



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO. 4992 OF 2024

- 1 Vishwanath Narsappa Reddy,
Age 70 yrs., Occ. Retired,
- 2 Nirmala Vishwanath Reddy,
Age 64 yrs., Occ. Household,
- 3 Balraj Vishwanath Reddy,
Age 39 yrs., Occ. Agri.,
- 4 Shashirekha Balraj Reddy,
Age 32 yrs., Occ. Household,
- 5 Sharda w/o Nandkumar Reddy,
Age 35 yrs., Occ. Household,
- 6 Nandkumar Vishwanath Reddy,
Age 44 yrs., Occ. Public Servant,

All are r/o Raje Shivaji Nagar,
Post Pakharsangvi, Barshi Road,
Latur, Tq. & Dist. Latur.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
M.I.D.C. Police Station,
Latur, Tq. & Dist. Latur.
- 2 Vishnu Maruti Jogdand,
Age 33 yrs., Occ. Labour,
R/o Post Nalegaon, Tq. Chakur,
Dist. Latur.

... Respondents

...

Mr. R.P. Cheble, Advocate h/f Mr. P.B. Vaidya, Advocate for applicants

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

...

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

DATE : 27th FEBRUARY, 2025

ORDER :

1 Present application has been filed for quashing First Information Report vide Crime No.549/2023 dated 25.07.2023 registered with M.I.D.C. Police Station, Latur and the proceedings in Special Case No.126/2023 pending before learned Special Judge, under the Atrocities Act, Latur, for the offence punishable under Sections 323, 341, 504, 506 of the Indian Penal Code, 1860 and under Sections 3(1)(r), (s), 3(1)(y), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as “the Atrocities Act”).

2 Heard learned Advocate Mr. R.P. Cheble holding for learned Advocate Mr. P.B. Vaidya for applicants and learned APP Mr. A.R. Kale for respondent No.1.

3 After taking us through contents of First Information Report as

well as charge sheet, learned Advocate for applicants submits that there is a civil suit pending since 07.10.2022 between applicant No.1 and mother of respondent No.2 in respect of plot No.182. Now, the informant has come with a case that his mother is owner of plot No.185, which she had purchased in the year 1986 and it is also stated that towards West of that plot there is 20 feet public road. He states about incident taken place at 10.00 a.m. on 18.02.2023 that applicant No.1, his wife applicant No.2 had abused him in the name of caste and thereafter applicant Nos.3 and 4 had gone to the said place. They slapped the informant. Thereafter, he says that the second incident had taken place at 10.30 a.m. on 19.02.2023 and at that time applicant Nos.1 and 3 had come in front of the road which is in front of the plot, abused him in the name of caste. Applicant No.6 had slapped him and told that he is in Police Department and came from Military, there is concession for him to commit murder of two persons and nobody can dare to do anything against him. He had also then abused him. It is then stated that the public road was engaged by putting iron sheets by applicants. Applicant No.5 had also taken part while committing the offence. From the charge sheet itself it can be seen that applicant No.6 was in a training programme at Pune between 13.02.2023 to 23.02.2023. The clarifications have been taken on 15.09.2023 as to whether applicant No.6 had obtained any concession or leave on 18.02.2023 or 19.02.2023. It indicates that applicant No.6 was not

present at all at the time of alleged incident. The First Information Report has been lodged on 25.07.2023, therefore, there is considerable delay in lodging First Information Report. Statements of witnesses would indicate that two of them are relatives of applicants and third person is not specific in respect of the incident i.e. witness Sugriv Manikrao Somwanshi. Therefore, with this evidence it can be gathered that First Information Report has been lodged with ulterior motive and, therefore, it would be unjust to ask the applicants to face the trial.

4 Learned APP is strongly objecting on the ground that there is material to connect applicants with the crime. The investigation is over and, therefore, let the applicants face trial.

5 There is no necessity to issue notice to respondent No.2.

6 At the outset, we would like to say that we had given hearing to learned Advocate for applicants for a considerable time and after disinclination is shown, he took some time to seek instructions for the withdrawal of application. However, after coming back, instead of directly stating as to what are his instructions he raised the point of delay, which according to him, remained to be agitated and then he states that he has not got instructions from applicants to withdraw the application.

7 We deprecate such practice. When already disinclination is

shown to grant any relief to applicants, learned Advocate representing them has pointed out only that much, that is, the instructions for which he had sought time from us, otherwise we would have started dictating the order immediately. Unnecessarily time has been consumed by learned Advocate for applicants.

8 Perusal of First Information Report would show that there are allegations as against applicant Nos.1 and 2 specifically under the Atrocities Act in respect of incident at 10.00 a.m. on 18.02.2023 and also that applicant No.2 had slapped the informant, after uttering the words. Then it is stated that applicant Nos.3, 4 and 5 had come at the said place and they had also abused the informant in the name of caste. Of course, it will have to be then decided by the Special Judge as to whether the said abuses by applicant Nos.3, 4 and 5 could have been given in chorus. Now, it is argued that the place where the incident had taken place is neither a public place nor it was within public view. However, if we consider the spot panchnama the place is shown to be beyond the iron sheet fencing which is stated to have been erected by applicants. Further, just near to the spot there is a structure made up in iron pipe has been shown and according to learned Advocate for applicants, it belongs to applicants. The question is, as to whether then any permission has been obtained by applicants to erect such construction, thereby it could have been even *prima facie* shown that the said place

belongs to applicants. There are documents which are collected from Grampanchayat, Pakharsangvi, Dist. Latur. In the resolution it was stated that Grampanchayat would inspect the spot as was alleged by applicant i.e. mother of present respondent No.2. Panchnama has been carried out and notice was also given to applicant No.3 stating that he has committed encroachment on the public road by erecting iron sheets. At the time of panchnama the concerned authority had come to the conclusion that the said encroachment was on the public road which was 20 feet in width. Now, it would be a disputed question of fact, as to whether the place which is shown to be the spot of offence, as per the panchnama which was shown by respondent No.2, is a public place or not, but certainly it would then be viewed from the public road which is further adjacent to the spot.

9 As regards delay, there is some explanation in the First Information Report. Whether that explanation is sufficient or not is again a subject of appreciation. Delay can be explained at any point of time and that cannot be the sole ground on which First Information Report and charge sheet can be quashed and set aside.

10 As regards presence of applicant No.6, First Information Report is clear enough in saying that he was present on 19.02.2023. The document on record from Director and Special D.I.G., State Intelligence Division, Pune

would show that there was holiday on 19.02.2023 and the location of applicant No.6 has been shown somewhere around AUSA tower in Latur. Again it would be for him to prove the plea of *alibi*, which cannot be considered here and, therefore, this is not a fit case where we can exercise our jurisdiction under Section 482 of the Code of Criminal Procedure. Application, therefore, deserves to be rejected at the threshold. Accordingly, application stands rejected.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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