



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1189 OF 2024

1. Vishal S/o. Balasaheb Jadhav,
Age : 26 Years, Occu. : Business,
R/o. Waregaon, Tq. Phulambri,
Dist. Chhatrapati Sambhajinagar.
2. Balasaheb S/o. Gulabrao Jadhav,
Age : 55 Years, Occu. : Agri./Labour,
R/o. Waregaon, Tq. Phulambri,
Dist. Chhatrapati Sambhajinagar.
3. Rekha W/o. Balasaheb Jadhav,
Age : 50 Years, Occu. : Housewife,
R/o. Waregaon, Tq. Phulambri,
Dist. Chhatrapati Sambhajinagar.

.... Applicants

VERSUS

1. The State of Maharashtra,
Through The Police Inspector,
Phulambri Police Station,
Dist. Chhatrapati Sambhajinagar.
2. Vishal S/o. Ganesh Thorat,
R/o. Thorat Vasti, Waregaon,
Tq. Phulambri,
Dist. Chhatrapati Sambhajinagar.

.... Respondents

....

Advocate for Applicants : Mr. Mayur B. Borse

APP for Respondent No.1-State : Mr. S.A. Gaikwad

Advocate for Respondent No.2 : Mr. Ashutosh Sisodiya (Appointed)

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

Dated : 13th June 2025

PER COURT :-

1. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for quashing the First Information Report (for short "the F.I.R.") vide C.R. No.0038 of 2024, dated 06.02.2024, registered with Phulambri Police Station, Dist. Aurangabad and by way of amendment, for quashing the charge-sheet and proceedings in Special Case No.209 of 2024, pending before the learned Special Judge under the Atrocities Act, Aurangabad, for the offences punishable under Sections 323, 504, 427 read with Section 34 of The Indian Penal Code, 1860 (for short "the I.P.C.") and Sections 3(1)(r), 3(1)(s), 3(2)(va) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act").

2. Heard learned Advocate for both the sides as well as learned APP for the State.

3. Learned Advocate for the applicants has taken us through the entire charge-sheet including the F.I.R. and submits that though the incident as per the F.I.R. had taken place at around 08.45 p.m. on

18.12.2023, the F.I.R. came to be lodged on 06.02.2024 and the reasons for the delay tried to be given appears to be concocted and not reasonable. In fact, applicant No.1 had filed an F.I.R. vide C.R. No.487 of 2023 against respondent No.2/informant with the same police station for the offences punishable under Sections 327, 323, 324, 504, 506 read with Section 34 of the I.P.C. The informant, in the F.I.R. itself, then states that he had absconded and remained present before the police station only on 17.01.2024. He came to be arrested in the matter and was released on bail. Thereafter also, he says that he went home on 18.01.2024. Yet the F.I.R. has been lodged on 06.02.2024. The F.I.R. is nothing but lodged with malafide intention. Further, the contents of the charge-sheet would show that the so called eyewitnesses viz. Gokul Jadhav and Ganesh Borse, who had come to resolve the dispute at the place of incident, in their statements recorded under Section 161 of the Cr.P.C., are not supporting the informant. The other eyewitnesses are hearsay witnesses and therefore, there is nothing on record which would attract the provisions under the I.P.C. or the Atrocities Act. It would be then unjust to ask the applicants to face the trial.

4. Per contra, learned APP as well as learned Advocate for respondent No.2/informant strongly opposed the application and

submitted that though there is a delay in lodging the F.I.R., yet the delay can be explained and it has been tried to be explained. Whether the said reason is reasonable or not would be considered by the learned Trial Court and cannot be the point for scrutiny by this Court under Section 482 of the Cr.P.C. It is not in dispute that the informant is a member of scheduled caste and he has been abused in the name of caste when he had gone to purchase some articles in the grocery shop of applicant No.1 and thereafter, there was a dispute between them when there was an attempt to make digital payment. The vehicle belonging to the informant has been damaged and it was, in fact, seized in the F.I.R. lodged by applicant No.1. Therefore, there is evidence to support the F.I.R. Hence, this is not a fit case where the Court should exercise the powers under Section 482 of the Cr.P.C.

5. At the outset, we are required to consider the contents of the F.I.R. and the material gathered during the investigation forming part of charge-sheet to consider as to whether the ingredients of the offences under which the F.I.R. has been registered and the charge-sheet has been filed are prima facie made out or not or whether there is such evidence to support the story given by respondent No.2/informant in his F.I.R.

6. Perusal of the F.I.R. would certainly show that there is a delay in lodging the F.I.R. We agree to the basic principle that only delay cannot be a ground for quashment of the F.I.R. or the proceedings. However, it will have to be considered in the light of the reason that has been tried to be given and when the application has been filed by submitting that the F.I.R. has tainted with malafides, then a closer scrutiny is required to be made for this purpose. We would like to rely upon the judgment of the Hon'ble Apex Court in the case of ***Mohammad Wajid and Another Vs. State of U.P. and Others, [(2023) AIR (SC) 3784]***, wherein, in para.30, it is held thus: -

"30.....it will not be just enough for the Court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute 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. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but 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...."

7. Respondent No.2/informant, in his F.I.R., contends that the incident had taken place at around 08.45 p.m. on 18.12.2023 and the F.I.R. has been lodged on 06.02.2024, for giving reasons. He states that and it shows that he was aware about the F.I.R. lodged against him by applicant No.1 vide C.R. No.487 of 2023. But, then, he is admitting that he had gone out of the village after the registration of the said offence and he states that it was due to fear. Thus, he has tried to avoid the word absconding. But, then, he states that, on 17.01.2024, he himself appeared before the police station. He was released on bail on 18.01.2024. Yet, he took the time to lodge the F.I.R. Now it is required to be seen as to whether this delay is tainted with malafides.

8. The F.I.R. states that when there was dispute between respondent No.2/informant and applicant No.1, the informant called his brother viz. Pravin Thorat and one Amol Jadhav to the spot and thereafter, according to the informant, applicant No.1 abused him in the name of caste. The quarrel had continued and then the other applicants joined applicant No.1. It is then stated that all of them had assaulted him with fists and hands and while abusing, his vehicle was damaged. He then states that witnesses Gokul Jadhav and Ganesh Borse came there and supported them. That means, till he

disappeared from the spot, his brother Pravin Thorat and witness Amol Jadhav had not arrived at the spot.

9. The statements of Pravin Thorat and Amol Jadhav would disclose that the entire incident was told by respondent No.2/informant to them. That means it shows that they went to the shop of applicant No.1 after they were called and applicant No.1 abused all of them in the name of caste and then the other applicants joined applicant No.1. A question then arises if the abuses were given to Pravin and Amol also, then why they had not lodged the F.I.R. immediately. It was absolutely not necessary that they ought to have waited for the informant. There is no reason given by these witnesses as to why they had not lodged the F.I.R. though their statements under Section 161 of the Cr.P.C. would show that they are also the members of scheduled caste. If they would have felt offended, then there was no hurdle for them to approach the police station immediately. In connection with this fact, then it will have to be considered that the said F.I.R. lodged by the informant is tainted with malafides.

10. The statements of witnesses Gokul Jadhav and Ganesh Borse would show that they were not supporting the prosecution. Interestingly, the Investigating Officer has taken the statements of

panch witnesses also under Section 161 of the Cr.P.C. The statement of respondent No.2/informant, under Section 164 of the Cr.P.C., recorded by the learned Judicial Magistrate First Class, Phulambri, is nothing but the replica of his F.I.R. But, interestingly, while explaining the said delay, he states that his brother viz. Pravin Thorat came to the spot after he fled away and thereafter, Pravin went and made the payment from phone pay in respect of price of the grocery, which he had purchased and then he states that, along with the brother, he went home and thereafter, he went for the work of sugarcane cutting.

11. Thus, after taking into account the entire charge-sheet, we can see that, as per the F.I.R., not a single independent witness was present when the alleged abuses were given to the informant in the name of caste and even if we take note of the statements of witnesses Pravin Thorat and Amol Jadhav, yet they were the only witness i.e. members of the scheduled caste who had allegedly heard the imputation. Again, no independent witness was there and therefore, we would like to rely upon the judgment of the Hon'ble Apex Court in the case of ***Hitesh Verma Vs. State of Uttarakhand and Another, [(2020) 10 SCC 710]***, wherein it has been observed in para.19 that -

*"This Court in a judgment reported as **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr., [(2018) 6 SCC 454]** issued certain directions in respect of investigations required to be conducted under the Act. In a review filed by the Union against the said judgment, this Court in a judgment reported as **Union of India Vs. State of Maharashtra & Ors., [(2020) 4 SCC 761]** reviewed the directions issued by this Court and held that if there is a false and unsubstantiated FIR, the proceedings under Section 482 of the Code can be invoked. The Court held as under:*

"52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 Cr.P.C."

12. We, therefore, come to the conclusion that the material in the charge-sheet is not sufficient even prima facie to attract the ingredients of the offences under the Atrocities Act. As regards the offences under the I.P.C. are concerned, they all are non-cognizable in nature and therefore, the F.I.R. under Section 154 of the Cr.P.C. was not maintainable. Under these circumstances, it would be an abuse of process of court if the applicants are asked to face the trial. A case is made out for exercising our powers under Section 482 of the Cr.P.C. Hence, the following order.

ORDER

- I) The application stands allowed.
- II) The First Information Report vide C.R. No.0038 of 2024, dated 06.02.2024, registered with Phulambri Police Station, Dist. Aurangabad and the charge-sheet and proceedings in Special Case No.209 of 2024, pending before the learned Special Judge under the Atrocities Act, Aurangabad, for the offences punishable under Sections 323, 504, 427 read with Section 34 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 the present applicants.

III) Fees of appointed Advocate is quantified at Rs.7,000/- (Rupees Seven Thousand Only), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd