



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2285 OF 2023

1. Datta s/o Asaram Ardad
Age: 47 years, Occu.: Agri.,
R/o. Rajatakali,
Taluka – Ghansawangi,
District Jalna.
2. Digambar s/o Asaram Ardad
Age: 42 years, Occu.: Agri.,
R/o. Rajatakali,
Taluka Ghansawangi,
District Jalna.
3. Vilas s/o Asaram Ardad
Age: 38 years, Occu.: Agri.,
R/o. Rajatakali,
Taluka – Ghanasawangi,
District Jalna.
4. Chetan s/o Asaram Ardad
Age: 36 years, Occu.: Agri.,
R/o. Rajatkali,
Taluka Ghanasawangi,
District Jalna.

.. Applicants

Versus

1. The State of Maharashtra
2. Vijaymala w/o Ashok Kharat
Age: 64 years, Occu.: Agri.,
R/o. Rajatakali,
Taluka – Ghanasawangi,
District Jalna.

.. Respondents

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Mr. R. M. Deshmukh, Advocate for the applicants.
Mr. N. R. Dayama, APP for respondent No.1/State.
Ms. Sayali Tekale - Dadape, Advocate for respondent No.2.

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

DATE : 22 APRIL 2025

ORDER :

. Present application has been filed initially for quashing the First Information Report vide Crime No.238 of 2023 dated 17.06.2023 registered with Ghanasawangi Police Station, District Jalna and later on, by way of amendment, for quashing the proceedings in Special Case No.67 of 2023, pending before the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ambad, District Jalna, for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

2. Heard learned Advocate Mr. R. M. Deshmukh for the applicants, learned APP for respondent No.1/State and learned Advocate Ms. Sayali Tekale-Dadpe, who is appointed for respondent No.2.

3. Learned Advocate for the applicants submits that he is restricting his submissions in respect of the offences which have been charged against the applicants under the Atrocities Act. The applicants are ready to face the trial for the offences under Indian Penal Code. He therefore

submitted that in order to attract the offence under the Atrocities Act, the applicants are not disputing that the informant is a member of Scheduled Caste, however, the incident is alleged to have taken place in the field and except one Baburao Natha Ardad, there is no other witness whose statement has been recorded under Section 161 of the Code of Criminal Procedure by stating that the said person was present. Even if we consider the statement of Baburao, then it can be seen that he had not heard the alleged abuses or insulting words uttered, but then he states that the informant and her husband were seen by him in injured condition. They had sustained bleeding injuries to their hands and behind them the present applicants were following. The applicants were abusing and they were holding axe and sickle. Therefore, he felt that the informant and her husband would be assaulted once again and, therefore, he suggested them to run, otherwise those persons would kill them. In his presence, he says that applicant Nos.2 and 4 had given threat to kill. Therefore, he is not the person who had heard the alleged insulting words so as to attract the offence under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

4. Per contra, learned APP and learned Advocate, who is appointed to represent the cause of respondent No.2, have taken us through the entire charge-sheet and they submit that the statement of the husband of the informant corroborates the FIR and the immediate action by them to

inform the fact to their sons. Baburao Ardad is the witness who has seen the present applicants coming from the field from the informant and, therefore, he may lend a corroborative piece of evidence which then can be further explained at the time of trial. That witness is an independent witness and, therefore, this is not a fit case even for exercise of powers under Section 482 of the Code of Criminal Procedure to the extent of offences under the Atrocities Act.

5. As aforesaid, we are restricting the application for quashment of the offences under Section 3(1)(r) and 3(1)(s) of the Atrocities Act in view of the submissions by the learned Advocate for the applicants and, therefore, a limited scrutiny is made. As per the FIR and the statement of the husband of the informant under Section 161 of the Code of Criminal Procedure, they both were working in their field where the present applicants went. Applicant No.1 abused them in the name of caste and asked them to sell their agricultural land to him. Then applicant No.1 gave slaps and fists causing injury to the husband of the informant. When informant tried to intervene, applicant No.3 assaulted her husband's both hands by axe. Applicant No.2 had then assaulted the informant on her both hands with sickle. When the voice of their quarrels raised, it was heard by Baburao Natha Ardad and he suggested them to flee away, at that time, accused Nos.2 and 4 gave threats to kill them. Thus, it is to be noted that when the actual abuses in the name of

caste were given, Baburao was not present. Therefore, in view of the decision in ***Hitesh Verma Vs. State of Uttarakhand and another, [(2020) 10 SCC 710]***, the offence under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act cannot be said to have been made out. Such insulting words ought to have been given in the presence of independent witness (not being relative and friend of the informant) and it should be in the public place or within the public view. Certainly, though the incident is stated to have taken place in the field, yet there is a road going abutting the land and Baburao had seen part of the incident from the road and, therefore, the said ingredient about public view is then made out. Yet, as aforesaid, as the independent witness had not heard the abuses, we are of the opinion that it would be an abuse of process of law if the applicants are asked to face the trial for the offence punishable under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

6. Taking into consideration the injury certificates and the statements under Section 161 of the Code of Criminal Procedure of the witnesses, certainly the offences under Indian Penal Code are made out. Before parting, we must clarify that the matter is before the learned Special Judge, under the Atrocities Act and he would be at liberty to consider whether any offence under the special enactment is made out at the time of framing of charge. If it is made out, then he may proceed with the framing of charge, otherwise he would be at liberty to take proper legal

recourse. Hence, the following order :-

ORDER

- I) Criminal Application stands partly allowed.
- II) The First Information Report vide Crime No.238 of 2023 dated 17.06.2023 registered with Ghanasawangi Police Station, District Jalna as well as the proceedings in Special Case No.67 of 2023, pending before the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ambad, District Jalna, for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Atrocities Act, stand quashed and set aside to the extent of offence under Sections 3(1)(r), 3(1)(s) of the Atrocities Act only, as against the present applicants.
- III) It is clarified that the matter to proceed for the other offences.
- IV) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2 is quantified at Rs.7,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm