



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3822 OF 2023

1. Fattelal s/o Arjun Patil
Age: 59 years, Occu.: Agri.,
2. Kirtikumar s/o Sayajirav Patil
Age: 40 years, Occu.: Agri.,
3. Jitendra s/o Ashok Patil
Age: 45 years, Occu.: Agri.,
4. Tanaji s/o Bhaidas Patil
Age: 46 years, Occu.: Agri.,
5. Vikas s/o Indrajit Patil
Age: 47 years, Occu.: Agri.,
6. Shivaji s/o Bhaidas Patil
Age: 50 years, Occu.: Agri.,
All R/o. At Post Eklahare,
Tq. Amalner, Dist. Jalgaon.

.. Applicants

Versus

1. The State of Maharashtra
Through, Marwad Police Station,
Tq. Amalner, Dist. Jalgaon.
2. Tanhaji s/o Pandharinath Wagh
Age: 36 years, Occu.: Agri.,
R/o. At Post, Eklahare,
Tq. Amalner, Dist. Jalgaon.

.. Respondents

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Mr. G. S. Shembole, Advocate for the applicants.

Mr. A. R. Kale, APP for respondent No.1/State.

Mr. N. R. Shaikh, Advocate for respondent No.2 (Appointed Through Legal Aid).

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**CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.**

RESERVED ON : 10 FEBRUARY 2025

PRONOUNCED ON : 05 MARCH 2025

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

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.59 of 2023 registered with Marwad Police Station, District Jalgaon and later on, by way of amendment, for quashing the proceedings in Special Case No.59 of 2023 pending before the learned Special Judge, Amalner, District Jalgaon for the offences punishable under Sections 143, 323, 504, 506 of Indian Penal Code, under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1949 (hereinafter referred to as the "Atrocities Act").

2. Heard learned Advocate G. S. Shembole for the applicants, learned APP Mr. A. R. Kale for respondent No.1/State and learned Advocate Mr. N. R. Shaikh for respondent No.2 (Appointed Through Legal Aid).

3. Learned Advocate for the applicants submits that the incident is stated to have taken place as per the FIR on 29.04.2023 around 7.00 to 7.30 a.m., however, the FIR has been lodged around 16.22 hours on the same day. There is delay in

lodging the FIR. Further, it is alleged that when the incident had taken place on 29.04.2023, all the applicants were in the premises of Marwad Police Station, District Jalgaon. The CCTV footage from the police station has been collected under the Right to Information Act by applicant No.1. Photographs of the same have been produced. Perusal of the entire charge-sheet would show that it is a concocted story. Further all the witnesses i.e. Madhukar Sahebrao Patil, Hansaraj Sukram Patil, Janabai Hemraj Patil, Kavita Vijay Patil, Vijay Hemraj Patil, Ravindra Vasant Patil, Mahesh @ Samadhan Vasant Patil, Arjun Gangaram Jadhav, Anita Arjun Jadhav, Dipak Pralhad More and Nikita Dipak More have stated that the informant had gone unnecessarily in front of the house of applicant No.1, abused him and started asking as to why his vehicle was set to fire. Applicant No.1 was convincing him by saying that he has not done any such act and he should not abuse. Thereupon, the other accused persons went there and started to persuade informant, but still the informant continued to abuse them in filthy language in the Chowk. Thereupon, there was exchange of heat words. Thereafter, when informant called police, the applicants were not at home, but they had gone to police station to lodge the report.

The informant had then caused damage to his own belongings in his house, torn his clothes on the person and started saying that he will not leave the applicants and would involve them in a case. All these things have come on record in the charge-sheet and, therefore, it would be an abuse of process of law to ask the applicants to face the trial.

4. Per contra, learned APP objected the application and submitted that since now the investigation is over and charge-sheet has been filed, let there be trial because there are statements in favour of the informant also.

5. Learned Advocate Mr. N. R. Shaikh, who is appointed through Legal Aid for respondent No.2, vehemently opposed the application and submitted that certainly there are certain statements in favour of the applicants. But if we see that those witnesses are mainly from the caste of the applicants. There are four witnesses, who may not be from the caste of the applicants, but still their presence is doubtful. The witnesses, who have spoken in favour of the informant, are the wife, father and mother, who were naturally in the house. In the past also various complaints have been lodged by the informant and his family, as the applicants appear to be having grudge against the informant

and his family because of their caste. As regards CCTV footage that is collected certainly it is a matter of evidence and would amount to disputed question of facts, which cannot be gone into in this application under Section 482 of the Code of Criminal Procedure. He relies on the decision of the Hon'ble Single Bench of Allahabad High Court in ***Manoj Yadav Alias Fauji Vs. State of U. P. and Another, [AIROnline 2021 ALL 3016]***, wherein also the plea was taken by the accused that he was not present at the time and place of occurrence as per the CCTV footage. In that case, the application under Section 482 of the Code of Criminal Procedure was rejected stating that all those submissions which were made relating to the disputed questions of fact cannot be adjudicated by the Court in proceedings under Section 482 of the Code of Criminal Procedure.

6. Important point to be noted is that perusal of the FIR would show that the incident is stated to have taken place in front of the house of the informant. He states that he was sweeping the courtyard around 7.00 to 7.30 a.m. on 29.04.2023. Applicant No.1, who is his neighbour, came out of his house and abused him by saying “ओ महार तुला जास्त झाले का तुझी मोटार सायकल आम्ही जाळली ऐवढे दिवसापासुन तुने आमचे काय करुन घेतले”. For this part of the

FIR, he makes allegations only against applicant No.1 and then he states that he was dragged in the Chowk of the village by applicant No.1. Perusal of the spot panchanama would show that the spot is the house and the courtyard. The distance between the house of the informant and the Chowk has not been stated by any of the witnesses. Further, when applicant No.1 was allegedly abusing him, who were the witnesses who had heard applicant No.1 giving intentional insult to the informant is not stated by him. At this stage only, we are taking note of the statements of witnesses i.e. Shital – wife of the informant, Pandharinath – father of the informant and Bhatabai – mother of the informant, who have also given the same statements. However, it is not stated by him where they were and what they did after applicant No.1 started dragging the informant towards Chowk. No third person, nor the relative, nor friend is stated to be present and had heard the alleged insulting words. We would like to rely 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.

7. The further part of the FIR states that when the informant was dragged till Chowk, at that place, all the accused were present and then applicant No.2 Kirtikumar told applicant No.1 that in spite of informant's motorcycle set to fire, he is not

listening and, therefore, his entire family members should be brought in the Chowk and set to fire, otherwise they will not listen. Then all the accused persons assaulted him with kicks and fists. In the process his clothes got torn. He then says that anyhow he rescued himself and came running to his house. This is the second episode. To this also, there is no witness except the earlier three witnesses i.e. wife and parents. When the incident is stated to have taken place in Chowk, it is hard to believe that it would not have been witnessed by anybody. The three witnesses in favour of informant have not stated that they had gone behind the informant and applicant No.1 to the Chowk and had tried to rescue the informant. Even the informant and these witnesses have not stated that they had cried for help from people and nobody came forward.

8. As per the FIR, a third episode is stated to have taken place in the house of the informant. He states that after he came running to the house, all the accused persons came armed with sticks and iron rods. They pelted stone on his house and damaged the cooler and earthen pot kept outside the house. applicant No.2 - Kirtikumar, applicant No.1 - Fattelal and accused - Uday caught hold of informant's wife and started

saying that she should be dragged till Chowk and should be raped, which was outraging the modesty of the wife. Witness Shital in her statement has stated that those three applicants had caught hold of her hand. She does not say what was stated by those applicants as stated in the FIR. When it comes to outraging of modesty of a woman, the best witness is the woman and she should tell what was said to her and what was the behaviour against her. For proving the offence under Section 3(1)(w)(i) of the Atrocities Act, intentionally touching to the woman belonging to Scheduled Caste knowing that she belongs to a Scheduled Caste, when such act of touching is of a sexual nature and is without the recipient's consent, is necessary. Here, the statement of witness Shital is not fulfilling the ingredients as she has merely stated that he was catching hold of her hand without utterance of any word. Witness Pandharinath and Bhatabai, who were allegedly present there have also not supported the contents of the FIR in that respect. Further, for proving offence under Section 3(1)(w)(ii) of the Atrocities Act, prosecution has to prove that words were used of a sexual nature towards a woman belonging to Scheduled Caste knowing that she belongs to a particular caste. Again at the cost of repetition, the statement of

the lady and the parents are not supporting the statement to that extent in the FIR. Therefore, ingredients of Section 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act are not attracted. The informant further says that abuse in the name of caste was given by saying that his ration has been stopped since last three months, still he (abuse) is unable to understand. This part of the incident had taken place inside the house and, therefore, the offence under Sections 3(1)(r), 3(1)(s) of the Atrocities Act are not at all attracted. So also in view of **Hitesh Verma (Supra)** it was not even heard by a third person as well as it was not in the public place or in the public view.

9. Thus, it can be seen that none of the Sections from the Atrocities Act are attracted in the present case. Even as regards the offence under Indian Penal Code, as aforesaid, Section 354 of Indian Penal Code will not get attracted as the woman has stated that her hand was caught, but the ingredients of the said offence require that there should be an assault or use of criminal force. As regards the other offences under Indian Penal Code are concerned, certainly it appears that it is with an intention to implicate the applicants. Here, we take note of the statements of the other witnesses who have been named earlier. All those

witnesses have stated a different story and they have stated that no such incident as stated in the FIR had taken place, though they were present at the spot. In fact, they say that applicant No.1 had gone to Ram Mandir for Darshan where the informant had gone and he started abusing applicant No.1. Since the charge-sheet is filed, we are considering the entire material in view of **B. V. Ram Kumar Vs. State of Telangana and Another, [Criminal Appeal No(s).___of 2025 (arising out of SLP (Crl.) No(s).7887 of 2024)]**, wherein it has been observed that :-

“14. The position of law is well settled by catena of judgments of this Court that in order to entertain a challenge to the FIR, charge sheet or an order taking cognizance, all that has to be seen is, whether from a bare reading of the charge sheet, the ingredients of the sections charged therein are being prima facie made out or not. Reference in this regard may be made to the judgment of this Court in **State of Haryana v. Bhajan Lal** [[1992 Supp (1) SCC 335] wherein it was held that :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly

defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

Thus, it is trite that the constitutional courts are wholly competent to exercise their extraordinary power to quash the criminal proceedings to prevent abuse of the process of the Court or otherwise to secure the ends of the justice if the allegations in the FIR or complaint neither disclose the commission of any offence nor make out a prima facie case against the accused.

10. Further, reliance can be placed on the decision in **Salib @ Shalu @ Salim Vs. State of Uttar Pradesh and others [(2023) 11 SCR 58]**, wherein it has been held that :-

“Whenever an accused seeks quashing of the First Information Report or the criminal proceedings essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, in such circumstances, the Court owes a duty to look into the First Information Report with care and a little more closely. It would not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances

emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. Court is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.”

11. The evidence in the form of CCTV footage is always collected as a corroborative piece of evidence. Definitely, it requires adducing of evidence to prove the footage. Definitely, at this stage, the said CCTV footage may amount to disputed question of fact, however, here, the fact is different in a sense that the CCTV's were installed in the same police station itself and when an officer, who is of the rank of Sub Divisional Police Officer, is conducting an investigation would have definitely interrogated the applicants thereupon and also from the statements of the above-said witnesses, he would have come to know that applicants were claiming to be present in the police station at the relevant time. He ought to have taken statements of those police officers who were on duty at the relevant time and also ought to have collected the CCTV footage. It appears that the present investigating officer has not applied his mind. Merely because the FIR has been lodged, he is not supposed to be under obligation to file charge-

sheet independent of the CCTV footage also. For the aforesaid reasons, we come to the conclusion that it would be an abuse of process of law if the applicants are asked to face the trial and, therefore, this is a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR bearing Crime No.59 of 2023 registered with Marwad Police Station, District Jalgaon as well as the proceedings in Special Case No.59 of 2023 pending before the learned Special Judge, Amalner, District Jalgaon for the offences punishable under Sections 143, 323, 504, 506 of Indian Penal Code, under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Atrocities Act, stand quashed and set aside as against the present applicants.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm