

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

**CRIMINAL APPLICATION (APL) NO.406 of 2020**

1. Dharmendra s/o Baliram Soni,  
Aged about 45 years, Occ.: Advocate,  
R/o. Ward No.3, Near Old College,  
Dharni, Tq. Dharni, Dist. Amravati  
Pin- 444702. .... **APPLICANT**

**// VERSUS //**

1. The State of Maharashtra  
Through Police Station Officer,  
Police Station Dharni, Tq. Dharni,  
District. Amravati.
2. Gopibai Radheshyam Kasdekar,  
Aged about 45 years, Occ.: Housewife,  
R/o Nehru Nagar, Ward No.1, Dharni,  
Tq. Dharni, District Amravati ...**NON-APPLICANTS**

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Shri P.R. Agrawal, Advocate for the applicant.  
Shri M.J. Khan, APP for the non-applicant No.1/State.

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**CORAM : S.B. SHUKRE AND G. A. SANAP, JJ.**  
**DATE : 16/06/2022**

**JUDGMENT: (Per: G.A. Sanap, J.)**

1. In this application, the applicant/accused is seeking the relief to quash and set aside the First Information Report No.174/2020 registered at Dharni Police Station District Amravati for the offences punishable under Sections 504 and 506 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC ST Act).

2. The First Information Report was registered on the basis of the report lodged by respondent No.2. It is the case of the prosecution that on 22.02.2020 at about 02.00 Hrs. while the respondent No.2 was cooking, there was a leakage from the gas cylinder and due to the leakage there was a fire. The fire was extinguished with the help of Bhaiji Gas Agency. Thereafter, the gas cylinder and regulator was deposited with the gas agency for replacement. It is stated that the respondent No.2 visited the gas agency on number of occasions, but she did not receive the gas cylinder and regulator. On 15.03.2020 in between 09.00 Hrs to 10.00 Hrs. she went to the office of gas Agency and met the applicant/accused. She demanded the gas cylinder and the regulator. The applicant got annoyed and abused her in the name of her caste. The actual abuses in

Marathi stated in the report reads thus:-

‘साले कोरकू बच्चोको कितना भी समझाओ नही समझ सकेगा यहापर आदिवासीयोंकी बापकी खेती है क्या आदिवासी को सब फ्री मे चाहिए, चल भग यहांसे, पैसे दिये बगैर सिलेंडर रेग्युलेटर नही मिलेगा’

On 17.03.2020, on the report of the respondent No.2, the crime as above came to be registered.

3. It is the case of the applicant that crime registered against him is false and frivolous. No incident as narrated by the respondent No.2 occurred. He is not the owner of the gas agency. His brother is the owner of the gas agency. He is an advocate by profession. It is submitted that no offence is made out against him on the basis of the facts stated in the report as well as on the basis of the evidence collected by the Investigating Officer. It is his case that according to respondent No.2, the incident took place in the cabin. There was no witness to the incident. It is stated that therefore, the basic ingredient of Section 3(1)(r) and (s) of SC ST Act that the act contemplated in this section must be committed in any place within public view has not been made out. He, therefore, prayed that the prosecution initiated against him needs to be quashed.

4. The Investigating Officer has filed the reply and reiterated the facts stated in the First Information Report. Besides, it is contended that during the course of the investigation, the statements of the witnesses have been recorded. The CCTV footage has been collected from the place of the incident. The investigation is complete in all respect. The brother of the applicant is the owner of the gas agency. It is the case of the prosecution that material collected during the investigation is sufficient to establish the complicity of the accused in the commission of the crime.

5. The respondent No.2 though served in this proceedings has failed to appear before the Court.

6. We have heard Mr. P.R. Agrawal, learned Advocate for the applicant/accused and Mr. M.J. Khan, learned APP for the State. We have perused the record and proceedings and particularly the case diary of the crime.

7. Learned Advocate for the applicant submitted that there are no witnesses to the incident, which according to the respondent No.2 occurred inside the cabin. In the submission of learned Advocate, the basic ingredient of Section 3(1)(r)

and (s) that the act contemplated therein must take place in any place within the public view has not been made out. Learned Advocate for the applicant took us through the relevant material to contend that the perusal of the same material at its face value does not make out the offence. Learned Advocate in order to substantiate his submission has placed reliance on more than one judicial pronouncements, to which may refer in the later part of the judgment.

8. Learned APP submitted that alleged incident occurred inside the cabin. Learned APP took us through the spot panchanama and statements of the witnesses recorded by the Investigating Officer during the course of the investigation. Learned APP on the basis of the materials collected during the course of investigation submitted that there are no witnesses to confirm the incident allegedly occurred inside the cabin. Learned APP submitted that the witnesses who are the labourers working at the gas agency have stated that they have seen the respondent No.2 entering the cabin of the applicant/accused. In the submission of learned APP, considering the seriousness of the crime, this may not be the proper stage to quash and set aside the First Information

Report.

9. Section (3)(1) (a) to (z) contemplates various atrocities against the member of Scheduled Castes and Scheduled Tribes and the punishment for those atrocities. In this case, the atrocities according to the prosecution alleged to have been committed are under Section (3)(1)(r) and (s) of the SC ST Act. In order to appreciate this submission, it would be necessary to reproduce Section 3(1) (r) and (s). The same reads thus:-

***“3. Punishments for offences of atrocities.***

*[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-*

*(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*

*(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;”*

10. In the backdrop of the above, it would be necessary to advert to the facts which are *prima-facie* brought on record.

As per the spot panchanama, the place of occurrence is cabin. The statements of the witnesses recorded by the Investigating Officer indicate that none of the witness has stated about the actual incident. The only statement about the incident occurred inside the cabin is of the informant/ respondent No.2. The question, therefore, is whether the incident alleged to have occurred, in the place within the public view as contemplated by the above section. It is to be noted that there is no witness to the actual incident to state that he saw the actual incident. On facts, therefore, it has to be held that there is no independent witness to *prima-facie* make out the primary ingredient of the provision that the alleged acts were committed in any place within public view.

11. We may now, deal with the judicial pronouncements directly on the issue cited by the learned Advocate for the applicant. In the case of *Dr. Manali w/o Makrand Kshirsagar and another Vs. State of Maharashtra and another 2020 All MR (Cri) 945*, it is held that the acts contemplated namely the insult or intimidation must occur in any place within public view. It is further held that the presence of this ingredient would be absolutely necessary to constitute an offence under

the said provision of law. If the complaint discloses absence of the ingredient, the same could not be sufficient to accuse the person of having committed an offence under this section.

12. While deciding the case of Dr. Manali (supra) the Division Bench has considered the law laid down by Division Bench in the case of ***Pradnya Pradeep Kenkare and another Vs. State of Maharashtra*** reported in ***2005 (3) Mh.L.J. 368***. The relevant observations directly on the point can be found from paragraph 8 of the decision. We deem it appropriate to reproduce paragraph No.8 of the said judgment.

It reads thus:-

*“8. However, the learned Advocate is justified in contending that the complaint nowhere discloses that the said expression was used in public view. In fact, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. It is nowhere stated by the complainant that at the time when the said statement was made by the petitioner No.2, i.e. on 15<sup>th</sup> August, 2004 at 9:30 a.m., there was any stranger to witness the said incident. The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression “in any place within public view” has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression “public view” has been prefixed by the preposition “within” which in fact follows the expression “in any place”. In other words, the expression relating to the location of the alleged offence is qualified by the requirement of*



*being “within public view”. The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under section 3(1)(x) of the said Act. In the provision of law comprised under section 3(1)(x) of the said Act, the word “view” refers to that of ‘public’ but prefixed by the expression “in any place within”. Being so, the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.”*

13. It is to be noted that the facts of the case of Pradnya (**supra**) are similar to the facts of this case. In the case of Pradnya, the offence alleged was committed in the cabin of the Principal of college and the Principal alone was present with the informant in the cabin. In our view, the proposition in the judgments cited *supra* has settled the legal position. The decisions in the case of Dr. Manali and Pradnya (**supra**) was followed by the Division Bench of this Court in the case of *Avakash s/o Sudhakarrao Ingole Vs. State of Maharashtra and another* reported in **2021 ALL MR (Cri) 3435** to which one of us (G.A. Sanap) was a member. The Hon’ble Supreme Court in the case of *Hitesh Verma Vs. State of Uttarakhand and another*

*(2020) 10 SCC 710* had an occasioned to consider the provisions of Section 3(1)(r) and (s) of the SC ST Act. It is held in this case that the basic ingredients that the words uttered in any place within public view must be established. It is held that if this ingredient is not satisfied then the offence under Section 3(1)(r) and (s) would not get attracted.

14. We have already stated the relevant facts and the material collected during the course of investigation. In this case except the informant/respondent No.2 there is no independent witness to the incident. The incident according to the prosecution occurred inside the cabin. It therefore, goes without saying that this basic ingredient of the occurrence of the atrocities as contemplated under Section 3(1) (r) and (s) in any place within public view has not been made out. The solitary statement of the informant-respondent No.2 if appreciated in the backdrop of the law laid down in the judgment cited supra, would show that the offences alleged to have been committed by the applicant/accused have not been made out. In order to consider the submissions and to apply the provisions of law and the law laid down in the judicial pronouncements, we have undertaken the exercise of *a prima-*

*facie* consideration of the material on record. The material, on *prima-facie* consideration does not make out the offence. The continuation of prosecution, in view of the above observation, would be miscarriage of a justice. Therefore, the prosecution deserves to be quashed. Hence following order:-

### **ORDER**

(A) Criminal Application is allowed in terms of prayer clause (i) which reads thus:-

*“quash and set aside the FIR No.174/2020, Dt. 17/03/2020 registered with Non-applicant No.1 Police Station, Dharni, Tq. Dharni, Dist. Amravati for the offence punishable U/s. 504 and 506 of the Indian Penal Code and Section 3(1)(r)(s) of the SC & ST (Prevention of Atrocities) Act, 1989.*

**JUDGE**

**JUDGE**

*manisha*