

(2015) 04 BOM CK 0161

In the Bombay High Court

Case No : Criminal Application Nos. 2803 of 2011 and 6632 of 2014

Bajirao and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 149, 323, 324, 34, 503
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 2(1)(f), 3, 3(1)(g), 3(1)(r), 3(1)(s)

Citation : (2015) 3 BomCR(Cri) 190 : (2015) 4 RCR(Criminal) 232

Hon'ble Judges : T.V. Nalawade, J; I.K. Jain, J

Bench : Division Bench

Advocate : V.D. Salunke, for the Appellant; S.B. Pulkundwar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Both the proceedings are filed under section 482 of the Code of Criminal Procedure for the relief of quashing and setting aside First Information Reports given against the applicants on the basis of which crime is registered mainly for offence punishable under section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") (first proceeding) and section 3(1)(r) and (s) of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 issued in respect of the provisions of the Act. The same learned Counsel argued in both the proceedings of the applicants and as the same point was argued for getting the relief, both the matters are being decided together. Learned Additional Public Prosecutor is heard.

2. In the first proceeding the crime is registered on the basis of report given by one Laxman Bansode. The incident in question took place on 25-6-2011. He has made allegations that at about 4.30 p.m, when he was present in front of his house, applicant Ganesh Deshmukh came in a car near Samaj Mandir. Ganesh

called the complainant towards Samaj Mandir. According to him, applicant Bajirao was present there and when he reached there, Bajirao gave blows of stick on chest and head. He has made allegations that Ganesh assaulted by using stick. Three more persons participated in the incident to assault the complainant and they had come in the same car. Some persons of the village like Kalidas Bansode, Balaji Bansode rushed to rescue him but these two applicants gave stick blows to those persons also. While giving beating the two applicants were giving abuses to the complainant by taking name of his caste by saying as "egkjk y; ektykl" (Mahara you have become arrogant). He then approached the village Sarpanch and both of them went to police station and gave report. Ganesh is from the same village and Balaji is from Ramnagar, Osmanabad. The crime came be registered for offences under sections 323, 149 etc. of Indian Penal Code and section 3(1)(x) of the Act. Affidavit-in-reply filed by the State shows that injury was sustained by complainant in the incident and there are statements of eye witnesses to the effect that the incident took place at the place described by the complainant.

3. The second proceeding is filed in respect of report given by Smt. Kalawati Kamble in respect of incident dated 25-11-2014. It is her case that they own 8 acres of agricultural land in Nagur and they are personally cultivating this land. It is her case that adjacent to their land in Gat No. 78/2 there is no land of Pramod Jawale but Pramod Jawale is trying to forcibly take possession of the portion of the complainant admeasuring 2.1/2 acres. It is her case that due to the dispute they have already approached Court but even when the proceeding is pending, Pramod Jawale has continued to harass them. It is her case that on 25-11-2014 at about 3.00 p.m. when she and her son Kishore were doing work of spraying insecticides on Toor crop, Dinkar Jawale and his son Vinod Jawale came there along with Niladhar Jawale and Tanaji Patil (the applicants). It is her case that they had come with tractor and they wanted to do sowing operation in the land. It is her case that when she said to them that it was her land, Dinkar gave blows of stick to her and three others assaulted her son Kishore by using stick and axe. It is her case that both of them sustained injuries in the incident and Kishore lost few teeth. It is her case that during incident when they raised hue and cry her other son Balaji, daughter-in-law Sangmitra, sister Vachhala, relative Pandurang and others like Pravin Chandanshive and two more persons rushed to the spot. It is her case that while leaving the field these applicants gave threat of life. It is her case that even Balaji was assaulted when he tried to intervene in the incident. On the basis of the report, initially crime came to be registered for offences punishable under sections 324, 323, 504, 506, 34 of the Indian Penal Code. It appears that subsequently supplementary statements were recorded and in the statements the witnesses stated that abuses were given by the applicants by taking name of the caste Mahar which is a scheduled caste. On 3-12-2014 the investigating officer informed the Court that as the complainant side was belonging to Scheduled Caste, Mahar and the accused side was belonging to Maratha community which is not either Scheduled Caste or

Scheduled Tribe, they want to add section 3(1)(r) and (s) of the Amendment Ordinance, 2014. In this matter there is no affidavit of the investigating agency, the other respondent, but some record in respect of agricultural land is produced. The record is produced to show that applicant Pramod has purchased some portion of land Gat No. 78/1 under sale deed dated 27-7-2011. To the south of this portion there is land Gat No. 78/2 which is shown to be already sold to Pramod Patil. 7/12 extracts are produced to show that in the land Gat No. 78/1 vendor Draupadi Nivrutti Kamble was the owner of 69R portion and this portion is sold to the applicant Pramod. This lady was having 40 R portion from Gat No. 78/2 also and the sale deed in respect of this portion was executed on the same date i.e. 27-7-2011. To the south of this portion there is land of Kalawati Kamble, the complainant from the present case. The 7/12 extract in respect of Gat No. 78/2 also shows that Kalawati Kamble is owner of 1.50 hectare portion from this land.

4. Thus, in the present case there is record which shows that in the same Gat number both, the complainant and the accused are having some portion and there is allegation of aforesaid nature against the applicants.

5. The learned Counsel for the applicants submitted mainly on the point that in both the cases it cannot be said that the incident took place "within public view" as mentioned in the section for which the crime is registered. The crimes were registered in the past for offence under section 3(1)(x) of the Act and now the crime is registered for offences under section 3(1)(r) and (s) of the Amendment Ordinance. The provisions of the Act and provisions introduced by Amendment Ordinance, 2014 are as follows:-

Principal Act :-

"3. Punishment for offences of atrocities.--(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.

Amendment Ordinance, 2014 :-

"4. Amendment of section 3. In section 3 of the principal Act,--(i) for sub-section (1), the following sub-section shall be substituted, namely:-

(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."

6. In respect of the second proceeding it can be said that there is one more provision, of section 3(1)(g) which is with regard to dispossession of Scheduled

Caste or Scheduled Tribe persons by the persons who are not from Scheduled Castes or Scheduled Tribes category. The ingredients of Section 3(1)(x) of the Act are as follows:-

- (i) intentionally insult or intimidate;
- (ii) with intention to humiliate a member of Scheduled Caste or Scheduled Tribe;
- (iii) In any place within public view.

7. No definition of "insult", "intimidation" etc. or even of the word "within public view" is given in the Act. In this regard one needs to read first the provision of section 2(1)(f) of the Act which is with regard to the definitions which needs to be used for the purpose of the Act and it runs as under:-

"2. Definitions.--(1) In this Act, unless the context otherwise requires,-

(f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meaning assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code."

In view of this provision, the meaning given to the words either in the Code or the Indian Penal Code needs to be used for the Act if there is no definition or meaning of the words given in the Act itself.

8. If there are no definitions and if the meaning of the words used in the Act is not available in the Code or in the Indian Penal Code, the Court is expected to interpret and give meaning to the words. Ordinarily intention of the Legislature has to be gathered from the statutory provisions only. If the words have created ambiguity or term or word used is too general, the Court can look to the preamble and title of the Act to ascertain the object behind the legislation. It cannot be disputed that both the title and the preamble of the Act show that the object is to prevent atrocities against the persons of scheduled castes and scheduled tribes. The Court is also expected to keep in mind that the penal provisions need to be interpreted strictly. However, the Court cannot re-write the section and it is wrong thing for the Court to read the words which are not there in the provision. In ordinary course when there is no definition of a word, the word needs to be given same meaning which it receives in ordinary parlance or in the sense in which people conversant with the subject may understand it. Thus, ordinarily literary meaning of the word needs to be used. When the language is explicit, it is for the Legislature to consider and not for the Court. Argument of inconvenience or hardship in such cases cannot be entertained by the Courts.

9. The aforesaid propositions for the interpretation can be seen in the cases reported as Sri Ram Ram Narain Medhi Vs. The State of Bombay, AIR 1959 SC 459 : (1959) 1 SCR 489 Supp and Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, AIR 1982 SC 1413 : (1983) CriLJ 647 : (1982) 1 SCALE 676 : (1982) 3 SCC 140 : (1983) 1 SCR 393 : (1982) 2 SLJ 582 :

(1982) 14 UJ 695 . The propositions need to be kept in mind while ascertaining the meaning given to the aforesaid term as the object behind the relevant provisions from the Indian Penal Code is different.

10. There are two provisions in Indian Penal Code in which the words "insult" and "intimidation" can be found and they are sections 503 and 504. These sections run as under:-

"503. Criminal intimidation.--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."

Explanation.--A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

504. Intentional insult with intent to provoke breach of the peace.--Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

11. The meaning of these words can be found in Legal Glossary published by the Central Government, Law and Justice Department, as Rajbhasha Khand in the year 1988. The meaning given to these words is as under:

Insult : 1. a gross indignity offered to another whether by act or by word; 2. to offer indignity to someone.

Intimidation : the act of intimidating, or inspiring with fear and thereby compelling to action or inaction; the state of being so intimidated.

12. The difference between the offence described in section 3(1)(x) and the offence shown in sections 503, 506 and 504 of IPC is the effect intended by the act of the accused. The effect intended by the act of the accused can be found in second ingredient already mentioned of section 3(1)(x) of the Act. There is one more distinction and in the section under consideration the "place" is mentioned for such act it is the third ingredient already quoted.

13. The offence of criminal insult mentioned in section 504 of IPC can be proved by proving the words used, signs made or visible representation made by the accused in view of the aforesaid literary meaning. In the same way the ingredient insult used in the section under consideration can be proved. It can be said that these are few ways for proving the act of insult and in fact the way in which human feeling can be hurt, such action also can be proved. Intimidation involves threat with intention to create fear. The offence involving intimidation

can be proved by proving the intention of the accused and it is not necessary for the prosecution to prove that the result was actually attained.

14. It is already observed that for proof of the offence punishable under section 3(1)(x) of the Act it is necessary to prove third ingredient of the offence viz. the act was committed at a place "within public view."

15. The learned counsel for the petitioner placed reliance on some reported cases to show as to how the last ingredient is interpreted. In the case reported as 2006 All MR (Cri) 3197 (Balu Galande v. State of Maharashtra) Aurangabad Bench of this Court had occasion to consider this term. The learned Single Judge considered the observations made by the Delhi High Court (in the matter decided by 3 Judges, per majority) and reported as Daya Bhatnagar and Others Vs. State, (2004) 109 DLT 915 . It appears that the Delhi High Court considered the principle that "graver is the offence stronger should be the proof". The Delhi High Court held that it is condition about the place and it is created with particular purpose. It is observed that meaning of this term is that public persons present (however small in number it may be), should be independent, impartial and not interested in any of the parties. In other words, the persons having any kind of close relationship or associated with the complainant would necessarily get excluded. Thus, the interpretation shows that the utterance of abuses should be heard and viewed at least by one independent person. The learned Single Judge of this Court observed that the witnesses who are relatives, friends, persons having blood relationship or the persons having close business or fiduciary relationship with complainant/victim are excluded from the purview of word "public" used in this ingredient. The learned Single Judge of this Court then considered one judgment reported as V.P. Shetty Vs. Sr. Inspector of Police and Another, (2005) CriLJ 3560 : (2005) 3 MhLj 1006 in which the case reported as 2001 All MR (Cri) 219 (Bai @ Laxmibai Poul v. State of Maharashtra) was referred. The learned Single Judge then observed that to attract the offence both the conditions that (1) the act amounting to insult should be audible; and, (2) visible to the public, should be satisfied.

16. The aforesaid matter was decided by the learned Single Judge of this Court on 13-4-2006. Then came the decision of a Division Bench of this Court from the Principal Seat which is reported as Pradnya Pradeep Kenkare and Another Vs. State of Maharashtra, (2005) 3 MhLj 368 . Interpretation and conclusion of the Division Bench of the aforesaid term can be found in paragraph 8 of the reported judgment which is as under :-

"8. However, the learned Advocate is justified in contending that the complaint nowhere discloses that the said expression was used in public view. In fact, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. It is nowhere stated by the complainant that at the time when the said statement was made by the petitioner No. 2, i.e. on 15th August, 2004 at 9.30 a.m., there was any stranger to witness the said incident. The provision of

section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the schedule caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression : "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under section 3(1)(x) of the said Act. In the provision of law comprised under section 3(1)(x) of the said Act, the word "view" refers to that of ""public"" but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under section 3(1)(x) of the said Act."

17. The Division Bench has summed up the meaning in following sentence :-

"therefore, the incidents of insult or intimidation have to occur in place accessible to and in the presence of public. The presence of both these ingredients would be absolutely necessary to constitute the offence."

Subsequent to the aforesaid decision, the Hon"ble Apex Court gave meaning of the aforesaid ingredient in the case reported as Swaran Singh and Others Vs. State through Standing Counsel and Another, (2008) CLT 1220 : (2008) CriLJ 4369 : (2008) 9 JT 60 : (2008) 11 SCALE 346 : (2008) 8 SCC 435 . The relevant portion of the decision is in paragraph 28 and 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. The decision of the Apex Court shows that wider meaning is given by the Apex Court to the ingredient than the meaning given by the learned Single Judge and the Division Bench of this Court in the cases cited supra. In short, the Apex Court has given the meaning of this place as:-

(1) the place is within public view when it can be seen by public, but not necessary that persons passing by that side saw or heard the incident and, also;

(2) the place which is not visible to public but in that case if the incident took place when some members of public were there (not merely relatives or friends) it turns into the place within public view.

20. In view of the aforesaid interpretation made by the Hon"ble Apex Court, wider meaning needs to be given to the last ingredient. It can be said that the Hon"ble Apex Court has used literal construction for giving meaning. This meaning is not leading to ambiguity.

21. The old provision of Section 3(1)(x) of the Act and the new provision of section 3(1)(r) and (s) are already quoted. Difference between the two provisions shows that the previous provision of section 3(1)(x) is kept intact as section 3(1)(r) and the act of giving abuses is separated in section 3(1)(s) of the new provision. However, the ingredient (in any place within public view) is still there in the new provision for both these offences. It can be said that even if there was no separation of offence of abuses, the previous section was covering this offence also.

22. For getting decision on merit learned counsel for the applicants placed reliance on some reported cases like :-

(1) Gorige Pentaiah Vs. State of A.P. and Others, (2008) CLT 1305 : (2009) CriLJ 350 : (2008) 9 JT 543 : (2008) 11 SCALE 715 : (2008) 12 SCC 531 : (2008) 18 VST 247 ;

(2) R.P. Kapur Vs. The State of Punjab, AIR 1960 SC 866 : (1960) CriLJ 1239 : (1960) 3 SCR 388 ;

(3) State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp .

23. In this case power of this Court under section 482 is mentioned and the grounds on which proceeding or FIR can be quashed are discussed by giving some illustrations. Learned counsel submitted that in the present case the complaints are frivolous and allowing the prosecution to continue would amount to abuse of process of law. This Court has already considered the relevant material available against the applicants from both the cases. It will be a matter

of appreciation of the aforesaid material and that can be done by the trial Court only. This Court holds that the relief cannot be given.

24. In the result, the applications stand dismissed. Interim relief stands vacated.