poor, but they should not be abused in the name of caste in front of people. She then states that applicant caught hold of her neck and gave threat as to how her case is taken by any Advocate. She then started slapping the informant. When informant's daughter, son and mother came to rescue her, at that time,

applicant had threatened her to kill. Applicant took a piece of brick and assaulted it on the head of informant causing bleeding injury to applicant. The informant then was taken to Police Station and then she lodged the report.

4 Learned Advocate for applicant states that except the son, daughter and mother of informant there is nobody's statement. When the alleged incident has taken place around 1.00 p.m. at the gate of Court, then certainly, general public would have been present here. Statement of any such person has not been recorded and, therefore, under such circumstance, it would be unjust to ask the applicant to face the trial.

5 Per contra, learned APP and learned Advocate appearing for respondent No.2 strongly opposed the application and submit that since the charge sheet is filed, it would be for the trial Court to decide. Further, the incident has taken place at the gate of the Court, which is definitely a public place and it was within public view. If the Advocate has misbehaved with the relatives of her client, then unnecessary protection need not be given. Learned APP points out the cross-complaint filed by present applicant and thereby indicating that certain incident in the Court premises has definitely taken place and, therefore, this is not a fit case where this Court should exercise powers under Section 482 of the Code of Criminal Procedure.

6 It is to be noted that for the injury alleged to have been caused by applicant with the help of brick, the prosecution is relying on injury certificate. It shows that informant was examined at 1.00 p.m. at S.R.T.R. Medical College and Hospital, Ambajogai and one injury was found in the form of laceration on parietal region and it is simple in nature. The weapon that is stated to have been used is brick. Brick is not an instrument of cutting, shooting, stabbing etc., that is, required as an ingredient under Section 324 of the Indian Penal Code and, therefore, police and prosecution appears to have invoked Section 324 of the Indian Penal Code wrongly. No ingredient of the offence under Section 324 of the Indian Penal Code can be attracted in such facts.

7 The next allegation is that the applicant has abused the informant and others in the name of caste. The incident is stated to have taken place around 1.00 p.m. near the gate of the Court. It was a working day on 26.03.2024 and, therefore, certainly general public might be present at the spot. When it comes to the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, the prosecution is required to prove that such abuses are given in public place and/or in public view. We would like to rely on **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 SCC 710], wherein it has been observed by the Hon'ble Supreme Court in paragraph Nos.13 and

14 that -

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the Civil Court, or that respondent 2 has invoked the jurisdiction of the Civil Court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent 2 is a member of Scheduled Caste.

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 v. State*, (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.” (emphasis in original)

8 In view of the decision in **Hitesh Verma** (supra) such abuses ought to have been heard by an independent witness (not being a friend or relative of the informant/victim). If we consider here, the statements, recorded under Section 161 of the Code of Criminal Procedure, are of the son, daughter and mother of informant i.e. relatives. The Investigating

Officer has not taken statement of any independent witness, who alleged to have been present on that day and seen as well as heard those abuses. Under such circumstance, it would be an abuse of process of law if the applicant is asked to face the trial for the offence under Section 324 of the Indian Penal Code, Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. For proving an offence under Section 3(2)(va) of the Atrocities Act it will have to be even *prima facie* shown by the prosecution that such act has been done by the accused only because the informant is a member of Scheduled Caste or the accused had the knowledge of the person being member of Scheduled Caste. Here, in this case, the daughter-in-law of the informant is the domestic help of the applicant and she is residing with applicant. Therefore, it cannot be said that the applicant has any grudge against member of Scheduled Caste. Rest of the sections are non cognizable. Though it appears that even the applicant has lodged a report against the informant and her son, daughter and mother on 27.03.2024 and there may be an incident; yet, we are only considering as to whether from the contents of the First Information Report and statements of witnesses the ingredients of offence have been made out and, therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Special Case No.42/2024, pending before learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ambajogai, Dist. Beed, arising out of First Information Report vide Crime No.131/2024 dated 27.03.2024 registered with City Police Station, Ambajogai, Tq. Ambajogai, Dist. Beed, for the offence punishable under Sections 324, 323, 504, 506 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside as against applicant viz. **Upasna d/o Vijaysingh Parihar.**

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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