



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4371 OF 2023

1 Padmakar Dattatraya Patil,
Age 49 yrs., Occ. Advocate and Agri.,

2 Samarth @ Dadu Padmakar Patil,
Age 22 yrs., Occ. Education,

Both are r/o Kalali, Tq. Amalner,
Dist. Jalgaon.

... Applicants

... Versus ...

1 The State of Maharashtra
Through Police Inspector,
Police Station, Marwad,
Tq. Amalner, Dist. Jalgaon.

2 Durgabai Bhagwan Bhil,
Age 50 yrs., Occ. Labour,
R/o Kalali, Tq. Amalner,
Dist. Jalgaon.

... Respondents

...

Mr. Mukul Deshmukh, Advocate h/f Mr. V.P. Patil, Advocate for applicants

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. P.A. Bharat, Advocate for respondent No.2

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

RESERVED ON : 20th MARCH, 2025

PRONOUNCED ON : 23rd APRIL, 2025

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

1 Present application has been filed for quashment of proceedings in Special Case No.43/2023 pending before learned Special Judge, under Atrocities Act/Additional Sessions Judge, Amalner, Dist. Jalgaon arising out of First Information Report bearing Crime No.119/2023 dated 21.07.2023 registered with Police Station, Marwad, Tq. Amalner, Dist. Jalgaon, for the offence punishable under Sections 294, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. Mukul Deshmukh holding for learned Advocate Mr. V.P. Patil for applicants, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. P.A. Bharat for respondent No.2.

3 Learned Advocate appearing for applicants has taken us through contents of First Information Report and charge sheet and submits that First Information Report is the outcome of *mala fide* intention. Applicant No.1 is practicing Advocate and it appears that amount has been taken by son of informant. Applicant No.1 had lodged First Information Report against son

of informant vide Crime No.117/2023 with the same Police Station on 19.07.2023, for the offence punishable under Sections 392, 323, 294, 504, 506 of the Indian Penal Code. To give a counterblast to First Information Report lodged by applicant No.1 present First Information Report has been lodged, that too, after a delay of two days. Learned Advocate for applicants relies on the decision in **Laxmikant Shridharrao Madhware vs. The State of Maharashtra and another** in Criminal Application No.1792 of 2022 decided by coordinate Bench of this Court on 31.01.2023, wherein by relying upon **Hitesh Verma vs. The State of Uttarakhand and another** in Criminal Appeal No.707 of 2020 decided on 05.11.2020 and **Swaran Singh and others vs. State through Standing Counsel and others** [(2008) 8 SCC 435] this Court had quashed the proceedings. Perusal of statements of witnesses would show that no abuses were given in the name of caste and in fact, those witnesses are from same tribe/caste of informant.

4 Learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the application and submitted that applicant No.1 is practicing Advocate, however, applicant No.2 is his son, who is still taking education. When amount was taken by son of informant; yet, he had not come for doing work. Applicant No.1 had asked him, as to why he is not coming for the work, thereupon, it appears that applicant No.1

started abusing in the name of caste, when, in fact, applicant No.1 was knowing the fact that informant and her son are members of Scheduled Caste. When the charge sheet is filed, let there be a full fledged trial, wherein evidence in respect of everything would be laid.

5 Before we proceed, a fact will have to be noted that at the behest of applicant No.1 offence vide Crime No.117/2023 came to be registered with the same Police Station on 19.07.2023, for the offence punishable under Section 392, 323, 294, 504, 506 of the Indian Penal Code. Perusal of said First Information Report would show that the place in the present offence and in that offence is same. In the normal course this Court would have been slow in quashing First Information Report and the charge sheet in a cross case. However, this Court is duty bound to see whether ingredients of the offence under which the present First Information Report and charge sheet has been filed, have been made out or not.

6 The informant, who appears to be an illiterate lady aged around 50 years, states that her son sat in a vehicle near old Grampanchayat Office of village Kalali for going for work with other labours to village Nimbhora around 8.30 a.m. on 19.07.2023. Applicant No.1 went there and asked him, as to whether he would come for work in his field, at that time, her son replied that his legs are aching and, therefore, he would come for work after

his legs were alright and he promised to go on the field of applicant No.1 on the next day morning. Thereafter, it is stated that applicant No.1 started giving abuses in filthy language to son of informant. At that time, son of informant resisted him by saying that he should not abuse him in the name of mother. Informant then assaulted the son and dragged him outside the vehicle. When informant went to rescue son, at that time, she was also assaulted. In the meantime, applicant No.2 went there and started assaulting them. Threat was given that they would recover double the amount that was given to them. Informant states that by doing work in the field of applicant No.1 they have repaid the said hand loan. From the said statement it can be seen that for the first few minutes she was not present, but she states that she went to the place after some time to rescue her son. She has not stated her presence nearby the said vehicle at the relevant time. Another interesting part is that when informant says that her son was sitting in the said vehicle along with other labours for going for work in the field at Nimbhora, her son states about excuse from going to work in the field of applicant No.1 on the ground that his legs were aching. That might have annoyed applicant No.1. Statement of son of informant is totally silent that which abuses were given. Thus, the person to whom the abuses were given does not say so, but in the First Information Report when the informant was not present at that time, still she gives those abuses, which were allegedly uttered by applicant No.1.

Presence of witnesses Arun Bhil, Dilbar Bhil, Nimba Bhil, Arjun Bhil, Mahendra Bhil, Sudam Bhil has been stated by son of informant and their statements have also been recorded. Statement of informant's son and those other witnesses are almost copy paste. Those witnesses have also not stated as to what were the abuses those were given by applicant No.1. Merely by stating abuses in filthy language will not bring them under 'obscene words' as contemplated under Section 294 of the Indian Penal Code. In order to prove offence under Section 294 of the Indian Penal Code as stated in **Pawan Kumar vs. State of Haryana and another** [1996 SCC (4) 17] two particulars are required to be proved by the prosecution viz. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place; and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, no offence is committed.

7 None of the witnesses have stated that they got annoyed by hearing the alleged abusive language. Now, every abusive language need not be obscene word. For obscene word it has to pass the Community Standard Test. The Constitution Bench judgment of Hon'ble Supreme Court in **Ranjit**

D. Udeshi vs. State of Maharashtra [AIR 1965 SC 881] indicated the concept of ‘obscenity’ would change with the passage of time and what might have been ‘obscene’ at one point of time would not be considered as ‘obscene’ at a later period. Thereafter, in **Aveek Sarkar and another vs. State of West Bengal and others** [AIR 2014 SC 1495] the Hicklin Test, which was used way back in 1868 at United Kingdom [**Regina vs. Hicklin** (1868 L.R. 2 Q.B. 360)] was not approved to determine ‘what is obscenity’. Hon’ble Supreme Court in connection with Section 292 of the Indian Penal Code held that ‘Community Standard Test’ would apply to determine ‘obscenity’. Similar meaning will have to be then given when the word comes in context with Section 294 of the Indian Penal Code and, therefore, only abuses will not be covered as ‘obscene words’. Therefore, offence under Section 294 of the Indian Penal Code has not been made out even *prima facie*.

8 In order to bring the case under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, the insulting words in the name of caste were not at all given in the present matter. Abuse given to a member of Scheduled Caste or Scheduled Tribe without reference to the caste or the tribe is not covered under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Now, what remains is Sections 323, 504 and 506 of the Indian Penal Code, for which, as those are non cognizable offences, there cannot be a First Information Report under

Section 154 of the Code of Criminal Procedure and, therefore, it would be an abuse of process of law to ask applicants to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Special Case No.43/2023 pending before learned Special Judge, under Atrocities Act/Additional Sessions Judge, Amalner, Dist. Jalgaon arising out of First Information Report bearing Crime No.119/2023 dated 21.07.2023 registered with Police Station, Marwad, Tq. Amalner, Dist. Jalgaon, for the offence punishable under Sections 294, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands quashed and set aside as against applicants viz. 1) **Padmakar Dattatraya Patil** and 2) **Samarth @ Dadu Padmakar Patil**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)