IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4348 OF 2024

Gorakh Maruti Rohakale
Age: 54 years, Occu.: Business,
R/o. C/901, Sai Radiance, Plot
No.59/60/61, Sector-15, CBD
Belapur, Navi Mumbai, Kokan
Bhavan, Thane. ***.. Applicant***

Versus

1. The State of Maharashtra
(Through Parner Police Station
Ahmednagar).

2. Shantabai Raghunath Ambedkar
Age: 59 years, Occu.: Household,
R/o. Bhalwani, Parner,
Ahmednagar. ***.. Respondents***

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Mr. Shaikh Sohail Subhedar, Advocate for the applicant.

Mr. V. K. Kotecha, APP for respondent No.1/State.

Mr. A. G. Ambetkar, Advocate for respondent No.2 (Through video conferencing).

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.
DATE : 10 JUNE 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed for quashing the proceedings in Special Case No.73 of 2024 pending before the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ahmednagar arising out of the FIR vide Crime No.88 of 2024 dated 06.02.2024 registered

with Parner Police Station, District Ahmednagar for the offences punishable under Sections 427, 504, 5506 of Indian Penal Code and under Section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the "Atrocities Act").

2. Heard learned Advocate Mr. Shaikh Sohail Subhedar for the applicant, learned APP Mr. V. K. Kotecha for respondent No.1/State and learned Advocate Mr. A. G. Ambetkar for respondent No.2 (through video conferencing).

3. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet including the FIR. He submits that from the FIR it can be seen that the applicants are the neighbouring shop owners of the informant. She contends that a shop by name Nageshwar Shoe Palace stands in her name and adjacent to that shop, there was shop of one Gorakh Maruti Rohkale on one side and on another side, there was property of one Raju Gorakh Rohakale. The property bearing No.451 was standing in the name of one Siddharth Masulkar and it was sold in November 2023. In November 2023, the present applicant and Laxman Masulkar started making construction on their premises and she states that with the help of JCB, a ditch of 15 feet in depth was taken. When she had gone to take articles from her shop, at that time, she saw

that the floor on the southern side from her shop got damaged and it is stated to be due to the ditch. Even the eastern side wall had suffered damage and then it is stated that she realized that the applicant had made encroachment and was going on with the construction. She then states that she herself with her husband went to Laxman Masulkar to inform that due to his activity of making the ditch, they have suffered. At that time, he told that he has purchased the shop from the present applicant and making construction and they should do whatever they want. She then states that she and her husband were abused by one Ganesh Masulkar, Sagar Masulkar in the name of caste. She then states that her husband had given a phone call to present applicant and informed him about the incident, at that time, the applicant arrived at the place of construction and started abusing them in the name of caste. The charge-sheet would show that there is statement of her husband only to support her contention. Therefore, with this material, it would be unjust to ask the applicant to face the trial. Further, it appears that the informant has filed Regular Civil Suit No.1255 of 2023 on 15.12.2023 against present applicant and others. So she has already taken the civil action and though in the present case the incident is stated to have occurred between 15.11.2023 to 16.11.2023, she lodged the FIR on 06.02.2024 i.e. after her civil suit with a concocted story.

4. Per contra, learned APP as well as learned Advocate appearing through video conferencing for respondent No.2 strongly objected the application and submitted that only delay cannot be the ground for quashing the FIR and the proceedings. The spot panchanama would show that there is damage to the shop premises. The incident has given birth to criminal action also and, therefore, this is not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5. At the outset, it is to be noted that as regards Indian Penal Code Sections are concerned, there is supporting evidence by way of spot panchanama, however, that is not attributed to the present applicant, as prior to the incident it is stated that present applicant had sold the said plot, which is adjacent to the shop of the informant, to Laxman Masulkar. Laxman Masulkar is stated to have taken the work of construction and, therefore, present applicant is not connected to that act. The role attributed to the present applicant is that after the husband of the informant gave phone call to him and informed about the incident that had allegedly been committed by co-accused; applicant went there and it is stated that he abused them in the name of caste. Statement of independent witness has not been recorded by the investigating officer, who is stated to have heard the abuses in the name of caste. Secondly, neither in the FIR, nor in the statement of her husband under Section

161 of the Code of Criminal Procedure, they have stated exactly where the alleged abuses were given by the present applicant. It is stated that applicant went to the place of construction and then gave abuses. How much was the distance between the place where informant and her husband were standing and the public road would be a question and, therefore, there is no clear evidence in the charge-sheet to show that the place was within public view or it was the public place so as to attract offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Reliance can be placed on the decision in ***Hitesh Verma Vs. State of Uttarakhand and another, [(2020) 10 SCC 710]***, wherein it has been held 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 No.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 No.2 is 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 and Ors. v. State through Standing Counsel and 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.

6. Therefore, case is made out to exercise powers under Section 482 of the Code of Criminal Procedure to a limited extent. Hence, the following order :-

ORDER

I) Criminal Application stands partly allowed.

II) The proceedings in Special Case No.73 of 2024 pending before the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ahmednagar arising out of the FIR vide Crime No.88 of 2024 dated 06.02.2024 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 427, 504, 506 of Indian Penal Code and under Section 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) and 3(1)(s) of the

Atrocities Act only, as against the present applicant.

III) It is clarified that the matter to proceed for the other offences.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm