



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.793 OF 2024

- 1) Vaibhav Parashar Joshi,
Age-40 years, Occu:Advocate,
- 2) Vaishali Vaibhav Joshi,
Age-32 years, Occu:Household,

Applicant Nos.1 and 2 Both:
R/o-Plot No.10, Rameshwar Colony,
Mehrun, Jalgaon, District-Jalgaon,

- 3) Vishwanath Tulshiram Dixit,
Age-66 years, Occu:nil,
- 4) Usha Vishwanath Dixit,
Age-64 years, Occu:Household,
- 5) Harshad Vishwanath Dixit,
Age-34 years, Occu:Labour,

Applicant Nos. 3 to 5:
R/o-Dnyaneshwar Nagar, Khedi (Bk.),
Taluka and District-Jalgaon.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through its M.I.D.C. Police Station,
Jalgaon, District-Jalgaon,
- 2) The Sub-Divisional Police Officer,
Jalgaon Division, Jalgaon,

- 3) Meena Ganesh Waghmare,
Age-22 years, Occu:Education,
R/o-Behind Shantaram School,
Dnyaneshwar Nagar, Khedi Bk.,
Taluka and District-Jalgaon.

...RESPONDENTS

...
Mr. Vijay B. Patil Advocate for Applicants.
Mr. V.K. Kotecha, A.P.P. for Respondent Nos. 1 and 2.
Ms. V.P. Narwade Advocate for Respondent No.3.
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**CORAM: SMT. VIBHA KANKANWADI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 15th APRIL, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 811 of 2023 registered with M.I.D.C. Police Station, Jalgaon, District-Jalgaon on 16th December 2023, for the offence punishable under Sections 504, 506, 143, 147 of the Indian Penal Code, Section 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"), and then byway of amendment for quashing the proceedings in Special Case No.35 of 2024, pending before the learned Special Judge under the Atrocities Act / District Judge-2 and Additional Sessions Judge, Jalgaon.

2. Heard learned Advocate Mr. Patil for the applicants, learned APP Mr. Kotecha for respondent No.1 and learned Advocate Ms. Narwade for respondent No.2.

3. Learned Advocate appearing for the applicants has taken us through the FIR and the entire charge-sheet. He submits that the applicant No.1 is a practicing Lawyer and he is the Lawyer of the husband of respondent No.3. R.C.C. No.477 of 2022 is pending before the learned Judicial Magistrate First Class, Jalgaon, for the offence punishable under Sections 498-A, 323, 504, 506, 510 read with Section 34 of the Indian Penal Code, arising out of the FIR vide Crime No.65 of 2022 at the behest of present respondent No.3. Applicant No.1 is also appearing for the husband of respondent No.3 in Petition No.A-66 of 2023 lodged by husband of respondent No.3 against her, under Section 13-A of the Hindu Marriage Act for divorce. Applicant No.2 is the wife of applicant No.1 and they both are residing at Jalgaon. However, applicant Nos. 3, 4 and 5 are the father, mother and brother of applicant No.2 and they reside at village Khedi Bk., Taluka and District-Jalgaon. Applicant No.3 is the neighbour of respondent No.3. Since applicant No.1 started

appearing for the husband of respondent No.3, she has filed various complaints thereby unnecessarily involving him as well as the other applicants. Applicant No.2 had given a complaint to District Superintendent of Police, Jalgaon on 9th October 2023 against respondent No.3. The present FIR is also the outcome of the same vengeance. Respondent No.3 states about the incident of 11.30 a.m., on 27th September 2023, wherein she states that applicant No.1 had talked to her when she was cleaning the otta (raised platform) outside the house of her mother. The said dialogue or conversation was stated to be abusive and he was insisting that she should give divorce to the husband. Then it is stated that all the accused persons started abusing respondent No.3 and her mother and while abusing, present applicant No.1 had abused her in the name of caste. Now, the charge-sheet is filed in which it can be seen that statement of mother of respondent No.3 has been recorded and there is statement of one Vimal Bonde, who is stated to have gone to the house of one Ashok Sonawane as she was not having any vegetables to cook. Said Vimal Bonde states that she had heard the abuses in the name of the caste. However, against said witness Vimal Bonde, applicant No.3 had recorded statement with police station on 5th November 2016 in connection with a complaint with MIDC Police

Station dated 6th February 2016. Vimal Bonde would be interested in speaking against the applicants and her presence was not shown in the FIR, but it was shown in the supplementary statement of the informant and the statement of the mother. The FIR and the proceedings are lodged with an intention of taking revenge. This would be a fit case where this Court should exercise powers under Section 482 of the Code of Criminal Procedure as per the guidelines in ***State of Haryana vs. Bhajanlal and others, AIR 1992 SC 604.***

4. Per contra, the learned APP and learned Advocate for respondent No.3 strongly opposed the application and submitted that whether the witness Vimal Bonde can be believed or not, would be decided by the trial Court, but in categorical words she has stated that she has witnessed the incident. She is an independent witness in whose presence the accused persons had abused and acted against the member of scheduled caste and therefore, this is not a case where the proceedings and FIR to be quashed and set aside.

5. Here the most important fact is that applicant No.1 is admittedly the Advocate representing the husband of respondent

No.3, informant in various Court proceedings. It is also a fact that the house of applicant Nos.3 to 5 is adjacent to the house of the mother of respondent No.3, with whom it appears that now respondent No.3 is staying. In the past also, it appears that there were non-cognizable offences registered by applicant No.2 against respondent No.3 and also by respondent No.3 against applicant Nos.1 to 4. Now the question is, whether the contents of the FIR are disclosing the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. It is stated that respondent No.3 was sweeping the raised platform of the house at 11.30 a.m. on 27th September 2023. The panchnama of the spot does not show that there is a raised platform / otta to the house of mother of respondent No.3. It appears that there is a road towards South of the house of the informant and towards North of that house, there is a house of accused Nos. 3 to 5. The spot is shown outside of the house of mother of respondent No.3, which appears to be the road. The charge-sheet gives the statement of only two witnesses under Section 161 of the Code of Criminal Procedure, out of which witness Kamalbai Sonawane is the mother of respondent No.3 and has been posed as victim. According to witness Vimal Bonde, she had gone to the house of respondent No.3 as there was no vegetable in her house for

cooking. Taking into consideration the chequered history, we are required to consider the things minutely. Vimal Bonde has given her address of Indira Nagar, whereas respondent No.3's house is behind Shantaram School. There appears to be substance in the say of learned Advocate for the applicants that the presence of this witness is doubtful and the fact that applicant No.3's statement against witness Vimal Bonde was recorded way back in 2016, will have to be considered when it comes to the ground of *mala fide*.

6. Now, as regards Sections 143, 147, 504, 506 of the Indian Penal Code are concerned, offence under Sections 504 and 506 is non-cognizable. For Sections 143 and 147 of the Indian Penal Code, there has to be an unlawful assembly. But in their own house when the applicants were there, it cannot be said to be unlawful assembly, as their presence at that place was not for any of the object stated in Section 141 of the Indian Penal Code. Therefore, in respect of those offences also, we hold that no case is made out for proceeding further. This is a fit case to hold that the FIR has been lodged with *mala fide* intention and therefore, it is within the parameters laid down in ***State of Haryana vs. Bhajanlal and others*** (supra). Hence we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in Special Case No.35 of 2024, pending before the learned Special Judge under the Atrocities Act / District Judge-2 and Additional Sessions Judge, Jalgaon, for the offence punishable under Sections 504, 506, 143, 147 of the Indian Penal Code, Section 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, arising out of the First Information Report vide Crime No. 811 of 2023 registered with M.I.D.C. Police Station, Jalgaon, District-Jalgaon on 16th December 2023, stands quashed and set aside as against applicant Nos. 1 to 5 i.e. - 1) Vaibhav Parashar Joshi, 2) Vaishali Vaibhav Joshi, 3) Vishwanath Tulshiram Dixit, 4) Usha Vishwanath Dixit and 5) Harshad Vishwanath Dixit.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25