



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

58 CRIMINAL APPLICATION NO.3885 OF 2024

- 1 Ramesh Kashinath Dhole,
Age 46 yrs., Occ. Agri.,
- 2 Dilip Prabhakar Dhole,
Age 38 yrs., Occ. Agri.,
- 3 Pravin Ramesh Dhole,
Age 31 yrs., Occ. Agri.,
- 4 Suresh Kashinath Dhole,
Age 47 yrs., Occ. Agri.,
- 5 Khandu @ Yogesh Kalyan Dhole,
Age 35 yrs., Occ. Agri.,
- 6 Zumberbai w/o Prabhakar Dhole,
Age 28 yrs., Occ. Household,
- 7 Meerabai w/o Suresh Dhole,
Age 46 yrs., Occ. Household,
- 8 Vinod Kalyan Dhole,
Age 31 yrs., Occ. Agri.,
- 9 Muktabai w/o Ramesh Dhole,
Age 48 yrs., Occ. Household,
- 10 Jijabai w/o Kalyan Dhole,
Age 49 yrs., Occ. Household,
- 11 Poonam d/o Suresh Dhole,
Age 19 yrs., Occ. Student,
- 12 Kavita Dilip Dhole,
Age 35 yrs., Occ. Student,

All are r/o Patode-Wadgaon,
Bidkin, Tq. & Dist. Aurangabad.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra
Through In-charge of Police Inspector,
Police Station, Bidkin,
Tq. & Dist. Aurangabad.
- 2 Lakshmibai w/o Dhondiram Gangve,
Age Major, Occ. Household,
R/o Potode-Wadgaon, Bidkin,
Tq. & Dist. Aurangabad.

... **Respondents**

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Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R. Sapkal, Advocate for applicants

Mrs. Priya R. Bharaswadkar, APP for respondent No.1

Mrs. Sunita G. Sonawane, Advocate for respondent No.2

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

DATE : 10th JUNE, 2025

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

1 Present application has been filed for quashment of the

proceedings in Charge Sheet No.268/2022 i.e. Special Case No.346/2022 pending before learned Special Judge, under the Atrocities Act, Aurangabad arising out of First Information Report vide Crime No.400/2022 dated 27.08.2022 registered with Police Station, Bidkin, Tq. & Dist. Aurangabad, for offence punishable under Sections 143, 147, 504, 506, 427 read with Section 149 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. S.R. Sapkal for applicants, learned APP Mrs. Priya R. Bharaswadkar for respondent No.1 and learned Advocate Mrs. Sunita G. Sonawane for respondent No.2.

3 Learned Senior Counsel has taken us through the entire charge sheet including First Information Report and he submits that there is a civil dispute pending between applicants and informant's family. Informant states that incident had taken place around 4.15 to 4.30 p.m. on 27.08.2022. She states that all the accused persons barged into the field of informant, where they had erected a temporary structure with the help of iron sheets. Filthy abuses were given to informant and her niece when it is stated that they were

resisting the applicants from taking away the iron sheets. The informant states that she had called the brother-in-law, whereupon abuses were given to him also in the name of caste and threats were given. It is then stated that damage has been caused to the structure, boar pipeline and mango trees. The incident is stated to have taken place on 27.08.2022 around 4.30 p.m.; yet, First Information Report came to be lodged around 21.02 hours. The delay has not been explained. It appears that incident had taken place on the point of taking water from the boar. The said boar is dug by applicant Suresh Dhole, but it is adjacent to the plot of informant's brother-in-law. Informant's brother-in-law Rohidas and other members of informant's family including informant had blocked the boar by putting stones in the same. Then there was quarrel. Threat was given to applicants that they would involve them in the case under Atrocities Act. In fact, applicant Suresh Dhole had filed civil suit i.e. Regular Civil Suit No.92/2021 on 20.04.2021 for permanent injunction. Even brother of informant appears to have filed Regular Civil Suit No.95/2021 for permanent injunction. Both the suits were brought in one Court by order dated 14.02.2022 passed by Principal District Judge, Aurangabad. Even in the past for so many occasions when there were disputes, threats were given to applicants that they would be involved in Atrocities case. Therefore, the present First Information Report is nothing but the act of *mala fides* and, therefore, it would be unjust to ask the applicants

to face the trial.

4 Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submit that the spot panchnama would clearly show that damage has been caused to the property belonging to the informant's family. It is not in dispute that informant and her family members are members of Scheduled Caste, even that stand was taken in the applications for transfer of both the civil suits. Therefore, in spite of knowledge that the property belongs to the member of Scheduled Castes; yet, damage has been caused with the sole intention to harass them. The charge sheet would also show that statements of witnesses have been recorded and each one of them state that substantial damage has been caused to the property. Even the incident is captured in the mobile and said recording was made available to the police. Therefore, this is not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5 The documents which have been produced by applicants to the extent that they are the orders of the Court can be considered even at this stage and it appears that both the parties have filed Regular Civil Suit No.92/2021 and Regular Civil Suit No.95/2021 for injunction in respect of

the same property or same cause of action i.e. the other party is disturbing the possession of the respective plaintiffs in the year 2021. The suit filed by applicant No.4 is prior in time. But that cannot be the ground to hold that First Information Report which is lodged on 27.08.2022 is tainted with *mala fides*. Applicants would be at liberty to agitate the said point before the trial Court, but as on today there is no such strong reason to arrive at that conclusion. The documents on record also show that damage has been caused to the tin shed and other property. It is stated to be the cattle shed and not only in the First Information Report it is stated that the incident has been captured by way of video recording, the evidence also shows that the clip was taken on pen drive, the clip which was in the mobile phone. Therefore, there is possibility of evidence as regards Indian Penal Code Sections are concerned and, therefore, we do not find this to be a fit case where we should exercise powers under Section 482 of the Code of Criminal Procedure in respect of the offence which has been registered under the Indian Penal Code Sections.

6 Turning towards the allegations in respect of the offence under the special enactment i.e. the Atrocities Act, in order to prove the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act the said utterances in the name of caste should have been on the public road or within the public

view and in view of the decision in **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 SCC 710] such abuses or insulting words should be heard by an independent witness (not being the friend or relative). In **Hitesh Verma** (supra), 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)

7 Here, in this case, in the entire charge sheet we are unable to get statement of any independent witness. The statements of relatives and victim

only appears to have been taken. Further as regards offence under Section 3(2)(va) of the Atrocities Act is concerned, taking into consideration the civil dispute, it cannot be stated that the incident would have occurred only on the ground that the informant and her family members are of Scheduled Caste. What had happened as regards the date of cause of action, upon which the civil suits were filed and the date of present incident, there appears to be no proximity, though the parties had resorted to the civil remedy at the earliest point of time. Therefore, we are of the opinion that *prima facie* case has not been made out for attracting the offences under the Atrocities Act. To that extent this Court can exercise its powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) The proceedings in Charge Sheet No.268/2022 i.e. Special Case No.346/2022 pending before learned Special Judge, under the Atrocities Act, Aurangabad arising out of First Information Report vide Crime No.400/2022 registered with Police Station, Bidkin, Tq. & Dist. Aurangabad, stands quashed and set aside to the extent of offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 only, as against applicants.

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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