

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 10TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.101825 OF 2019

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BETWEEN:

1. BHIMAPPA JANTAKAL @ BHIMANNA
2. PRAVEENKUMAR JANTAKAL
3. ANANTAKUMAR JANTAKAL
4. VINODKUMAR JANTAKAL

... PETITIONERS

(BY SRI NEELENDRA D.GUNDE, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
KOPPAL TOWN POLICE STATION

REPRESENTED BY THE STATE
PUBLIC PROSECUTOR
HIGH COURT BUILDING
DHARWAD.

2. RAMESH GAVISIDDAPPA GINAGERI

(AMENDMENT CARRIED OUT VIDE ORDER
DATED 18.12.2019)

... RESPONDENTS

(BY SRI RAMESH CHIGARI, HCGP FOR R1;
SRI B.C.JNANAYYASWAMI, ADVOCATE FOR R2))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 12.07.2019 PASSED BY THE DIST. & SESSIONS JUDGE, KOPPAL, IN SPL.C.C.(AC) NO.25/2015 THEREBY REJECTING THE APPLICATION FILED BY THE PETITIONERS U/S 227 OF CR.P.C., WHEREIN THE PETITIONERS WERE TRIED FOR OFFENCES P/U/S 323, 505, 506 R/W SEC. 34 OF IPC & SEC. 3(1) (10) OF SCHEDULE CASTE & SCHEDULE TRIBES (PREVENTION OF ATROCITIES ACT), 1989.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.02.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question proceedings in Special C.C.(AC) No.25 of 2015 pending before

the District and Sessions Judge at Koppal arising out of Crime No.179 of 2015 registered for offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1) and (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short).

2. Brief facts, as projected by the prosecution, are as follows:-

On 23-09-2015 the 2nd respondent one Sri Ramesh Gavisiddappa Ginageri registered a complaint against the petitioners alleging that on 20-09-2015 at 11 a.m. in front of the house of Mallappa Kavalur/CW-8 when he was mediating a civil dispute between the parties, petitioner No.1, brother of the father of the complainant was also present along with the petitioners. It is the allegation that all of a sudden all the petitioners abused the complainant by taking the name of the caste viz. Scheduled Caste and also indulged in assaulting and threatening the complainant. Based on the said incident, a

complaint came to be registered before the jurisdictional police by the 2nd respondent/complainant for offences punishable under sections afore-quoted. The police, after investigation, filed a charge sheet in the matter. On filing of the charge sheet, the petitioners filed discharge application before the learned Sessions Judge under Section 227 of the Cr.P.C. The learned Sessions Judge dismissed the application filed under Section 227 on 12-07-2019 holding that there was *prima facie* material against the petitioners to continue the trial. It is this order that is called in question in the subject petition. A consequential relief of discharge is also sought by the petitioners.

3. Heard Sri Neelendra D.Gunde, learned counsel appearing for the petitioner, Sri Ramesh Chigari, learned High Court Government Pleader appearing for respondent No.1 and Sri B.C. Jnanayyaswami, learned counsel appearing for respondent No.2.

4. Learned counsel appearing for the petitioners would urge the following contentions:

- (i) *The complainant does not belong to Scheduled Caste. He belongs to Vishwakarma caste which is not a Scheduled Caste. The basis for this contention is that the mother of the complainant did belong to Scheduled Caste and married to the father of the complainant who belonged to forward caste and as such he loses the status of belonging to 'Scheduled Caste'.*
- (ii) *The incident did not take place in a public view at all, as the parties to a particular civil dispute were negotiating or mediating the dispute between them. No other person is involved in the talks.*
- (iii) *To bring home assault, a wound certificate is produced which does not show any external injuries and therefore, would contend that neither the case under the Act nor assault under Section 323 of the IPC and intimidation under Section 506 of the IPC is present in the case at hand.*

5. On the other hand, the learned counsel representing the 2nd respondent would submit that since the mother belongs to Scheduled Caste, the 2nd respondent/son also belongs to Scheduled Caste. Therefore, there is no warrant of interference insofar as the case under the Act is concerned. He would

further contend that assault or otherwise is a matter of trial and this Court should not interfere at this juncture, as charges are yet to be framed in the case at hand.

6. The learned High Court Government Pleader would also toe the lines of the learned counsel appearing for the 2nd respondent to contend that it is a matter of trial for the petitioners to come out clean.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance of the submissions made and on going through the records the following issues arise for determination:

- (i) ***Whether the mother of the complainant loses her status of being a member of Scheduled Caste the moment she married the father of the complainant who belongs to a forward caste?***
- (ii) ***Whether the complainant being a son of a member of Scheduled Caste/mother and a forward caste/father would acquire the status as member belonging to 'Scheduled Caste'?***

(iii) Do the impugned proceedings warrant any interference?

Issue No.(i): Whether the mother of the complainant loses her status of being a member of Scheduled Caste the moment she married the father of the complainant who belongs to a forward caste?

8. The afore-narrated facts are not in dispute. The mother of the complainant belong to 'Madiga' caste which comes under Scheduled Caste gets married to the father of the complainant who is a Vishwakarma by caste. The contention of the learned counsel for the petitioners is that, the moment woman belonging to Scheduled Caste gets married to a man belonging to forward caste, she would lose the status of a member belonging to Scheduled Caste and, therefore, the son also has lost the status of 'Scheduled Caste' and as such, the complaint was not maintainable. The first part of the submission, on the face of it is unacceptable, as it is fundamentally flawed.

9. It is trite that a woman belonging to Scheduled Caste getting married to a man belonging to forward caste will not lose

her caste status as one belonging to Scheduled Caste. This issue need not detain this Court for long or delve deep into the matter as a Full Bench of the High Court of Bombay in the case of **RAJENDRA SHRIVASTAVA v. STATE OF MAHARASHTRA**¹ answers the very question whether a lady belonging to Scheduled Caste or Scheduled Tribe marrying a person belonging to forward caste can be abused in the name of her caste by a member of the public or by the husband or his relative and whether offence under the Act can be registered.

The full Bench answers the issue in the following manner:

“11. The observations made in paragraph 31 of the decision in the case of Valsamma (supra) [1997 (1) Mh.L.J. (SC) 618] above cannot be read as a ratio laying down that on marriage, a wife is automatically transplanted into the caste of husband. The law on this aspect has been laid down by a larger bench of the Apex Court in the case of V. V. Giri (supra). The Constitution bench held that the caste is acquired by birth and the caste does not undergo a change by marriage or adoption. The ratio of the decision in the case of a Valsamma Paul (supra) [1997 (1) Mh.L.J. (SC) 618] is that acquisition of the status of a scheduled caste or a scheduled tribe by voluntary mobility into these categories would play fraud on the constitution. The Apex Court held that a candidate born in forward caste who is transplanted in a family of backward caste by adoption or by marriage does not become eligible to

¹(2010) 2 Mh.L.J. 198

benefits of reservation under the constitution. The observations made in paragraph 31 in the case of Valsamma (supra) [1997 (1) Mh.L.J. (SC) 618] are not to the effect that a woman born in a forward caste, on her marriage with a person belonging to a scheduled caste or a scheduled tribe, is automatically transplanted in the caste of her husband by virtue of her marriage. In fact, the ratio of the said decision is set out in paragraph 34 of the judgment which has been quoted above.

12. When a woman born in a scheduled caste or a scheduled tribe marries to a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage. A person born as a member of scheduled caste or a scheduled tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste. The label attached to a person born into a scheduled caste or a scheduled tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.

13. If the interpretation sought to be put by the learned counsel appearing for the applicant is accepted, it will defeat the very object of enacting the said Act. It will defeat the innovative steps taken by the framers of our constitution for protecting the persons belonging to scheduled castes and scheduled tribes who have suffered for generations.

14. Thus, the question formulated by the learned Single Judge will have to be answered in the affirmative. The question formulated by us in paragraph one will have to be answered in the negative. A woman who is born into a scheduled caste or a scheduled tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of husband by virtue of her marriage and, therefore, she cannot be said to belong to her husband's caste.

(Emphasis as in the original)

It is held that a woman who is born in a Scheduled Caste or Scheduled Tribe on marriage with a person belonging to forward caste, is not automatically transplanted into the caste of the husband by virtue of her marriage and she cannot belong to the caste of the husband. Therefore, the mother of the complainant continued to be a Scheduled Caste woman despite her marriage to a man belonging to Vishwakarma caste. The first issue that fell for determination on the contention of the learned counsel appearing for the petitioners is answered against him negating the submission that once the mother gets married to a forward caste man, she would lose the status of being a member of Scheduled Caste.

Issue No.(ii): Whether the complainant being a son of a member of Scheduled Caste/mother and a forward caste/father would acquire the status as member belonging to 'Scheduled Caste'?

10. The subject issue to be determined is, whether the complainant who is the son born to the mother belonging to Scheduled Caste and father belonging to Vishwakarma caste, would become a member of the Scheduled Caste *qua* the Act. This issue is dealt with by the Apex Court not in the context of the Act but in the context of issuance of caste certificate. The Apex Court in the case of **RAMESHBHAI DABHAI NAIKA v. STATE OF GUJARAT**² has held as follows:

“44. The observation made by Gajendragadkar, J. half a century ago was tellingly shown to be true in Rajendra Shrivastava v. State of Maharashtra [(2010) 112 (2) Bom LR 762], a case that came before the Full Bench of the Bombay High Court. In Rajendra Shrivastava [(2010) 112 (2) Bom LR 762] a Scheduled Caste woman, who had married a man from an upper caste, accused her husband and his family members of subjecting her to cruelty and abusing her in the name of her caste. A case was accordingly instituted against the accused, including the husband, under Sections 498-A, 406, 494, 34 of the Penal Code, 1860 read with the provisions of Sections 3(1)(ii) and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the anticipatory bail application filed on behalf of the husband it was contended that

² (2012) 3 SCC 400

on getting married with him the complainant had assumed his caste and lost her identity as a Scheduled Caste person. She could, therefore, make no complaint under the provisions of the SCs and STs (Prevention of Atrocities) Act. It goes without saying that in support of the contention raised on behalf of the husband strong reliance was placed upon the observations made in *Valsamma* [(1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] in para 31 of the judgment.

45. The Full Bench in *Rajendra Shrivastava* case [(2010) 112 (2) Bom LR 762] before which the matter came up for consideration on reference framed the following issue as arising for consideration:

“If a woman who by birth belongs to a Scheduled Caste or a Scheduled Tribe marries to a man belonging to a forward caste, whether on marriage she ceases to belong to the Scheduled Caste or the Scheduled Tribe?”

46. The Full Bench of the Bombay High Court in *Rajendra Shrivastava* case [(2010) 112 (2) Bom LR 762] examined *Valsamma* [(1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] in light of the two Constitutional Bench decisions of this Court, namely, *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and *V.V. Giri v. D. Suri Dora* [AIR 1959 SC 1318 : (1960) 1 SCR 426]. The Full Bench also considered the law of precedent and referred to the decision of this Court in *State of A.P. v. M. Radha Krishna Murthy* [(2009) 5 SCC 117 : (2009) 2 SCC (Cri) 612]. It finally came to hold that the observations made in para 31 of the decision in *Valsamma* [(1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] cannot be read as the ratio laying down that on marriage, a wife is automatically transplanted into the caste of her husband. In para 12 of the judgment in *Rajendra Shrivastava* [(2010) 112 (2) Bom LR 762] the Full Bench of the Bombay High Court it held as follows:

“When a woman born in a Scheduled Caste or a Scheduled Tribe marries to a person belonging to a forward

caste, her caste by birth does not change by virtue of the marriage. A person born as a member of a Scheduled Caste or a Scheduled Tribe has to suffer from disadvantages, disabilities and indignities only by virtue of belonging to the particular caste which he or she acquires involuntarily on birth. The suffering of such a person by virtue of caste is not wiped out by a marriage with the person belonging to a forward caste. The label attached to a person born into a Scheduled Caste or a Scheduled Tribe continues notwithstanding the marriage. No material has been placed before us by the applicant so as to point out that the caste of a person can be changed either by custom, usage, religious sanction or provision of law.”

We fully endorse the view taken by the Bombay High Court and we feel that in the facts of the case that was the only correct view.

47. In light of the discussion made above it is clear that the view expressed in para 31 of the Valsamma [(1996) 3 SCC 545: 1996 SCC (L&S) 772: (1996) 33 ATC 713] judgment that in an inter-caste marriage or a marriage between a tribal and a non-tribal the woman must in all cases take her caste from the husband, as a rule of the constitutional law is a proposition, the correctness of which is not free from doubt. And in any case it is not the ratio of the Valsamma [(1996) 3 SCC 545: 1996 SCC (L&S) 772: (1996) 33 ATC 713] decision and does not make a binding precedent.

48. It is also clear to us that taking it to the next logical step and to hold that the offspring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and is brought up as the member of that community suffering all the deprivations, humiliations, disabilities and

handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the Constitution.

49. Let us now examine how the issue has been dealt with by some of the High Courts.

50. A Full Bench decision of the Kerala High Court in M.C. Valsala v. State of Kerala [AIR 2006 Ker 1] is a case in point. The Government of Kerala had issued G.O. (Ms) No. 298 dated 23-6-1961 stating that children born of inter-caste marriages would be allowed all educational concessions if either of the parents belonged to the Scheduled Caste/Scheduled Tribe. Later, on a query made by the Kerala Public Service Commission, the Government clarified vide a G.O. (Ms) dated 25-1-1977 that the Government Order dated 23-6-1961 could be adopted for determining the caste of the children born of such inter-caste marriage for all purposes. Resultantly, such children were treated as belonging to the Scheduled Caste or Scheduled Tribe if either of their parents belonged to SC/ST. After the decision of this Court in Punit Rai [(2003) 8 SCC 204] and in light of the separate though concurring judgment of Sinha, J. the State of Kerala cancelled the earlier G.O. (Ms) dated 23-6-1961 and its clarification dated 25-1-1977 and replaced it by another order G.O. (Ms) No. 11/2005/SCSTDD dated 20-6-2005 directing that the competent authorities would issue the Scheduled Caste/Scheduled Tribe community certificates to the children born from inter-caste marriage only as per the caste/community of his/her father subject to the conditions of acceptance, customary traits and tenets as stipulated in the judgments of the Supreme Court. The validity of the Government Order dated 20-6-2005 came up for consideration before the Full Bench of the Kerala High Court.

51. The High Court considered the decisions of this Court in a number of cases including Valsamma [(1996) 3 SCC 545: 1996 SCC (L&S) 772: (1996) 33 ATC 713], Sobha Hymavathi Devi [(2005) 2 SCC 244] and Punit Rai [(2003) 8 SCC 204] and in

para 21 of the judgment came to hold as follows: (M.C. Valsala case [AIR 2006 Ker 1] , AIR p. 10)

“21. The Government, vide order G.O. (Ms) No. 25/2005/SCSTDD dated 20-6-2005 directed the competent authorities to issue SC/ST community certificates to the children born out of inter-caste married couples as per the caste/community of the father subject to the conditions of acceptance, customary traits and tenets stipulated in Punit Rai case [(2003) 8 SCC 204] and Sobha Hymavathi Devi case [(2005) 2 SCC 244] . The above Government order would also be applicable to the children born out of inter-caste married couple if the mother belongs to SC/ST community. Subject to the above direction, rest of the directions contained in G.O. (Ms) No. 11/05 and G.O. (Ms) No. 25/2005 would stand.”

(emphasis supplied)

We are in agreement with the view taken by the Kerala High Court.

52. A Division Bench of the Delhi High Court in Kendriya Vidyalaya Sangathan v. Shanti Acharya Sisengi [(2011) 176 DLT 341] after considering a number of decisions of this Court summed up the legal position as to the offspring of an inter-caste marriage or a marriage between a tribal and a non-tribal in clauses (3) and (4) under para 30 of the judgment as follows: (DLT p. 355)

“(3) The offshoot of wedlock between Scheduled Caste/Scheduled Tribe male and a female belonging to forward community can claim Scheduled Caste/Scheduled Tribe status for Indian society is patriarchal society where the child acquires the caste of his father.

(4) The offshoot of wedlock between Scheduled Caste/Scheduled Tribe female and a male belonging to forward community cannot claim Scheduled Caste/Scheduled Tribe status unless he demonstrates

that she has suffered the disabilities suffered by the members of the community of his mother.”

(emphasis supplied)

53. In *Arabinda Kumar Saha v. State of Assam* [(2001) 3 Gau LT 45] a Division Bench of the Gauhati High Court had a case before it in which a person whose father belonged to the upper caste and mother to a Scheduled Caste claimed the Scheduled Caste status. The Court found and held that though the father of the writ petitioner was admittedly a forward caste man he was brought up as a member of the Scheduled Caste. This was evident from the fact that the writ petitioner had not only been the office-holder of Anusuchit Jati Karamchhari Parishad but the Scheduled Caste community treated the appellant as belonging to the Scheduled Caste and even the non-Scheduled Caste people treated him as Scheduled Caste, inasmuch as in his college career and in his service career he was treated as a person belonging to a Scheduled Caste.

54. ***In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.***

55. ***In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who***

belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well."

(Emphasis supplied)

On a coalesce of the judgments rendered by various High Courts, the Apex Court at paragraphs 54 and 55 holds that it is a question of fact to be proved by the child born to such parents that he still belongs to Scheduled Caste, in view of continuance of deprivations and humiliations that he suffers in the society. The Apex Court follows the judgment of the Full Bench afore-quoted of the Bombay High Court, as also the judgment of the Delhi High Court. At paragraph 52 of the judgment, the Apex Court quotes the judgment of the Delhi High Court. The Delhi High Court holds that the offshoot of wedlock between the Scheduled Caste/Scheduled Tribe female and a male belonging to forward community cannot claim Scheduled Caste/Scheduled Tribe status, unless he/she demonstrates that he/she has suffered

the disabilities suffered by the members of the community of his/her mother.

11. The case at hand is the one under the Act. Section 2(ec) of the Act defines who is a victim. A 'victim' would fall within the definition of the Scheduled Caste and Scheduled Tribe as declared by the State. Section 3 determines punishments for offences of atrocities and reads as follows:

“3.Punishment for offences of atrocities:

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

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excrete, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or

interferes with the enjoyment of his rights any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or Scheduled Tribe to do 'begging' or other similar forms of forced or bonded labour other than any, compulsory service for public purpose imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

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

(xi) assaults or uses force to any women belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or Scheduled Tribe to leave his house, village, or other place or residence;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

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

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of a offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives fabricates false evidence intending/hereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member

of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground 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 imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with the intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for their offence.”

Section 3 begins with whoever not being a member of Scheduled Caste indulges in several of the incidents against members of Scheduled Caste, the offences become punishable under Section

3. Therefore, the soul of the provision is undoubtedly the complainant should belong to Scheduled Caste.

12. The complainant, in the case at hand, is the son born to a member of Vishwakarma/father and a member of Scheduled Caste/mother. Though the mother does not lose the status of Scheduled Caste after marriage, the status of the son to complain that he is a Scheduled Caste and accused are amenable for punishment under the Act, is not axiomatic. The whole hog of pleadings in the complaint should be made while registering one such complaint by a child whose parents are both Scheduled Caste and forward caste. The pleading in the case at hand *qua* the complaint is bald and vague as vagueness could be.

13. The police, after investigation, have filed a charge sheet in the matter showing the complainant to be a Scheduled Caste. The policemen have not gone on patriarchal principle which may not by itself correct. But, the facts pleaded in the complaint or

other documents in the investigation should demonstrate that the son has suffered the same disabilities that persisted with his mother. It is germane to notice the complaint which reads as follows:

“ವಿಷಯ:- ಜಾತಿ ನಿಂದನೆ ಮಾಡಿ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ದೈಹಿಕವಾಗಿ ಹಲ್ಲೆ ಮಾಡಿರುವವರ ವಿರುದ್ಧ ದೂರು ದಾಖಲಿಸುವ ಕುರಿತು.

ಈ ಮೇಲ್ಕಾಣಿಸಿದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ವಿನಂತಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ನಾನು ರಮೇಶ ತಂ/ ಗವಿಸಿದ್ದಪ್ಪ ಗಿಣಿಗೇರಿ ಸ. ಶ್ರೀ.ಬಸವೇಶ್ವರ ನಗರ (ಸಜ್ಜೆ ಹೂಲಿ) ವಯಸ್ಸು 32, ಉದ್ಯೋಗ ವ್ಯವಹಾರ ಜಾತಿ ಮಾದಿಗ, ದಿನಾಂಕ 20.09.2015 ರಂದು ಬೆಳಿಗ್ಗೆ 11-00 ಗಂಟೆಗೆ ಶ್ರೀ ಮಲ್ಲಪ್ಪ ಜಡಿಯವರಿಗೆ ಸಂಬಂಧಿಸಿದ ಆಸ್ತಿವ್ಯಾಜ್ಯವನ್ನು ಬಗೆಹರಿಸಲು ಹೋಗಿದ್ದಾಗ ಅಲ್ಲಿ ನನ್ನ ತಂದೆಯವರ ತಮ್ಮನಾದ ಶ್ರೀ.ಭೀಮಪ್ಪಾ ಜಂಗಕಲ್ ಅವರ ಮಕ್ಕಳಾದ ಪ್ರಬೀಣಕುಮಾರ ಜಂತಕಲ್ ಅನಂತಕುಮಾರ ಜಂತಕಲ್ ಮತ್ತು ವಿನೋದ ಜಂತಕಲ್ ಎಲ್ಲರೂ ಸಾ. ವಿಶ್ವಾಸನಗರ ಕೊಪ್ಪಳ ಇವರೆಲ್ಲರೂ ಕೂಡಿ ಅವರಿಗೆ ಸಂಬಂಧವೇ ಇರದ ವಿಷಯದಲ್ಲಿ ಬಂದು ನನಗೆ ಏಕಾಏಕಿ ಮಾದಿಗ ಸೂಳೆ ಮಗನೇ ಎಂದು ಬೈದು, ಅಲ್ಲದೇ ಮಾದಿಗ ಸೂಳೆ ಮಗನನ್ನು ನ್ಯಾಯಬಗೆಹರಿಸಲಿಕ್ಕೆ ಏಕೆ ಕರಿಸಿರಿ ಅಂತಾ ಇನ್ನು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಜಾತಿ ನಿಂದನೆ ಮಾಡಿ ನಿಂದಿಸಿದರು. ನಾನು ಏಕೆ ನನಗೆ ಮಾದಿಗ ಸೂಳೆ ಮಗ ಅಂತಾ ಬೈಯುತ್ತೀರಿ ಎಂದಿದ್ದಕ್ಕೆ ಲೇ ಮಾದಿಗ ಸೂಳೆ ಮಗನೇ ಅಂದು ನನಗೆ ಮತ್ತು ನನ್ನ ಕುಟುಂಬದವರಿಗೆ ಕೊಂಡಿನಲ್ಲಿ ಪೆಟ್ಟೋಲ ಹಾಕಿ ಸುಡುತ್ತೇವೆ ಎಂದು ಜೀವ ಭಯ ಹಾಕುತ್ತಾ ನನಗೆ ಆನಿ ಕಟ್ಟಿನ ಸ್ಥಳಗಳಾದ ಎರಡು ತೋಕೆಂಣೆ ಸಂದಿಯಲ್ಲಿ ಎದೆಗೆ ಕಿವಿಗೆ ಕಪಾಳಕ್ಕೆ ಹೊಟ್ಟೆಗೆ ಹೊಡೆದಿದ್ದಾರೆ ಕುಂಡಿನಲ್ಲಿ ಉರುಳುಸಾಡಿಸಿ ಮಾಡಿರುತ್ತಾರೆ ಇದರಿಂದ ನನಗೆ ತುಂಬಾ ನಷ್ಟವಾಗಿದೆ ಅಲ್ಲದೇ ನನ್ನ ಕೊರಳಲ್ಲಿದ್ದ 25 ಗ್ರಾಂ ಬಂಗಾರದ ಚೈನ ಫರ್ ಕೂಡಾ ಕಳೆದಿದೆ.

ಈ ಘಟನೆಯ ಕುರಿತು ನನ್ನ ಅಣ್ಣನಾದ ಗಿವಿಸಿದ್ದಪ್ಪ ಗಿಣಿಗೇರಿ ಮತ್ತು ನನ್ನ ತಮ್ಮನಾದ ಪರಶುರಾಮ ಗಿಣಿಗೇರಿ ಅವರಿಗೆ ಪೋನ ಮಾಡಲು ಮೂಂದಾದಾಗ ಲೇ ಮಾದಿಗ ಸೂಳೆ ಮಗನೇ ನೀನು ಯಾರನ್ನು ಕರೆಸಿದರು ನಾನು ಹುಬ್ಬಳ್ಳಿಯಿಂದ ರೌಡಿಗಳನ್ನು ಕರೆಯಿಸಿ (ಸೆಟಲಮೆಂಟಿನಿಂದ) ನಿನ್ನ ಮತ್ತು ನಿನ್ನ ಕುಟುಂಬದ ಎಲ್ಲಾರ ಮನೆಗಳಿಗೆ ಪೆಟ್ಟೋಲ್ ಉಗ್ಗಿ ಬೆಂಕಿ ಹಚ್ಚುತ್ತೇವೆ ಎಂದು ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ ಅಲ್ಲದೇ ನನಗೆ ಮತ್ತು ನನ್ನ ಕುಟುಂಬಕ್ಕೆ ರಕ್ಷಣೆ ಕೊಡಿರೆಂದು ತಮ್ಮಲ್ಲಿ ವಿನಂತಿಸಿಕೊಳ್ಳುತ್ತಾ ಈ ಘಟನೆಯ ಬಗ್ಗೆ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಹಿರಿಯರಿಗೆ ವಿಚಾರಿಸಿ ತಡವಾಗಿ ಇಂದು ತಮ್ಮಲ್ಲಿಗೆ ಬಂದು ದೂರನ್ನು ಕೊಡಲು ಬಂದಿರುತ್ತೇನೆ ಮತ್ತು ಅದೇ ದಿವಸ ನನಗಾದ ಗಾಯಕ್ಕೆ ಜಿಲ್ಲ ಆಸ್ಪತ್ರೆ, ಕೊಪ್ಪಳದಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿರುತ್ತೇವೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ದಸ್ತೂರ
ಸಹಿ/-

ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/-”

The complaint does not contain any fact about anything whatsoever, with regard to the complainant belonging to the Scheduled Caste. It is bald and vague. The Police, after investigation, have filed the charge sheet in the matter. Column No.17 – summary of the charge sheet reads as follows:

“17. Brief facts of the case

ದಿನಾಂಕ . 20.09.2015 ರಂದು ಬೆಳಿಗ್ಗೆ, 11.00 ಗಂಟೆ ಸುಮಾರು ಕೊಪ್ಪಳ ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ ವ್ಯಾಪ್ತಿಯ ಗವಿಶ್ರೀಗರದಲ್ಲಿ ಶ್ರೀ ಮಲ್ಲಪ್ಪ ಕವಲೂರು ರವರ ಮನೆಯ ಮುಂದಿನ ರಸ್ತೆಯಲ್ಲಿ ಫಿಯಾರ್ಧಿದಾರ ಶ್ರೀ ರಮೇಶ (ಅನಾರೋಗ್ಯ ಸ್ಥಿತಿಯಲ್ಲಿರುವ ತಮ್ಮ ಸಂಬಂಧಿಕ ಚಂದ್ರಪ್ಪ ಜಡಿ ಎಂಬುವರ ಆಸ್ತಿ ವ್ಯಾಜ್ಯ ಬಗೆಹರಿಸಲು) ಹೊರಟಾಗ ಈ ದೋಷಾರೋಪಣ ಪತ್ರ ಅಂಕೂ 12ರಲ್ಲಿ ನಮೂದ ಮಾಡಿದ ಆರೋಪಿತರಾದ 1) ಭೀಮಪ್ಪ @ ಭೀಮಣ್ಣ, 2) ಪ್ರವೀಣಕುಮಾರ 3) ಅನಂತಕುಮಾರ 4) ವಿನೋದಕುಮಾರ ಇವರು ತಮಗೆ ಸಂಬಂಧಿಸಿದೇ ಇರುವ ವಿಷಯದಲ್ಲಿ ಬಂದು ಫಿಯಾರ್ಧಿದಾರರಿಗೆ ಏಕಾಏಕಿ 'ಮಾದಿಗ ಸೂಳೆ ಮಗನೇ' ಎಂದು ಜಾತಿ ಎತ್ತಿ ಬೈದು, 'ಮಾದಿಗ ಸೂಳೆಮಗನ್ನ ನಾಯ್ಕ ಬಗೆಹರಿಸಲಿಕ್ಕೆ ಏಕೆ ಕರೆಸಿರಿ' ಅಂತಾ ಅನ್ನಲು ಫಿಯಾರ್ಧಿದಾರರು ಏಕೆ ನನಗೆ ಮಾದಿಗ ಸೂಳೆ ಮಗ ಅಂತಾ ಬೈಯುತ್ತೀರಿ ಎಂದಿದ್ದಕ್ಕೆ ಆರೋಪಿತರಲ್ಲರೂ ಪುನಃ ಫಿಯಾರ್ಧಿದಾರರಿಗೆ 'ಲೇ ಮದಿಗ ಸೂಳೆ ಮಗನೇ ನಿನಗೆ ಮತ್ತು ನಿನ್ನ ಕುಟುಂಬದವರಿಗೆ ರೋಡಿನಲ್ಲಿ ಪೆಟ್ರೋಲ್ ಹಾಕಿ ಸುಡುತ್ತೇವೆ.' ಎಂದು ಕೈಯಿಂದ ಹೊಡೆಬಡೆ ಮಾಡಿ, ಸಾದಾ ಸ್ವರೂಪದ ಗಾಯವನ್ನುಂಟು ಮಾಡಿರುತ್ತಾರೆ ಮತ್ತು 'ಲೇ ಮಾದಿಗ ಸೂಳೆ ಮಗನೇ ನೀನು ಯಾರನ್ನ ಕರಿಯಿಸಿದರು, ನಾವು ಹುಬ್ಬಳ್ಳಿಯಿಂದ ರೌಡಿಗಳನ್ನು ಸೆಟಲಮೆಂಟಿಂದ ಕರೆಯಿಸಿ ನಿನ್ನ ಮತ್ತು ಕುಟುಂಬದ ಎಲ್ಲಾ ಮನೆಗಳಿಗೆ ಪೆಟ್ರೋಲ್ ಉಗಿ, ಬೆಂಕಿ ಹಚ್ಚುತ್ತೇನೆ ಅಂತಾ ಜೀವದ ಹೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ.”

A reading of the complaint, the summary of the charge sheet and the statement of witnesses, all speak about only assault and not

anything about determination of caste of the complainant. As a matter of fact, the first petitioner is the brother of the father of the complainant. Unless it is demonstrated from the facts that from the birth till registration of complaint the complainant does belong to Scheduled Caste, in terms of the judgment of the Apex Court, the Act on the face of it cannot be invoked. If the Act cannot be invoked, the complaint by the complainant was not maintainable. Therefore, the 2nd issue is answered against the complainant, as there is no evidence or documents produced, to demonstrate that he continues the disability of being a member of Scheduled Caste in terms of the judgment of the Apex Court.

Issue No.(iii): *Do the impugned proceedings warrant any interference?*

14. Since the Act itself was not invocable in the case at hand, the issue that now remains to be answered is as to whether, further proceedings are permitted to be continued against the petitioners for offences punishable under Sections 323, 504, 506 read with Section 34 of the IPC. All the aforesaid

offences are non-cognizable. That may not be the determinative factor to stall further proceedings. The parties to the *lis* were in a civil dispute with regard to the property. Settlement talks were on between the parties. It is at that time, it is alleged, that assault has taken place. Complaint is registered on 23-09-2015 for an incident that happened on 20-09-2015. There is no explanation, whatsoever, as to why complaint was not immediately registered.

15. To contend that the petitioners have assaulted the complainant, a wound certificate is produced, which depicts that there are no external injuries at all. X-ray was not even taken and the complaint had little pain over the chest and it is declared that the injury was simple in nature. This cannot be enough evidence to contend that there was assault by the petitioners on the complainant. What remains is offence alleged under Sections 504 and 506 of the IPC. The intimidation in the backdrop of a civil dispute between the parties cannot be brushed aside, since the complainant and the 1st petitioner do

belong to the same family and were in dispute with regard to a property. It cannot be probablised that other offences under Sections 504 and 506 have happened even. Therefore, finding the complaint in terms of the Act and the Code being untenable, I answer the issue holding that the impugned proceedings warrant appropriate interference, as a result whereof, I deem it appropriate to terminate the proceedings against the petitioners for the aforesaid offences, as permitting further proceedings would become an abuse of the process of law and result in miscarriage of justice.

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The order dated 12.07.2019 passed by the District and Sessions Judge, Koppal in Special C.C.(AC) No.25 of 2015 stands quashed and consequently, the application filed by the petitioners under Section 227

of the Cr.P.C. before the District and Sessions Judge,
Koppal is allowed.

I.A.No.1/2019 stands disposed, as a consequence.

Sd/-
JUDGE

bkp
CT:MJ