



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO.4624 OF 2024

Uttareshwar Bapu Khandare,
Age 24 yrs., Occ. Business,
R/o Karegavan, Tq. & Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Beed (City),
Tq. & Dist. Beed.
- 2 XYZ

... Respondents

...

Mr. S.S. Thombre, Advocate for applicant

Mrs. R.P. Gour, APP for respondent No.1

Mrs. A.D. Deshmukh, (Advocate (appointed through Legal Aid) for
respondent No.2

...

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

DATE : 08th APRIL, 2025

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

- 1 Present application has been filed initially for quashing First

Information Report vide Crime No.126/2024 dated 13.06.2024 registered with Police Station, Beed (City), for the offence punishable under Sections 306, 324, 376 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, later on by way of amendment for quashing the proceedings in Special Case No.208/2024 pending before learned Special Judge, under the Atrocities Act, Beed.

2 Heard learned Advocate Mr. S.S. Thombre for applicant, learned APP Mrs. R.P. Gour for respondent No.1 and learned Advocate appointed through High Court Legal Services Sub Committee Aurangabad Mrs. A.D. Deshmukh for respondent No.2.

3 Learned Advocate appearing for applicant has taken us through First Information Report and submits that deceased girl was 21 years old and as per the informant, she left informant's home around 2.00 p.m. on 12.06.2024 without informing anybody. Family members were searching her. However, around 5.00 p.m. informant's son received phone call on his mobile from unknown number, but deceased girl talked to him and told that she loves applicant and she is going to perform marriage with him. Then the son of informant asked her, as to where she is, she should come to home first. She told that she is at Yelamb phata and refused to come to home.

Informant's son went to Yelamb phata, where he found that there was quarrel between deceased girl and present applicant and girl had sustained injury to her head, at that time, informant's son hear the applicant insulting the girl in the name of caste and he will not marry her. Then the son of informant brought deceased girl to Neknoor Government Hospital and at that time the entire story was told by her. She was then referred for further medical treatment to Civil Hospital, Beed. Informant's another son gave phone call around 6.00 a.m. on 13.06.2024 that the girl has committed suicide by hanging herself with a scarf to the window of bathroom of Woman Ward in Civil Hospital, Beed. Then First Information Report has been lodged. In fact, there was no contact between applicant and girl after the son of informant had taken her along with him. If the said story given by informant is to be believed, there is no question of any abetment. But, unfortunately, though the applicant appears to be in love with deceased girl, as the informant and his sons took her back it appears that she has taken the ultimate step. However, it would be an abuse of process of law if the applicant is asked to face the trial.

4 Learned APP as well as learned Advocate for respondent No.2, who came to be appointed through Legal Aid, strongly opposed the application and submitted that though initially the offence came to be

registered under Section 306, 324 of the Indian Penal Code and Sections under the Atrocities Act; yet, in view of the Postmortem Report, wherein it is stated that sexual assault cannot be ruled out, offence under Section 376 of the Indian Penal Code has been added. Brother of deceased is an eye witness to abuses and assault, whose statement has been recorded under Section 161 of the Code of Criminal Procedure and, therefore, when applicant is responsible for her death, this is not a fit case where the Court should exercise powers under Section 482 of the Code of Criminal Procedure.

5 Before we turn to the facts, we take the note of the fact that present proceedings is under Section 482 of the Code of Criminal Procedure and now the charge sheet is filed, therefore, this Court can consider the entire material which is before this Court and when applicant has come with a case that he has been instigated, then in view of **B.V. Ram Kumar vs. State of Telangana and another** [2025 INSC 194], 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. Chh. 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.”

6 Now, initially the offence was under Section 306, 324 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In First Information Report it was tried to be posed that the girl when missing around 2.00 p.m. on 12.06.2024 within three hours then she had given a phone call to her brother disclosing that she is in love with applicant and they are going to perform marriage. But, then the said son by asking her about her location went there, whereupon it is stated that he witnessed the dispute between the girl and applicant and also the fact that girl had sustained injury to her head

and then applicant was saying that since the girl is from Scheduled Caste, he will not marry her. This itself is an unbelievable story, for the simple reason that when phone call was given at 5.00 p.m., she informs about her intention to marry and within few minutes how applicant would have taken the decision not to marry, that too, on the point of caste, when she had stated that there is love affair between herself and applicant. Now, as regards injury to head of girl, the supplementary statement of informant states that informant's son had brought the girl to their house (as per First Information Report he had not brought the girl to house, but had taken to Government Hospital, Neknoor) and prior to that on phone the girl had refused to come to house. But then in the supplementary statement dated 20.06.2024 informant says that the girl was brought by her brother to the house and at that point of time informant was giving advice to her that applicant is not from their caste and, therefore, she should not marry him but she was not in a position to listen, therefore, the informant had slapped her and in that process she fell down on the wall of their house, thereby causing injury to the head of the girl. Now, again a supplementary statement has taken on 01.07.2024 of the informant, wherein he had stated that girl told him after she was brought to home that as the applicant refused to perform marriage with her and she was insisting, applicant had assaulted her causing injury to her head. Thus, it can be seen that in the allegations itself there are somersaults. The Inquest

Panchnama and Postmortem Report show there was injury to head of girl. There is statement of another son of informant i.e. the elder brother (the brother, who alleged to have gone to fetch the girl at Yelamb Phata is the younger brother) states that around 6.00 p.m. the younger brother left the girl near house. He made inquiry with girl, who then told that she had gone with applicant with whom she has love affair and they were supposed to marry. The elder brother was giving advice to her, so also he states that father was also giving advice that she should not marry to applicant, but when it was seen that the girl was not listening the father, the father had slapped her and then she fell down on the wall of the house causing injury to her head. The elder brother then took her to Government Hospital, Neknoor, then upon the advice of Doctor to have C.T. Scan she was taken to Civil Hospital, Beed and was admitted around 9.30 p.m. He states that since she was admitted in the Female Ward, he called his maternal aunt to stay with the girl and he himself and his cousin were waiting outside the Ward. Around 6.00 a.m. on the next day after the aunt called them, they had peeped from the upper window of bath room and saw that the girl has committed suicide by hanging herself. The younger brother in his statement dated 20.06.2024 has stated that when he went to Yelamb Phata he found applicant and sister. The girl was talking to the applicant stating that she wants to marry him, but the applicant was saying that he will not marry her.

Then the younger brother says that he told both of them that they should go to home and then decide. He took both of them near the house and cousin brother took the girl inside the house and at that time the younger brother asked applicant, as to why he had taken his sister along with him and then assaulted the applicant. He should call his parents. The applicant then called his elder brother. The relatives of applicant came and at that time this witness told the relatives that applicant should sever the relationship with his sister and not to even call her. This witness went home. Thus, he is not uttering a single word regarding the abuses in the name of caste or the alleged conduct on the part of the applicant that as the girl was member of Scheduled Caste he had no intention to marry her. Thus, certainly, this is an act of implicating the applicant. Interestingly, this younger brother in his statement recorded on 01.07.2024 has then improved and stated about the abuses in the name of caste or the conduct of the applicant regarding to the caste of the girl. Statement of mother of the girl is also on the same line and she in her initial statement has stated that she had witnessed her husband slapping the girl and then because of which the girl falling on the wall of the house resulting in injury to the head. There is statement of maternal aunt of the girl, who was with the girl in the Female Ward and also the statement of her son, who was outside the Ward along with the elder brother. Neither the elder brother nor maternal aunt nor her son have stated that after the girl

was admitted to Civil Hospital, Beed around 9.30 p.m. there was any contact between the applicant and deceased either on phone or physical till 6.00 a.m. on the next day. Therefore, there is no question of abetment of committing suicide by the girl can be alleged against the applicant.

7 In view of the offence involved in the matter under the Atrocities Act, the investigation has to be by a Police Officer of the rank of Sub Divisional Police Officer. Accordingly, the same has been conducted by Sub Divisional Police Officer, Beed Division Mr. Vishwambar Golde. We deprecate his action in adding Section 376 of the Indian Penal Code only on the basis of statement or remark in Postmortem Report “sexual assault cannot be ruled out”. If we see the entire charge sheet i.e. statements of all relatives of deceased, none of them have stated that there was at any point of time sexual intercourse between applicant and deceased. If at all the Investigating Officer comes across such remark, then he ought to have taken further statements regarding the knowledge about any such act. Merely on the basis of such statement in the Postmortem Report the said section ought not to have been added. Mr. Vishwambar Golde, the Sub Divisional Police Officer, without application of mind has added the said section. He ought to have avoided it, in view of statement which he has recorded. Charges of rape are serious in nature and, therefore, not only the person alleging such charges

but also the Investigating Officer should think twice before levelling it.

8 We also further take the legal position in respect of Section 306 of the Indian Penal Code, for which we will have to consider Section 107 of the Indian Penal Code. We would like to rely on the decisions in **Dilip Ramrao Shirasao and others vs. State of Maharashtra and another** [2016 ALL MR (Cri) 4328], **Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh** [2002 Cri.L.J. 2796], **Madan Mohan Singh vs. State of Gujrat and another** [(2010) 8 SCC 628], **S.S. Chheena vs. Vijay Kumar Mahajan** [2010 All MR (Cri) 3298 (S.C.)] and **R. Shashirekha vs. State of Karnataka and others** [2025 INSC 402]. Taking into consideration the ratio laid down in all these authorities and the fact in present case, definitely, ingredients of any of the offences under which charge sheet is filed are not at all attracted. Further, it has been observed in one of the recent Judgments in **Mahendra Awase vs. The State of Madhya Pradesh** [2025 INSC 76] that merely for the satisfaction of informant Investigating Officer should not file charge sheet against accused, arrayed in offence under Section 306 of the Indian Penal Code. In **Amalendu Pal @ Jhantu vs. State of West Bengal** [(2010) 1 SCC 707] similar view that of **M. Mohan** (supra) is taken, wherein it was held that -

“In a case of abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action

proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 of the Indian Penal Code would not be sustainable.”

9 Further, in view of **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 SCC 710] alleged insulting words were not heard by any independent witness. We hold that even *prima facie* the ingredients of offence under Sections 3(1)(r), 3(1)(s) as well as Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are not made out. In **Hitesh Verma** (supra) in paragraph Nos.13 and 14 it has been observed thus -

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)

10 When even *prima facie* ingredients of offences are not made out, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure, because it would be an abuse of process of law to ask the applicant to face the trial. Hence, following order.

ORDER

i) Criminal Application stands allowed.

ii) The proceedings in Special Case No.208/2024 pending before learned Special Judge, under the Atrocities Act, Beed arising out of First Information Report vide Crime No.126/2024 dated 13.06.2024 registered with Police Station, Beed (City), for the offence punishable under Sections 306, 324, 376 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside as against applicant **Uttreshwar Bapu Khandare.**

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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