



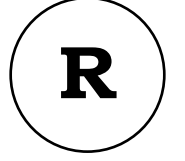
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO.4384 OF 2023



BETWEEN:

1. SRI V JAGADISH BATHIJA
SON OF VASHDEV DAS
AGED ABOUT 75 YEARS,
RESIDING AT FLAT NO.42, TOWER-6,
PEBBLE BAY APARTMENTS,
1ST MAIN ROAD, 2ND STAGE, DOLLARS COLONY
BENGALURU, KARNATAKA-560094.
2. SMT. BRINDA BATHIJA (@ SARAH KHAN)
WIFE OF ABDUL RAHIM KHAN,
AGED ABOUT 44 YEARS,
RESIDING AT FLAT NO. A2,
074 SNN RAJ ETERNIA, SILVER COUNTY ROAD,
KUDLU, SARJAPUR HOBLI,
BENGALURU 560068.

...PETITIONERS

(BY SRI P.P. HEGDE, SENIOR ADVOCATE
FOR SRI. S SUSHANT VENKATESH PAI., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY SANJAY NAGAR POLICE STATION
SANJAY NAGAR MAIN RD,
CIL LAYOUT, A BLOCK,
JUDICIAL COLONY,
RAJ MAHAL VILAS 2ND STAGE,





SANJAYANAGARA, BENGALURU-560094.
REPRESENTED
HEREIN BY ITS STATION HOUSE OFFICER

2. MRS. REKHA SAYANNAVAR
AGED ABOUT 41 YEARS,
WIFE OF GRISH.H,
RESIDING AT LAKSHMI NIWAS,
OPP.COTTAGE HOSPITAL,
GOKAK FALLS ROAD, GOKAK,
BELGAUM-591307.

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO A. QUASH THE FIR DATED 29.03.2023 BEARING NO.70/2023 REGISTERED BY THE 1st RESPONDENT SANJAY NAGAR POLICE STATION AND ALL INVESTIGATION PURSUANT THERETO AT ANNEXURE A AND OFFENCE OF SC/ST (POA) AMENDMENT ORDINANCE 2014 (U/S.3(1)(R)(S)); AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners are before this Court calling in question registration of Crime in Crime No.70 of 2023 for offences punishable under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.



2. Heard Sri P.P. Hegde, learned Counsel appearing for the petitioners and learned High Court Government Pleader for the State. Respondent No.2-Complainant though served, remains unrepresented.

3. *Sans* details, facts in brief, are as follows:

Petitioners are the owners of a premises located in Flat No.42, Tower-6, Pebble Bay, No.74, 1st Main Road, RMV 2nd Stage, Dollars Colony, Bangalore - 560 094. Petitioners desirous of letting the said premises on rent and the second respondent – complainant desirous of taking the premises on rent enter into a rental agreement on 21.06.2018, per month for usage of the said premises and Rs.16,461/- as maintenance directly payable to the Pebble Bay Owners' Association. A security deposit of Rs.10/- lakhs was paid to the petitioners to be returned interest free. It transpires that towards the Rs.10/- lakhs security deposit, two cheques were handed over by the complainant one for Rs.3/- lakhs and another for Rs.7/- lakhs. The second cheque was dishonoured for want of sufficient funds. The petitioners then register a complaint against the complainant for offences punishable under Section



138 of the Negotiable Instruments Act, 1881. The said case is pending in C.C.no.315/2019.

4. The second respondent defaulted in payment, neither the rent was paid nor the maintenance to the Association. Therefore, she has caused multiple defaults. By the time the agreement expired, the complainant was in due of Rs.15,45,733/- as no rent was paid. A legal notice was caused upon the complainant for eviction, which is also served on the complainant. Despite service of notice, no payment was made. They were constrained to initiate proceedings before the learned Sessions Judge in O.S.No.4119/2020, seeking recovery of rent and delivery of vacant possession of the premises. The complainant throughout the said period was working as a Member of the Third Additional Bangalore Urban Consumer Commission.

5. The concerned Court passes its judgment and decree on 01st December, 2022 directing the second respondent to vacate and handover the vacant premises to the hands of the petitioners within three months from the date of the decree.



The respondent No.2-Complainant failed to comply with the order passed by the concerned Court, dated 01st December, 2022. Therefore, the second petitioner files an Execution Petition in EP No.661 of 2023 to get the order dated 01st December, 2022 executed as passed in Original Suit No.4119 of 2020. A delivery warrant, then, was issued on 10th March, 2023 seeking eviction of the respondent No.2 from the premises owned by the petitioners. The jurisdictional police was also directed to provide required assistance to ensure the delivery warrant executed.

6. In terms of what was directed by the concerned Court on 29th March, 2023, the Court Bailiff, with the assistance of jurisdictional police, seek to execute the delivery warrant. Therefore, it appears that the Bailiff had to wait all day on 29th March, 2023 for the purpose of executing the delivery warrant. The execution is then over on the evening of the said day i.e. on 29th March, 2023.

7. Later the respondent No.2 registers a crime on 29th March, 2023 alleging an incident said to have happened on 26th



March 2023. The incident was, hurling of abuses by the petitioners against the complainant in the house of the complainant. The complaint then becomes a crime in Crime No.70 of 2023 for the afore-quoted offences. It is the registration of the crime that drives the petitioners to this Court in subject petition.

8. The learned Senior Counsel takes this Court through the documents appended to the petition seeking to demonstrate gross misuse of the provisions of Atrocities Act in gross abuse of the process of the law. For the reason that the complainant who became a chronic defaulter in not making payment of rent even for a month after taking the premises on rent, the petitioners were constrained to approach the Civil Court. The Civil Court's decree was also not bothered to be adhered by the Member of the District Consumer Forum. What the complainant would do is register a crime invoking the Atrocities Act for an act that has never happened by the hands of the petitioners. It is the complainant's version that she was hurled abuses on 26.03.2023 in the house. If that be so, there can be no allegation of offence under Sections 3(1)(r) and(s) of



the Atrocities Act, is his submission. He seeks obliteration of the crime.

9. The learned High Court Government Pleader would, however, seek to refute the submissions of the learned Senior Counsel to contend that since the crime has been registered under the provisions of Atrocities Act, the further investigation should be permitted to be continued and as it would become a matter of trial later whether the petitioners have, in fact, hurled such abuses or not, and would seek dismissal of the petition.

10. The respondent No.2-complainant, though served, remains unrepresented. It is therefore, the counsel for the petitioner and the learned High Court Government Pleader are heard in the matter.

11. I have given my anxious consideration to the submissions made by the respective learned Counsel and have perused the material on record. The afore-narrated facts are not in dispute. The complainant being a tenant in the house



owned by the petitioners is a matter of record. The complainant enters into rental agreement with the petitioners on 21st June, 2018 and does not pay a rupee of rent. On 08th September, 2020, petitioners were constrained to approach the Civil Court in Original Suit No.4119 of 2020 seeking eviction of the complainant from the premises and recovery of the arrears of rent, as no rent had been paid, since the complainant had taken the premises on rent. The Court, after hearing all the parties, passes its judgment and decree on 01st December, 2022 directing delivery of the premises within three months from the date of the decree. The order reads as follows:

"ORDER

Suit filed by the plaintiff is decreed with cost.

The defendants are directed to quit, vacate and handover the vacant possession of the suit schedule premises to the plaintiff within 3 months from the date of decree and also the plaintiff is entitled for Rs.15,45,733/-.

The plaintiff is entitled for inquiry with regard to arrears of rent and mesne profit as per Order 20 Rule 18 of CPC.

Draw decree accordingly."

(Emphasis added)



A direction was issued to the complainant to vacate and hand over the vacant possession of the premises and also payment of arrears of rent to the tune of Rs.15,45,733/-. This was not obeyed to by the complainant. The petitioners, then, were constrained to file execution petition in EP No.661 of 2023 on 13th March, 2022. The concerned Court issues the delivery warrant and also directs the jurisdictional police to render assistance to execute the delivery warrant. It is then, the delivery warrant is said to be executed by the Bailiff who approaches the petitioners and on the evening of the said day on 29th March, 2023 executes the delivery warrant.

12. Immediately thereafter, the crime comes to be registered on 29th March, 2023 alleging the afore-quoted offences. The narration in the complaint is quite strange. The narration is that, on 26th March, 2023, the petitioners come to their house, in which the complainant was a tenant and hurl abuses inside the house. The complaint then becomes a crime in Crime No.70 of 2023. If this is the allegation in the complaint, permitting any further investigation into the complaint, would, on the face of it, become an abuse of the



process of law as it forms a classic case where the provisions of Atrocities Act are misused by a disgruntled tenant who do not want to pay rent after taking the premises on rent and sought to scuttle the decree by not adhering to it. The delivery warrant being issued against the complainant, leads the complainant to register the crime as a counter-blast, wreck vengeance for what she has suffered as an order at the hands of the concerned Court. Hurling of abuses as obtained under Section 3(1)(r) and (s) of the Atrocities Act is required to be noticed. Section 3(1)(r) of the Atrocities Act directs that the abuses should be hurled in the public place; Section 3(1)(s) directs that the abuses should be hurled in the place of public view. Therefore, the abuses should be either in the public place or in the place of public view. The narration in the complaint itself is that the abuses were hurled inside the house. The presence of the complainant inside the house, at that time, is conspicuously absent in the complaint. Therefore, the very complaint itself is so frivolous that no further proceedings should be permitted to be continued. Even otherwise, the Apex Court in the case of **HITESH VERMA v. STATE OF**



UTTARAKHAND reported in **2020(10) SCC 710**, at

paragraphs 18 to 20, has held as follows:

"11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

***"3.(1)(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;"*

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view".

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked



jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh v. State [Swaran Singh v. State, (2008) 8 SCC 435: (2008) 3 SCC (Cri) 527]. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) [Ed.: This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below: "Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."]. The Court held as under: (SCC pp. 443-44, para 28)

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate



of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

(emphasis in original)

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh [Swaran Singh v. State, (2008) 8 SCC 435: (2008) 3 SCC (Cri) 527], it cannot be



said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject-matter of civil dispute between the parties as per Respondent 2 herself. Due to dispute, the appellant and others were not permitting Respondent 2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the civil court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

... ..

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

19. This Court in a judgment reported as Subhash Kashinath Mahajan v. State of Maharashtra [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] 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 v. State of Maharashtra [Union of India v. State of Maharashtra,



(2020) 4 SCC 761 : (2020) 2 SCC (Cri) 686] 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 : (Union of India case [Union of India v. State of Maharashtra, (2020) 4 SCC 761 : (2020) 2 SCC (Cri) 686] , SCC p. 797, para 52)

"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 CrPC."

20. Later, while examining the constitutionality of the provisions of the amending Act (Central Act 27 of 2018), this Court in a judgment reported as Prathvi Raj Chauhan v. Union of India [Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727 : (2020) 2 SCC (Cri) 657] held that proceedings can be quashed under Section 482 of the Code. It was held as under : (SCC p. 751, para 12)

"12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing



the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.”

21. In Gorige Pentaiah [Gorige Pentaiah v. State of A.P., (2008) 12 SCC 531: (2009) 1 SCC (Cri) 446] , one of the arguments raised was non-disclosure of the caste of the accused but the facts were almost similar as there was civil dispute between parties pending and the allegation was that the accused has called abuses in the name of the caste of the victim. The High Court herein has misread the judgment of this Court in Ashabai Machindra Adhagale [Ashabai Machindra Adhagale v. State of Maharashtra, (2009) 3 SCC 789: (2009) 2 SCC (Cri) 20] as it was not a case about the caste of the victim but the fact that the accused was belonging to upper caste was not mentioned in the FIR. The High Court of Bombay had quashed the proceedings for the reason that the caste of the accused was not mentioned in the FIR, therefore, the offence under Section 3(1)(xi) of the Act is not made out. In an appeal against the decision of the Bombay High Court, this Court held that this will be the matter of investigation as to whether the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. Therefore, the High Court erred in law to dismiss the quashing petition relying upon later larger Bench judgment.

22. The appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because Respondent 2 was a Scheduled Caste since the property dispute was not on account of the fact that Respondent 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a



Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar any person to protect his rights by way of a procedure established by law.”

(Emphasis supplied)

Reference being made to another judgment of the Apex Court which bears consideration in **Hitesh Verma’s** case (*supra*) in the case of **GORIGE PENTAIHAH v. STATE OF A.P.**¹ is apposite wherein the Apex Court holds as under:

“5. Learned counsel appearing for the appellant submitted that even if all the allegations incorporated in the complaint are taken as true, even then, no offence is made out under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act”) and under Sections 447, 427, 506 of the Penal Code, 1860. As far as Section 3(1)(x) of the Act is concerned, it reads as under:

*“3. Punishments for offences of atrocities.—
(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*

*(i)-(ix)****

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

¹ **(2008) 12 SCC 531**



...

...

...

Scope and ambit of courts' powers under Section 482 CrPC

12. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court; and
- (iii) to otherwise secure the ends of justice.

Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

13. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* [1964 AC 1254; (1964) 2 WLR 1145; (1964) 2 All ER 401 (HL)] Lord Devlin stated that where



particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys [1977 AC 1: (1976) 2 WLR 857: (1976) 2 All ER 497 (HL)] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the courts' power to prevent such abuse is of great constitutional importance and should be jealously preserved."

(Emphasis supplied)

The Apex Court, in the aforesaid judgment, had delineated the concept of abuses in public place or in a public view which is further amplified by a three Judge Bench in **HITESH VERMA's** case (*supra*).

13. In the light of the afore-narrated judgment of the Apex Court, if the case at hand is considered, as observed hereinabove, the hurling of abuses is neither in a public place nor in a place of a public view. Apart from the said fact, the timing of the complaint is required to be noticed. The delivery warrant issued was sought to be executed on 29.03.2023. After the execution or during the process of execution of the



delivery warrant, the complainant registers the crime, not for an incident that happens on 29.03.2023, but alleging that an incident of 26.03.2023, three days prior to the said act. The allegation is, abuses are hurled against the complainant in her house by the petitioners. If the abuses had been hurled, nothing prevented the complainant from immediately registering the complaint on the very day i.e, 26.03.2023. Though delay would not be fatal, delay in the peculiar facts of this case dilutes the substance of the complaint, as the complainant is a member of the District Consumer Forum and is very well aware of her rights, being well aware would not have waited for 3 days to register the crime. The litigations initiated by the petitioners against the complainant for which she has become disgruntled has sought to misuse the provisions and abuse the process of law, only as a counter blast to the action of the petitioners in litigating against her or to wreck vengeance for having succeeded in the aforesaid litigations. It is due to the cases of this nature where the provisions of the Act are grossly misused engaging the Courts of law, at times, genuine complaints of people who have actually suffered such abuses, would go into the oblivion.



14. In the light of the facts narrated hereinabove, the judgment of the Apex Court in **HITESH VERMA** (*supra*) would become applicable to the case at hand on all its fours. Therefore, permitting further investigation to continue against the petitioners would amount to abuse of process of law, degenerate to harassment and would result in miscarriage of justice. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) FIR dated 29th March, 2023 registered in Crime No.70 of 2023 by Sanjaynagar Police Station stands quashed.

Sd/-
JUDGE

LNN
List No.: 1 SI No.: 19