

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 13552 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

=====

JIVANBHAI NAGJIBHAI MAKWANA

Versus

STATE OF GUJARAT & 1 other(s)

=====

Appearance:

MR KUNAL S SHAH, ADVOCATE for the Petitioner

MR SOAHAM JOSHI, APP for Respondent No. 1 - State

MR DHAVAL A PARMAR, ADVOCATE for Respondent No. 2 - Complainant

=====

CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 20/07/2023****CAV JUDGMENT**

1. The present petition is filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973,

for quashment of the impugned FIR being C.R. – II No.40 of 2018 registered with the Chotila Police Station, District : Surendranagar for the offences punishable under Sections 323 and 506(2) of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The brief facts of the prosecution case are that the petitioner and the complainant, both are the members of one political party. Since the petitioner was claiming the post of President of Chotila Nagarpalika and the complainant was going to cast his vote in favour of the Congress Party, there were exchange of words as alleged and the petitioner has humiliated the complainant in front of other elected members, including the women members of the Nagarpalika. Therefore, the impugned complaint.

3. Heard learned advocates.

4.1 Learned advocate Mr. Kunal S. Shah for the applicant has submitted that this is a gross of abuse of process of law. He has submitted that the petitioner and the complainant were friends and have contested & elected as the Members of the Chotila Nagarpalika on the symbol of the same political party - BJP. They had such good terms that

they can say anything to each other. He has submitted that incident never happened between them. The complainant has falsely implicated the petitioner in the offence in question. He has submitted that there was an election of President of the Nagarpalika and as the complainant and few other elected members have cast their votes against the mandate of the BJP and in turn, not in favour of the petitioner, a complaint was made by the petitioner against them to remove from the Party and therefore, keeping grudge in mind, the complainant has lodged the impugned complaint. He has submitted that though a complaint is made against other members, that too women elected members, they have not made any complaint, that too criminal complaint against the petitioner.

4.2 He has submitted that the complainant wanted to be a President of the Nagarpalika and the Party has not inclined to declare the complainant as a President of the Nagarpalika, but the name of the petitioner has selected by the Party and therefore, the complainant has made the impugned complaint against the petitioner. He has submitted that no ingredients are attracted / satisfied which culminated into an offence in question. He has submitted that the complainant has tried to disturb the image of the petitioner. He has submitted that the complainant has kept ill-motive that if he will not be a President, then the petitioner, being

a good friend of him, will not be a President of the Nagarpalika. He has submitted that this is a misuse of the law by the complainant. He has submitted that during the course of investigation, there is no material whatsoever against the petitioner which culminated into the offence in question. He has submitted that there is no evidence against the petitioner which attracts the ingredients of the Sections, as invoked in the impugned complaint. He has submitted that this petition may be allowed by quashing the impugned complaint.

4.3 In support of his submissions, learned advocate for the petitioner has relied upon the following decisions :

- (i) *2023 LawSuit (Kar) 18 – Shailesh Kumar Venkatesh versus State of Karnataka; Jayamma W/o Kenchappa*
- (ii) *2017 LawSuit (Del) 1297 – Prem Mardi versus Union of India*
- (iii) *2008 LawSuit (SC) 2280 – Gorige Pentaiah versus State of A.P.*
- (iv) *(2008) 8 SCC 435 – Swaran Singh versus State*
- (v) *2022 LawSuit (Ori) 831 – Surendra Kumar Mishra versus State of Orissa*
- (vi) *2023 AHC 52312 – Syed Mohiuddin Ahmad versus State of U.P.*
- (vii) *2020 LawSuit (SC) 691 – Hitesh Verma versus State of Uttarakhand*

5. *Per contra*, learned advocate Mr.Dhaval A. Parmar for the complainant has submitted that *prima facie* offence is made out against the petitioner. He has submitted that the petitioner has used such language in front of other persons and thereby caused offence in question. He has submitted that the petitioner is not permitted to use such language against the caste of the complainant as he has insulted the complainant in public place. He has submitted that time and again, the Hon'ble Supreme Court of India, in catena of decisions, held that such petitions may not be entertained. He has submitted that discretion may not be used in favour of the petitioner by this Court under Section 482 of the Code. He has submitted that this petition may be dismissed.

6. Learned APP Mr.Soaham Joshi for the State has supported the arguments canvassed by the learned advocate for the complainant. He has submitted that *prima facie* offence is made out and therefore, let the petitioner face the trial. He has submitted that at this stage, this Court may not exercise the powers under Section 482 of the Code in favour of the petitioner, which may be used very sparingly. He has submitted that this petition may be dismissed.

7.1 I have heard rival contentions raised by the

learned advocates for the respective parties. I have perused the documents available on record.

7.2 Considering the case of the prosecution as per the FIR, the following points are emerged :

- The incident has happened two days before lodging the impugned complaint.
- There were other seven elected Members along with the complainant, as alleged.
- The Chief Election Officer and all other officials were present at the time of incident.
- No one has supported the case of the complainant.
- The complainant and the petitioner were elected members of the Nagarpalika on the symbol of one political party - BJP.
- The petitioner and the complainant, both were knowing each other since long.
- There was no untoward incident with any elected women members, as alleged.
- Any elected woman member has lodged complaint against the petitioner.
- If the incident has happened in true sense, why the complainant has waited for two days, is one of the questions for consideration.

- From whose instigation, the impugned complaint is lodged.
- From whose instigation, the impugned complaint is not lodged immediately, if such incident is happened actually, as alleged.
- The alleged incident is based on ifs and buts.
- The alleged threat was that, if the complainant will cast his vote against the petitioner / BJP, then the petitioner will see him. It suggests that if the complainant will not cast his vote against BJP, such complaint would not stand ever, more particularly offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
- If outsider, who have directed the complainant to lodge the impugned complaint, suggested not to lodge the complaint, then the question is about the veracity of the alleged incident as well as veracity of using language about the caste.

By plain reading of the impugned complaint, these are the points which are emerged from it, which are necessary to be taken into consideration by this Court at this stage in this petition under Section 482 of the Code of Criminal Procedure, 1973.

7.3 Further, at this juncture, the conduct of the complainant is required to be considered which smacks a lot. Looking at the complaint itself, the incident happened before two days from the date of lodging the impugned complaint. The complainant approached the police station immediately as averred, but he did not lodge the complaint at that time. He waited for the direction of his higher authorities/representatives. The questions are posed here that : Who are his higher authorities/representatives, Whose direction the complainant was following, Which was the actual advice, Why the complaint has not been lodged on the same day, Why should they delay to lodge the complaint, Was there any motivation to the complainant to lodge the impugned complaint at a belated stage, If yes, which was that motivation, Whether there was any ill-motive, Whether any grievance against the petitioner by the complainant, Whether the incident has happened in friendship. These are the questions which are in the dark till today.

7.4 Further, the normal reaction of any victim would be that when any untoward incident has happened to him, he should approach the concerned police authority immediately to lodge the complaint or the victim would immediately raise his grievance before any higher authority. In the present case, the complainant has neither raise any

grievance about the alleged incident before any higher authority or before any election officials who were present on the spot nor he has lodged any complaint before the police authority immediately. As per the complaint, he went to the police station, but not lodged the complaint, as directed by his representatives. Such action of the complainant creates doubt and tilts the balance in favour of the petitioner.

7.5 Further, looking at the entire episode as alleged in the complaint, no one has lodged the complaint against the petitioner except the complainant. In fact, as per the complaint, the petitioner has gotten down one lady member viz., Jetuben by pulling her chair; and further, the petitioner has beaten one Rekhaven Makwana with a leg blow. Both of these lady members have not even lodged any complaint against the present petitioner. If such an incident has happened actually, the grievance would have been raised by such women members, however, there is no whisper about the alleged incident by any such women members. Further, there is no whisper about the alleged incident by any election officials. That itself suggests that the alleged incident is concocted one.

7.6 It seems that the complaint is a counter-blast of the action taken by the petitioner. The petitioner has made a

complaint to the higher authorities of his political party – BJP against the complainant and another two members with regard to the casting of votes to another political party – Congress for the election of the President of the Nagarpalika and therefore, it seems that it is a counter-blast by the complainant. It is surprising that in the complaint, the complainant has narrated the incident with two women members, but said women members have not made any complaint against the present petitioner. Keeping this background in mind, it transpires that no offence as alleged under the Indian Penal Code or under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out against the petitioner.

7.7.1 Keeping the above in mind, it would be fruitful to refer to the relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which are invoked in the complaint, as under :

“3. Punishments for offences 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;

3. Punishments for offences atrocities.—

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;”

7.7.2 The essential ingredients of Section 3 of the Act can be broken down as below :

(i) There should be intentional insult or intimidation of an SC/ST person by a person who is not a member of the SC/ST communities

(ii) Since the insult must be intentional, it logically follows that the accused is aware or knows that the victim belongs to an SC/ST.

(iii) The incident must be in any place within public view.

7.7.3 At this stage, we must keep in mind the purpose of passing the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, which is as under :

“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable... Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under these circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.”

7.7.4 Further, looking to the language of the Section, the offence must have been committed against the person who is a member of Scheduled Caste and Scheduled Tribe. In the present case, it is a fact that the complainant is a member of a Scheduled Tribe, however, there is no evidence

to show that the offence was committed only on the ground that the complainant was a member of the Scheduled Tribe. Unless the investigation indicates or reveals the intention of a person not belonging to Scheduled Caste or Schedule Tribe to commit any of the offences under Section 3 of the Act, in order to oppress or insult or humiliate or subjugate or ridicule a member of Scheduled Caste or Scheduled Tribe as such person merely belongs to that caste, the offence under Section 3 of the Act cannot be invoked. If the motive for the crime is not a casteist attack, the person cannot be dragged for an offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. While the Act is essentially meant for protecting the members of a scheduled caste or scheduled tribe from atrocity or oppression, at the same time, it cannot be allowed to be misused. It is a greater responsibility on the investigating officer to investigate such offence wisely and/or very sharply and in a fair manner. Further, even accepting for a while that the alleged incident happened at a time when other members of the public were present, the question would still be; whether the petitioner committed the overt act with any intention to insult and intimidate the complainant on account of he belonging to schedule tribe ? Further, if we believe that alleged incident has happened, it was pure and simply an abuse by the petitioner under the peculiar facts and circumstances and a

sudden outburst and on the spur of the moment without carrying the requisite intention to humiliate the complainant so to say.

Further, the Delhi High Court has held that the number of public persons does not matter, but they should be independent, impartial and not interested in any of the parties. These persons must be distinct and strangers to the parties, not sharing any close relationship or any business, commercial or any other vested interests. If the persons have any close relationship or connection or any other vested interests, they will get excluded from this ambit.

7.7.5 On the other hand, the justification for interpreting the provisions very stringently could be due to the alleged misuse of the Act. There have been cases where members of the SC/ST community have threatened to accuse others under 1989 Act and lodge fake cases.

The allegations, in this case, are that the proposed accused conveyed the mandate of their own political party to cast the vote to the petitioner for the post of President of the Nagarpalika and it cannot be an act of physical harm or mental agony on the complainant by allegations of insult / humiliate by uttering words regarding his caste as he belongs

to schedule tribe.

It indubitably clears that Section/s of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act are attracted only when a person is trying to promote ill feelings against the members of the Scheduled Castes and the Scheduled Tribes.

Keeping the above in view, this Court is of the opinion that, the allegations mentioned in the impugned complaint does not constitute criminal offences under the Act, as alleged.

7.7.6 At this stage, it would be fruitful to refer to Rule 7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, which indicates the role of investigating officer, which is as under :

“7. Investigating Officer - (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/ Director-General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) xxx

(3) xxx ”

Considering the above Rule, there is no whisper about the alleged incident in the entire investigation. At this stage, the Court has kept in mind the conduct vis-à-vis the allegations vis-à-vis the political issues. The complainant as well as the petitioner are from one political party – BJP. Both were claiming the post of President of the Nagarpalika. But, since the party leaders have chosen the petitioner as a President, the complainant has kept a grudge and filed the complaint after two days from the alleged incident. Further, except the complaint, no one has lodged the complaint against the petitioner. Under the circumstances, the impugned complaint is required to be quashed and set aside by exercising the powers under Section 482 of the Code in favour of the petitioner.

7.8.1 Further, it would also be fruitful to refer to the relevant provisions of the Indian Penal Code, which are invoked in the complaint, as under :

*“Sec.323 : Punishment for voluntarily causing hurt.
— Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description*

for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Sec.506 : Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

7.8.2 Above discussion makes it clear that the immediate purpose of criminal intimidation is to induce the person threatened to do, or to abstain from doing, something which the person was not legally bound to do or to omit. It is therefore a punishable offence. Section 506 is the penal section which states the punishment for the offence of criminal intimidation, the offence itself is defined in Section

503. Section 506 IPC is divided into two categories which are lesser and graver forms of criminal intimidation and thus, punishment is given accordingly. In IPC offence of criminal intimidation is expressly laid out and tries to cover all facets of criminal intimidation.

7.9 This Court is also conscious that this is a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the impugned complaint by the petitioner. This is not an anticipatory bail application under Section 438 of the Code of Criminal Procedure, 1973.

8. This Court has discretionary powers to exercise if this Court finds that there is an abuse of process of law, as held by the Hon'ble Apex Court in the case of ***State of Haryana V/s Bhajan Lal reported in AIR 1992 SC 604, which reads as under :***

“In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Art.226 or the inherent powers under sec.482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such

power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.155(2) of the Code.

(3) 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.

(4) 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 sec.156(2) of the Code.

(5) 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.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. At this stage, it is also relevant to refer to the judgment of the Hon'ble Apex Court in the case of ***Inder Mohan Goswami and Another versus State of Uttaranchal*** reported in ***(2007) 12 SCC 1***, more particularly para : 23 & 24 thereof, which read as under :

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Sec. 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 Sec. 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.]

24. Inherent powers under Sec. 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.”

10. Further, it would also be fruitful to refer to the decision of the Hon'ble Apex Court in the case of ***Gorige Pentaiah versus State of Andra Pradesh*** reported in ***(2008) 12 SCC 531***, more particularly Paras : 5 to 8 and 12 thereof, which read 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 Indian Penal Code. As far as Section 3(1)(x) of the Act is concerned, it reads as under :

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

(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."

6. *In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No.3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.*

7. *Similarly, we find that the ingredients of Section 506 of the Indian Penal Code are totally absent in the complaint. In the complaint it is*

not even mentioned that the accused had intimidated or threatened the complainant or any one else. In absence of basic ingredients of the section in the complaint, no case under section 506 IPC can be sustained. Section 506 reads as under :

"Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

8. *"Criminal intimidation" has been defined in Section 503 which reads as under :*

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

12. *This court in a number of cases has laid down the scope and ambit of courts' powers under section 482 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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.”

11. It is also relevant to refer to the decision of the Hon'ble Apex Court in the case of ***Hitesh Verma versus State of Uttarakhand*** reported in ***(2020) 10 SCC 710***, more particularly Paras : 14, 19, 21 and 22 thereof, which read as under :

"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 and Ors. v. State through Standing Counsel and Ors.. 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. The Court held as under :

"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."

19. *This Court in a judgment reported as Dr.Subhash Kashinath Mahajan versus State of Maharashtra 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 versus State of Maharashtra reviewed the directions issued by*

this Court and held that if there is a false and unsubstantiated FIR, the proceedings under Section 482 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 of the Code.”

21. *In Gerige Pentaiah, 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 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 No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that*

respondent No. 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.”

12. With great pain it is noted that, many a time, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are being misused, some time by the complainant and/or some time by the concerned authorities. Here is the glaring example. Here the place of offence is a public place i.e. the office of the Nagarpalika. There is no concrete material against the petitioner in the entire investigation, which attracts the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Prima facie, it seems that it is completely a politically motivated complaint. In such situation, the sufferer would be the non-scheduled caste and non-scheduled tribe qua these provisions, by which damage is caused to fabric of social harmony in the society.

13. In view of the above facts and circumstances as well as the law laid down by the Hon'ble Apex Court, this Court finds that the present petition is required to be allowed by quashing the impugned complaint by exercising the powers under Section 482 of the Code in favour of the petitioner. This is a gross case of abuse of process of law and therefore, the petitioner needs to be protected.

14. For the reasons recorded above, the following order is passed.

14.1 This application is allowed.

14.2 The impugned FIR being C.R. – II No.40 of 2018 registered with the Chotila Police Station, District : Surendranagar is quashed and set aside.

14.3 Consequently, the subsequent proceedings, if any, arising out of the same FIR are also hereby quashed and set aside.

14.4 Rule is made absolute accordingly.

15. The compensation received by the complainant pursuant to the complaint under the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, if any, shall be refunded to the State, forthwith and the State will do needful for the same if not refunded, in accordance with law.

Direct service is permitted.

M.H. DAVE

Sd/-
(SANDEEP N. BHATT,J)