



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 CRIMINAL APPLICATION NO.2639 OF 2023

- 1 Umadevi Praladh Totkar,
Age 55 yrs., Occ. Agri. & Housewife,
R/o Gudsur, Tq. Udgir,
Dist. Latur.
- 2 Virochan Praladh Totkar,
Age 35 yrs., Occ. Agri.,
R/o Gudsur, Tq. Udgir,
Dist. Latur.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through its Deputy Superintendent
of Police, Latur,
Police Station, Latur,
Tq. & Dist. Latur.
- 2 Naresh Dnyanoba Suryawanshi,
Age 34 yrs., Occ. Agri.,
R/o Gudsur, Tq. Udgir,
Dist. Latur.

... Respondents

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Mr. S.G. Jadhavar, Advocate for applicants

Mr. A.D. Wange, APP for respondent No.1

Mr. K.A. Kadam, Advocate for respondent No.2 - **absent**

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

DATE : 14th FEBRUARY, 2025

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

1 Present application has been filed initially for quashing First Information vide Crime No.147/2023 dated 14.07.2023 registered with Police Station, Jalkot, Dist. Latur and by way of amendment for quashing proceedings in Special Case No.50/2023 pending before learned Special Judge, under the S.C. & S.T. Act, Udgir, Dist. Latur, for the offence punishable under Sections 448, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), (s), 3(2)(va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. S.G. Jadhavar for applicants and learned APP Mr. A.D. Wange for respondent No.1. Learned Advocate for respondent No.2 was absent.

3 Learned Advocate for applicants vehemently submits that civil suit is pending since 2022 in respect of land in question and, therefore, with some ulterior motive it appears that concocted First Information Report has been filed. Further, as regards abuse in the name of caste is concerned, perusal of entire charge sheet would show that except the relatives nobody

else was present and incident is stated to have taken place in the land which cannot be said to be a public place nor it can be said to be in public view. He relies on the decision in **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 Supreme Court Cases 710] to support his contention.

4 Per contra, learned APP for respondent No.1 has strongly opposed and submits that there are eye witnesses to incident and they have stated that abuses in the name of caste were given. Though incident had taken place in agricultural land; yet, adjacent to land the public road passes by and, therefore, the spot can be said to be within the public view. Therefore, this is not a fit case for quashment of First Information Report and proceedings.

5 Perusal of First Information Report would show that the incident had taken place on 14.07.2023 around 2.00 p.m. when the informant, his brothers and mother were doing agricultural work. He states that in the field, which he has purchased from husband of applicant No.1 and father of applicant No.2, both applicants have erected unauthorized structure and informant found that they have sowed the crop in one portion of land. Informant states that he made inquiry with them, as to why they have done such act, then he was abused in the name of caste. Applicant No.2 was

holding katti in one hand and in another hand he was holding wooden log of the spade and he rushed towards brothers of informant and mother. He was shouting that he would eliminate them. In First Information Report he says that incident has been witnessed by one Dnyanoba Kisan Jadhav. He has admitted that he has purchased the land from Pralhad Totkar in 2008. Applicants have produced photo copy of plaint in Regular Civil Suit No.827/2022, wherein applicant No.2 filed the said suit against his father, mother and others including the informant. The said suit is for declaration that sale deed executed by his father in favour of informant is null and void to the extent of his share i.e. 1/5th share. Consequential prayers have been made. The said suit has been filed on 18.10.2022. Even if we consider the pendency of civil suit, it can be seen that when the sale deed is stated to be executed in respect of two lands separately in 2007 and 2008, the suit that is filed in 2022 is belated; yet, there is a cause of action. Paragraph No.5 of the suit states that the cause of action arose on 12.07.2022. That cannot be the ground for quashment of First Information Report and the charge sheet but in respect of incident dated 14.07.2023 the same will have to be assessed independently. Now, who was in possession of said piece of land can be gathered prima facie on the basis of sale deed and, therefore, the contents of First Information Report and charge sheet would certainly disclose the offence under Sections 448, 504, 506 read with Section 34 of the Indian

Penal Code. However, as regards offences under the special enactments i.e. the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, we will have to consider that the incident has taken place in private land. First Information Report, statement of witnesses and the spot panchnama does not specifically state where exactly the incident had taken place. It is stated to have occurred in Sy.No.508 which is admeasuring 01 hectare. Though the road is running North-South towards West of said land; yet, we cannot presume that spot was visible from public road. It should be not only visible but also audible. Further, the statements, those have been recorded under Section 161 of the Code of Criminal Procedure, are of the mother Vimal, brother Vijay and Santosh in respect of said incident dated 14.07.2023. In First Information Report presence of Dnyanoba Kisan Jadhav is stated but perusal of his First Information Report would show that informant is his nephew, that means, a related witness. Therefore, we will have to consider the ratio laid down in **Hitesh Verma** (supra). In paragraph No.14, after relying on decision in **Swaran Singh vs. State** [2008 (8) SCC 435] that, *“On the contrary, if the remark is made inside the 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.”* Therefore, such intentional insult in the name of caste should be before an independent witness and not in presence of relatives or friends. Here, there are only

relatives who are then bound to support. Hence, in this case we are of the opinion that ingredients of offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are not made out and, therefore, we should exercise our powers under Section 482 of the Code of Criminal Procedure to the limited extent. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) The proceeding in Special Case No.50/2023 pending before learned Special Judge, Under the S.C. & S.T. Act, Udgir, Dist. Latur arising out of First Information vide Crime No.147/2023 dated 14.07.2023 registered with Police Station, Jalkot, Dist. Latur stands quashed and set aside as against applicants to the extent of offence punishable under Sections 3(1)(r), (s), 3(2)(va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 only.
- iii) It is clarified that the relief of quashing the said proceedings for other offences stands rejected.
- iv) The concerned Court to take further steps as against applicants.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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