

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3597 OF 2022

BETWEEN

SRI RITHESH PAIS,

... PETITIONER

[BY SRI. SANDESH J. CHOUTA, SENIOR COUNSEL A/W SRI.
LAKSHMIKANTH G., ADV.]

AND

1. STATE OF KARNATAKA
BY PUTTUR TOWN P.S.
REP.BY SPP, HIGH COURT COMPLEX,
BANGALORE 560 001.

2. SRI. MOHAN,
SRI. MOHAN,

... RESPONDENTS

[BY SRI. K.S. ABHIJITH, HCGP FOR R1; SRI. AJAY PRABHU, ADV. FOR SRI. B.S. SACHIN ADV FOR R2.]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF Cr.P.C., PRAYING TO QUASH ENTIRE CHARGE SHEET AND PROCEEDINGS THEREON IN SPL.C.NO.5023/2021 (CRIME NO.72/2020 OF PUTTUR TOWN P.S.) FOR OFFENCES PUNISHABLE UNDER SECTIONS 504, 323, 506 OF IPC AND SEC.3(1)(r)(s), 3(2)(va) OF THE SC/ST P.A. AMENDMENT ACT, 2015 WHICH IS NOW PENDING ON THE FILE OF THE V ADDL.DISTRICT & SESSIONS JUDGE, D.K. MANGALURU SITTING AT PUTTUR, D.K.

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

ORDER

The petitioner is before this Court calling in question the proceedings in SPL.C.No.5023/2021 pending before the V Additional District & Sessions Judge, DK, Mangalore sitting at Puttur arising out of Crime No.72/2020 of Puttur Town Police Station registered for the offences punishable under Sections 504, 323, 506 of the IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (hereinafter referred to as "the Act" for short).

2. *Sans* details, facts in brief germane for consideration of the *lis* are as follows:

Facts as projected by the prosecution are that on 2.10.2020 at around 10.30 a.m. when the complainant was working in a newly constructed building belonging to CW-7 at Yelmudi, Puttur, Puttur Taluk accused/petitioner goes there and asks the complainant to stop the work for which the complainant appears to have replied that he is working on the instructions of the owner of the building. It is further alleged that in front of witnesses CW-2 to CW-6 the accused/petitioner addressed the complainant taking the name of his caste, threatened his life and obstructed construction activity of CW-7. Based upon this incident, a complaint is registered by the 2nd respondent/ complainant against the petitioner alleging that he has hurled abuses taking the name of his caste which would become offence punishable under Section 3(1)(r) and 3(1)(s) of the Act. The police after investigation have filed a charge sheet. Filing of the charge sheet against the petitioner for offences punishable under the aforementioned provisions of the Act and Sections 504, 506 and 323 of the IPC in Special Case No.5023 of 2021 is what drives the petitioner to this Court in the subject petition.

3. Heard learned Senior Counsel Sri. Sandesh J. Chouta for Sri. Lakshmikanth G. learned counsel appearing for the petitioner, Sri. Ajay Prabhu, learned counsel for Sri. B.S. Sachin representing respondent No.2 and learned High Court Government Pleader appearing for respondent No.1-State.

4. Learned Senior Counsel would contend with vehemence that the complainant is an employee of CW-7 – Sri Jayakumar R.Nair against whom the petitioner has instituted civil suit and an order of injunction is operating against him and, therefore, he has set up his employee to settle his personal scores or wreck vengeance for the petitioner's act of instituting the suit. He would further contend that hurling of abuses is neither in a public place nor in a place of public view; it is admittedly hurled at the basement of the building where no passerby was present.

5. On the other hand, the learned counsel representing 2nd respondent and the State in unison would contend that the abuses have admittedly been hurled in front of CWs-2 to 6, the witnesses and the said act is also seen by other public. It is a matter of trial

for the petitioner to come out clean as the complaint narrates such circumstances and as such a trial would become necessary.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

7. To consider the submissions made by the respective learned counsel, a little walk in time is necessary. The petitioner and one Sri Jayakumar R.Nair were in a squabble with regard to certain property. The petitioner is plaintiff No.2 in a suit instituted in O.S.No.179 of 2020 in which 8th defendant is Sri Jayakumar R.Nair. The said suit is instituted by the petitioner seeking perpetual injunction against the defendants. The civil Court concerned has granted an interim order of injunction in favour of the petitioner and others which reads as follows:

"Heard. Perused. There are sufficient materials to pass an ex-parte TI order restraining the defendants from alienating or creating any charge over plaint 'A' Schedule Property till next date of hearing. If ex-pare TI order is not passed very purpose of filing the suit will be defeated. Hence, defendants are hereby restrained from alienating or creating any encumbrance over plaint 'A' Schedule Property till next date of hearing. Issue ex-pare TI Order. Plaintiffs to comply order 39 Rule 3(a) of CPC.

*Issue S/s and notice on IA No.II to VII to defendants.
R/by 31/08/20."*

The said suit is pending consideration with the order of injunction granted on 11-08-2020. After the grant of injunction the first informant/CW-1, the complainant registers a complainant on 2.10.2020 alleging that the petitioner had hurled abuses taking the name of his caste at the basement of the building where he was working and also intimidated all the workers.

8. What is germane to be noticed is who is the complainant. The complainant/CW-1 is the employee of defendant No.8 in the suit Sri Jayakumjar R.Nair against whom an order of injunction is operating in a suit filed by the petitioner. This fact of the complainant being the employee of Sri Jayakumjar R.Nair is not in dispute as the complaint itself narrates this fact. What springs now to be considered is, whether hurling of abuses has taken place in a public place or a place of public view to attract Sections 3(1)(r) and 3(1)(s) of the Act. Sections 3(1)(r) and 3(1)(s) read as follows:

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

... ..

- (r) *intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;*
- (s) *abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;'*

In terms of Sections 3(1)(r) & 3(1)(s) what is necessary to drive home an offence that would become punishable under these Sections is that hurling of abuses must be either in a public place or a place of public view. The allegation against the petitioner is that he has hurled abuses on the complainant at the basement of the building and the witnesses to the said incident are CWs-2 to 6. The complainant is CW-1. It is again not in dispute that all the witnesses including the complainant are co-employees of Sri Jayakumjar R.Nair or fiends of CW-1/complainant. This is also an admitted fact. The Police, after investigation, have filed the charge sheet.

Summary of the charge sheet reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ (ಅವಶ್ಯಕವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ):-

ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಅಂಕಣ ನಂಬ್ರ 12 ರಲ್ಲಿ ಹೆಸರು ವಿಳಾಸ ನಮೂದಿಸಿದ ಆರೋಪಿತನ ಮೇಲಿನ ಆಪಾದನೆ ಏನೆಂದರೆ ಆರೋಪಿತನು ಕ್ರೈಸ್ತ ಜಾತಿಗೆ ಸೇರಿದವನಾಗಿದ್ದು ಚಾ ಸಾ 1 ನೇಯವರು ಪರಿಶಿಷ್ಟ ಜಾತಿಯ ಬೈರ ಜಾತಿಗೆ ಸೇರಿದವರಾಗಿರುತ್ತಾರೆ. ದಿನಾಂಕ 02.10.2020 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 10.30 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಚಾ ಸಾ 1 ನೇಯವರು ಚಾ ಸಾ 7 ನೇಯವರು ಪುತ್ನೂರು ತಾಲೂಕು ಪುತ್ನೂರು ಕಸ್ತಾ ಗ್ರಾಮದ ಏಳ್ಕುಡಿ ಎಂಬಲ್ಲಿ ಹೊಸದಾಗಿ ನಿರ್ಮಿಸುತ್ತಿರುವ ಕಟ್ಟಡದ ಕಾಮಗಾರಿ ಕೆಲಸವನ್ನು ಮಾಡುತ್ತಿರುವಾಗ ಆರೋಪಿತನು ಅಲ್ಲಿಗೆ ಹೋಗಿ ಚಾ ಸಾ 1 ನೇಯವರಲ್ಲಿ ಕೆಲಸ ಮಾಡಬಾರದು ಕೆಲಸ

ನಿಲ್ಲಿಸಬೇಕೆಂದು ದರ್ಪದಿಂದ ಜೋರಾಗಿ ಗದರಿಸಿದಾಗ ಚಾ ಸಾ 1 ನೇಯವರು ನಾನು ಧನಿಗಳು ಹೇಳಿದ್ದಷ್ಟು ಕೆಲಸ ಮಾಡುವುದು ನೀವು ಅವರಲ್ಲಿ ಮಾತಾಡಿ ಎಂದು ಹೇಳಿದಾಗ ಚಾ ಸಾ 2 ರಿಂದ ಚಾ ಸಾ 6 ನೇಯವರ ಎದುರಿನಲ್ಲೇ ಚಾ ಸಾ 1 ನೇಯವರನ್ನು ಉದ್ದೇಶಿಸಿ ಬೋಳಿಮಗನೇ ನೀನು ಹರಿಜನ ಹೊಲೆಯ ನಿನಗೆ ಇಷ್ಟು ಅಹಂಕಾರವಿದ್ದರೆ ನನಗೆಷ್ಟು ಇರಬೇಡ ಕೆಲಸ ಮುಂದುವರಿಸಿದರೆ ನಿನ್ನ ಕೈಕಾಲು ಕಡಿದು ಹಾಕುವೆನು ನಿಮ್ಮನ್ನೆಲ್ಲಾ ಜೀವ ಸಹಿತ ಬಿಡಲಿಕ್ಕಿಲ್ಲ ನಿನ್ನ ಜಾತಿಯೇ ಹಾಗೇ ನಿನ್ನನ್ನು ಏನು ಮಾಡಬೇಕೆಂದು ಗುತ್ತಿಗೆ ಎಂದು ಆರೋಪಿತನು ಚಾ ಸಾ 1ನೇಯವರ ಮೈಗೆ ಕೈ ಹಾಕಿ ಅವರ ಅಂಗಿಯನ್ನು ಎಳೆದು ಹರಿದು ಹಾಕಿ ದೌರ್ಜನ್ಯವೆಸಗಿದ್ದಾಗಿದೆ. ಚಾ ಸಾ 7 ನೇಯವರು ಕಟ್ಟಡ ನಿರ್ಮಿಸುವುದಕ್ಕೆ ಆರೋಪಿತನು ಆಕ್ಷೇಪಿಸುತ್ತಿದ್ದು ಅಲ್ಲಿ ಕಟ್ಟಡ ನಿರ್ಮಿಸಬಾರದೆಂಬ ಕಾರಣದಿಂದ ಈ ಗಲಾಟೆ ನಡೆಸಿರುವುದಾಗಿದೆ.”

If the complaint, summary of charge sheet and the statement of witnesses, CW-2 in particular, are read in tandem, it would unmistakably reveal that hurling of abuses has happened at the basement where CWs-1 to 6 were working and in the basement, it is not indicated, any other person was even present. Two factors would emerge from a reading of the aforesaid statements – one being, the basement of the building was not a place of public view and two, only persons who claim to be present were the complainant/CW1 and other employees of Sri Jayakumar R.Nair or friends of CW-1. Therefore, hurling of abuses is clearly not in a place of public view or a public place for the aforesaid provisions of the Act to be get attracted in the case at hand. Reference being made to the judgment of the Apex Court in the case of **HITESH**

VERMA v. STATE OF UTTARAKHAND¹ in the circumstances becomes apposite. The Apex Court has interpreted the very provision that is now invoked against the petitioner and held what would it mean to be a place of public view or a public place. The Apex Court 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

¹ (2020)10 SCC 710

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

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.

... ..

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."

(Emphasis supplied)

The Apex Court, in the afore-quoted judgment, has also considered the squabble between the parties which could have led to registration of the crime. The facts therein are akin to the facts in the case at hand. Sri Jayakumar R.Nair wanting to shoot the

shoulder of his employee – CW-1 for the act of the petitioner having registered a suit against Sri Jayakumar R.Nair and also secured an interim order of injunction leading to registration of the crime cannot be brushed aside as it demonstrates a clear link in the chain of events. Therefore, the registration of crime itself suffers from want of bona fides.

9. The aforementioned is the analysis of invocation of the provisions of the Act. Offences under the IPC are also invoked in the case at hand which would become punishable under Sections 504, 506 and 323 of the IPC. For an offence punishable under Section 323 IPC there should be hurt caused in the squabble. A perusal at the records would reveal that the wound certificate shows a simple scratch mark on the fore-arm and another scratch mark on the chest. Bleeding is not what is indicated. Therefore, simple scratch marks cannot become offence under Section 323 of the IPC. Insofar as Sections 504 and 506 of the IPC are concerned, they are clearly an offshoot of the allegations made under the Act. Therefore, none of the offences under Sections 3(1)(r), 3(1)(s) or Section 3(2)(va) can be driven home in the case at hand as they are all

shrouded with the act of 8th defendant seeking to wreck vengeance against the petitioner for having registered the suit. Therefore, none of the offences alleged are sustainable in the peculiar facts of the case at hand.

10. Reference being made to another judgment of the Apex Court which bears consideration in **Hitesh Verma's** case (*supra*) in the case of **GORIGE PENTAI AH v. STATE OF A.P.**² 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;"

...

...

7. Similarly, we find that the ingredients of Section 506 of the Penal Code are totally absent in the

² (2008) 12 SCC 531

complaint. In the complaint it is not even mentioned that the accused had intimidated or threatened the complainant or anyone 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:

"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;"

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

"503. Criminal intimidation.— Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone 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 threats, commits criminal intimidation."

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*).

11. Insofar as the judgment relied on by the State in the case of ***State of Uttar Pradesh v. Naresh and others*** reported in ***(2011)4 SCC 324*** to contend merely because the witnesses are the friends of the complainant, it would not vitiate the proceedings. The said judgment is distinguishable on the facts of the case at hand in juxtaposition to the facts obtaining in the said case, without much *ado*, as the case was concerning examination of witnesses in a trial for murder under Section 302 of the IPC and all the witnesses though were friends, had corroboration with other material. In the case at hand, neither the complaint nor the statements nor the finding in the charge sheet would be enough to drive home the offence so alleged under the Act.

12. In the light of the afore-quoted facts, when the basic ingredients of the offence are missing, then permitting such proceedings to continue and to compel the petitioner to face the rigmarole of criminal trial would be totally unjustified, leading to abuse of the process of law. In the teeth of the aforesaid facts and analysis, permitting further proceedings to continue would

degenerate into harassment and result in miscarriage of justice.

13. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The proceedings in Spl.C.No.5023/2021 (Crime No.72/2020 of Puttur Town P.S.) for offences punishable under Sections 504, 323, 506 of the IPC and Sec.3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2015, pending on the file of V Additional District & Sessions Judge, D.K. Mangaluru, Sitting at Puttur D.K., stand quashed.

**Sd/-
JUDGE**

tsn*