



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.432 OF 2020

1. Ramdas Ganeshrao Rahate,
aged about 68 years, occupation doctor.

2. Rajendra Ganeshrao Rahate,
aged about 64 years.

Occupation agriculturist,
both r/o Saur, taluka Bhatkuli,
district Amravati.

..... **Applicants.**

:: VERSUS ::

1. The State of Maharashtra,
Police Station Officer, Walgaon,
taluka and district Amravati.

2. Archana Narendra Mohod,
aged about 38 years,
r/o Buddhapura, Gram Saur,
Walgaon, Amravati City,
district Amravati.

..... **Non-applicants.**

Shri S.V.Sirpurkar, Counsel for the Applicants.
Shri M.J.Khan, Addl.PP for NA No.1/State.
Shri S.M.Nandeshwar, Counsel for NA No.2.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 25/11/2025
PRONOUNCED ON : 05/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. The present application is preferred by the applicants under Section 482 of the CrPC for quashing of FIR in connection with Crime No.47/2020 registered under Sections 114, 188, 294, 295, 295-A, 323, 336, 354, 427, and 506(2) read with 34 of the IPC and under Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va), and 3(1)(w) (i) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC ST Act) and and consequent proceeding bearing chargesheet No.87/2024.

2. The crime is registered on the basis of a report lodged by non-applicant No.2 (the informant) against the applicants on allegations that in village Saur, there is an “Idol of Lord Buddha” at “Buddha Vihar”. On 28.1.2020, the applicants by instigating driver of JCB bearing

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registration No.MH-27/AC/472 caused damage to verandah where the said “Idol of Lord Buddha” was installed and thereby humiliated and insulted feelings of all “Buddha Community.” It is further alleged that the applicants abused them on their caste by saying that, “..... जातीवर धेडगिने हो तुम्ही लव माजले, नाही या हो येथे काय XXXXX पकडाले आल्या अश्या अश्लील शिवीगाळ करुन अर्चना मोहोड या उपासीकेचा हात पकडून ओढून फोकनिचे तुझे कपडे काढून गावात फिरवतो.....” and thereby outraged her modesty and humiliated and insulted her. On the basis of the said report, the police registered the crime against the applicants.

3. Heard learned counsel Shri S.V.Sirpurkar for the applicants, learned Additional Public Prosecutor Shri M.J.Khan for the State, and learned counsel Shri S.M.Nandeshwar for the informant.

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4. Learned counsel for the applicants submitted that with false; baseless, and omnibus allegations, the FIR is lodged. In fact, the applicants are respectable citizens. Applicant No.1 is Doctor by profession. Whereas, applicant No.2 is real brother of the applicant No.1. They are Members of the Zilla Parishad at Saur and have been elected as Members of the Gram Panchayat. The informant lodged the report alleging that on 28.1.2020, at about 6:30 pm, the applicants with their common intention had brought JCB and caused damage to the verandah on which the “Idol of Lord Buddha” had been installed. In fact, no such incident has taken place. There is dispute with the informant who is Member of a private trust namely “New Gautam Mandal” at Saur. There is also a long standing dispute about open space. In fact, the said verandah, on which the “Idol of Lord Buddha” is installed, was erected by encroaching upon the

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Government Land. The Chief Executive Officer of Zilla Parishad, Amravati had already clarified that the Government Land cannot be allotted to persons or groups or private institutions and, therefore, the order passed by the Gram Panchayat was set aside in the year 2013 allotting the said land. In the year 2016, the said private trust “New Gautam Mandal”, in contravention of the order of the Chief Executive Officer of Zilla Parishad, had encroached upon the said land and had erected small verandah and constructed a temporary structure. The Gram Panchayat at Saur, had already taken cognizance of this illegal act and passed a Resolution in April 2016 in this regard. An intimation of the same was already given to the Sub Divisional Officer, Chief Executive Officer, Tahsildar, Police Station Officer of Police Station at Bhatkuli, and Collector at Amravati. It was resolved that the construction under “Pipal Tree” is illegal

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encroachment and needs to be removed. Therefore, several notices were issued to the “New Gautam Mandal” at Saur intimating them to remove the said structure. However, the informant and other members have not paid any heed to it. The Gram Panchayat finally issued Notice to the “New Gautam Mandal” and asked them to remove the encroachment within three days. As far as the incident is concerned, as movement of removing encroachment was in progress in the village, accidentally, JCB dashed against the said verandah and a minimum damage was caused to the said verandah. By taking disadvantage of the same, this false crime is registered against the applicants. Moreover, none of witnesses has stated regarding what was the exact instigation by the applicants to the driver of the JCB. In fact, when the driver was taking JCB in the village, inadvertently, dashed against corner of the said verandah and there is

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absolutely no damage to the “Idol of Lord Buddha” at “Buddha Vihar” and, therefore, question of insulting or humiliating feelings of the “Buddha Community” does not arise. Even accepting the allegations as it is, it is only to the extent of reference of caste.

Mere abuses or abusive language is not sufficient to attract offence under Section 294 of the IPC.

As far as offence under Section 354 of the IPC is concerned, it is alleged that applicant No.1 has given sexual overtures, due to which modesty of the informant was outraged.

Except the omnibus allegations, no specific acts are narrated by the informant to show that sexual overtures were such that it caused outraging of the modesty.

He further submitted that Section 295 or 295-A of the IPC is also not attracted as ingredients of the offence; destroys, damages or defiles any place of worship; are not attracted. As such, he prays that the application be allowed.

5. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that considering the allegations levelled against the applicants, there is a specific allegation that they have abused the informant on her caste and thereby humiliated and insulted her as well as outraged her modesty by sexual overtures and also caused damage to the place of worship and, therefore, he prays that the application be rejected.

6. Learned counsel for the informant endorsed the said contentions.

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7. On hearing both the sides and perusing recital of the FIR and investigation papers, it reveals that the nature of accusations is that the applicants, who are Members of the Gram Panchayat, instigated the driver of the JCB to cause damage to the verandah whereat “Idol of Lord Buddha” was installed. During the investigation, the investigating officer has collected various documents, from which it revealed that the said verandah was constructed by the Members of the “New Gautam Mandal” by contravening directions and orders passed by the revenue authority. The communication to the Tahsildar at Bhatkuli by the Collector shows that he has already directed to remove the said encroachment. The said communication is dated 19.7.2018. Thus, from the communication, it reveals that the said verandah itself is constructed by encroaching upon the Government Land.

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8. As far as the incident is concerned, perusal of spot panchanama shows that a small corner of the said verandah was damaged due to the dash by the JCB. As far as “Idol of Lord Buddha” is concerned, there is absolutely no damage caused to the said idol. Though statements of witnesses are recorded showing that the applicants have humiliated and insulted their feelings by causing damage to the “Idol of Lord Buddha”, investigation papers nowhere establish the same.

9. It is apparent that as action was taken against the Members of the “New Gautam Mandal” and directions were given to remove the encroachment, by taking disadvantage of the above said incident, the FIR came to be lodged.

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10. The basic ingredients to constitute the offence under Section 3(1)(r) of the SC ST Act are that, (a) accused person must not be a member of a Scheduled Caste or a Scheduled Tribe; (b) accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe; (c) accused must do so with an intent to humiliate such a person; and (d) accused must do so at any place within public view.

11. The Hon'ble Apex Court, in Criminal Appeal No.2622/2024 (**Shajan Skaria vs. The State of Kerala and anr**), observed that to establish offence under Section 3(1)(r) of the SC ST Act, merely on the fact that the complainant is member of Scheduled Caste or Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act of 1989 that every act of intentional insult or

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intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe.

It has been further observed that words “with intent to humiliate” as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only

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in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the “upper castes” over the “lower castes/untouchables”, the notions of ‘purity’ and ‘pollution’, etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

12. In the light of the above observations, if facts of the present case are taken into consideration, admittedly, no *prima facie* case is made out against the applicants.

13. Insofar as offence under Section 294 of the IPC is concerned, it is settled law that mere abusive and humiliating or deformity words by itself cannot attract the offence under Section 294(b) of the IPC.

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14. Section 294 of the IPC talks about obscene acts and songs. The said Section is reproduced as under for reference:

294. Obscene acts and songs.-

Whoever, to the annoyance of others –

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

It is to be noted that test of obscenity under Section 294(b) of the Indian Penal Code is, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then

was) reported in **PT. Chacko v. Nainan, reported in (1967 KLT 799)** explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the *Queen v. Hicklin*, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words:

“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in **Ranjit D.Udeshi vs. State of Maharashtra, AIR 1965 SC 881**. In **Samuel Roth v. U.S.A., 354 US 476 (1957)**, Chief Justice Warren said

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that the test of ‘obscenity’ is the “substantial tendency to corrupt by arousing lustful desires”. Mr. Justice Harlan observed that in order to be ‘obscene’ the matter must “tend to sexually impure thoughts”. I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are ‘obscene’ and the utterance would constitute an offence punishable under Section 294(b) IPC”.

15. The allegation is also levelled that applicant No.1, by bay of sexual overtures, outraged modesty of the informant.

Admittedly, there is no allegation that any criminal force is used by the applicants on the informant.

As far as sexual overtures or coloured remarks are concerned, there is an *omnibus* allegation against the applicant No.1.

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No specific allegation is levelled against applicants and, therefore, offence under Section 354 or 354A of the IPC is also not made out against the applicant No.1.

16. Learned counsel for the applicants rightly submitted that Section 295 of the IPC is also not attracted as spot panchanama shows that no damage is caused to the “Idol of Lord Buddha” and, therefore, the allegation, that the applicants have destroyed or damaged any place of worship or any object, is not attracted and, therefore, the allegation, that by doing the said act, the applicants have insulted the said community, is also not made out. There is nothing on record to show that there was any deliberate or malicious act intended by the applicants to outrage feeling of the said community and, therefore, Section 295-A of the IPC is also not attracted.

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17. The law relating to quashing of FIRs was explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supplementary (1) SCC 335** wherein principles have been laid down which are required to be considered while considering applications for quashing of the FIRs, which read as under:

“(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation

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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;

(c) 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;

(d) 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;

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(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

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ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

18. By applying the aforesaid principles to the facts of the present case in hand, it shows that no *prima facie* case is made out against the applicants.

19. It is apparent that due to the action taken by the Gram Panchayat against the said “New Gautam Mandal” of which the informant is also one of members, the FIR came to be lodged.

20. In view of that, as the application deserves to be allowed, we proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

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(2) The FIR in connection with Crime No.47/2020 registered under Sections 114, 188, 294, 295, 295-A, 323, 336, 354, 427, and 506(2) read with 34 of the IPC and under Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va), and 3(1)(w)(i) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and consequent proceeding bearing chargesheet No.87/2024 are hereby quashed and set aside to the extent of the applicants.

Application stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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