

(2020) 02 BOM CK 0072

In the Bombay High Court

Case No : Criminal Application (Apl) No. 477, 570 Of 2019

Dr. Manali And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 21-02-2020

Acts Referred:

Scheduled Caste And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3, 3(1)(b), 3(1)(r), 3(1)(x), 3(1)(y), 3(1)(xiv)
Code Of Criminal Procedure, 1973 — Section 482
Maharashtra Public Universities Act, 2016 — Section 105

Citation : (2020) 02 BOM CK 0072

Hon'ble Judges : Sunil B. Shukre, J;Madhav J. Jamdar, J

Bench : Division Bench

Advocate : Sunil Manohar, S.S. Khedkar, A.V. Palshikar, B.J. Lonare, P.D. Meghe

Final Decision : Allowed

Judgement

Madhav J. Jamdar, J

1. Heard. Admit. Heard finally forthwith by consent of learned counsel of all the parties.

2. In both the above Criminal Applications, the power of this Court under Section 482 is invoked seeking that First Information Report "Crime

No.0251 dated 27.04.2019 registered by the M.I.D.C. Police Station, Nagpur for the offences under Sections 3(1)(x) and 3(1) (xiv)of the Scheduled

Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "said Act of 1989") be quashed. The said F.I.R.

has been registered on the basis of complaint made by the respondent No.2. As the First Information Report sought to be quashed in both the

applications is one and the same, both the criminal applications are heard together and being disposed of by this common judgment.

3. As far as Criminal Application No.477 of 2019 is concerned, the applicant No.1 is the Principal of Rajiv Gandhi College of Engineering,

Wanadongri, Nagpur (hereinafter referred to as 'said college'), the applicant No.2 is the Head of the Mechanical Department of the said college

and the applicant No.3 was working as Administrative Officer in the said college from 24.05.2013 to 03.09.2018 and had discharged his duties as

Presenting Officer in the departmental enquiry held against the respondent No.2. The applicant in Criminal Application No.570/2019 was appointed as

the Enquiry Officer in the said departmental enquiry held against the respondent No.2.

4. We have heard Shri Sunil Manohar, learned Senior counsel in Criminal Application No.477/2019 and Shri P. D. Meghe, learned counsel for the

applicant in Criminal Application No.570/2019, Shri A. V. Palshikar, learned A.P.P. for the respondent No.1 in both the matters and Shri B. J. Lonare,

learned counsel for the respondent No.2 in both the matters.

5. Shri Sunil Manohar, learned Senior Advocate appearing for the applicants in Criminal Application No.477/2019, submitted that the applicant No.1 in

said application is working as Principal and applicant No.2 is working as Head of the Mechanical Department of the said college respectively, and

applicant No.3 was working as Administrative Officer at the relevant time and discharged his duties as Presenting Officer in the departmental enquiry

held against the respondent No.2. It is the submission of the learned Senior counsel that as actions were taken by respective applicants including

issuance of the show cause notices dated 10.07.2017, 29.07.2017, 31.07.2017 to the respondent No.2, as his explanation was not found satisfactory,

the competent Authority decided to hold enquiry against the respondent No.2 and as charge-sheet dated 21.08.2017 was issued to the respondent

No.2 by the Appointing Authority and as applicant No.3 acted as Presenting Officer, and the applicant in Criminal Application 570/2019 acted as the

Enquiry Officer, after conducting the enquiry, the Enquiry Report dated 14.09.2018 was submitted to the competent Authority and as per said Enquiry

Report charges are held to be proved and therefore during this period to pressurize the applicants and the competent Authority, complaint was made

by the respondent No.2 on or about 31.10.2017 to the respondent No.1 making totally false allegations against the applicants and the Enquiry Officer.

It is further submission of the learned Senior counsel that the respondent No.1 after holding enquiry came to the conclusion that the said complaint dated 31.10.2017 was without any substance and therefore, did not take further action. It is further submission of the learned Senior counsel that the respondent No.2 in order to pressurize the applicants and the Enquiry Officer and dissuade them from proceeding further against him on the basis of the aforesaid departmental enquiry made a complaint dated 27.04.2019 to the respondent No.1 making totally false allegations and on the basis of such false complaint, the respondent No.1 has registered the First Information Report " Crime No.0251, for the offences under Section 3(1)(x) and 3(1) (xiv) of the said Act of 1989. The learned Senior counsel further submitted that the allegations made in the F.I.R. even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence. It is further submitted that in the F.I.R. itself it is mentioned that the incident has taken place in the Principal's cabin and as per F.I.R. at that time only the applicant No.1 and the respondent No.2 were present in the Principal's cabin and no third person was present and therefore by no stretch of imagination the offence under Section 3(1)(x) can be said to have taken place as the main ingredients for offence to be committed under said section is that incident should have taken place "within public view". It is further submitted that the case is completely covered by the judgment of this Court in the case of Pradnya Pradeep Kenkare and Anr., Vs. State of Maharashtra, reported in 2005(3) Mh.L.J. 368 and V. P. Shetty Vs. Sr. Inspector of Police and Anr., reported in 2005(3) Mh.L.J. 1006. The learned Senior counsel further submitted that the dispute, if any, is service dispute and it has been converted into a criminal offence under the provision of the said Act of 1989, by taking advantage of the fact that the respondent No.2 belongs to Schedule Caste. To support this submission the reliance is placed on the judgment of this Court in the case of State of Maharashtra Vs. Shashikant Eknath Shinde, reported in 2003 All.M.R. (Cri.) 306.0 With these submissions, the learned Senior counsel prayed that the F.I.R. be quashed.

6. Shri P. D. Meghe, learned counsel for the applicant in Criminal Application No.570/2019 submitted that, the applicant is a practicing advocate for last 15 years and enjoys a very clean and unblemished record and except the F.I.R. filed by the respondent No.2, he has no criminal antecedent. He

further submitted that said applicant has acted only as Enquiry Officer in the departmental enquiry conducted against the respondent No.2, and

therefore, false F.I.R. is lodged against him. He further submitted that the allegations which are leveled against him in the F.I.R. even if, they are

taken at their face value and accepted in their entirety do not prima facie constitute any offence. It is further submitted that the allegations made

against him in F.I.R. do not fall under any of the categories mentioned in Section 3 of the said Act of 1989.

7. Shri B. J. Lonare, learned Advocate for the respondent No.2 in both the Criminal Applications argued that, the F.I.R. discloses the offence under

the provisions of the said Act of 1989. It is further submitted that the incident in question has taken place in the chamber of the Principal and

therefore, the same is in the public place and accessible to public. It is his contention that to constitute the offence under Section 3(1)(x), it is sufficient

if the said place is accessible to the public. In support of this submission he has relied on the judgment in the case of Anis Ahmed S/o Abdul Majid

Ahmed Vs. State of Maharashtra and Anr., reported in 2006(2) Mh.L.J. (Cri) 237. He further relied on the judgment of the Apex Court in the case of

Swaran Singh and Ors., Vs. State Through Standing Counsel and Anr., reported in 2009(2) Mh.L.J. 2,2 to contend that the offence under Section 3(1)

(x) of the Act of 1989 is attracted to the incident which has taken place in the chamber of the Principal by relying on paragraph No.27 and 28 of the

said judgment. He further submitted that the F.I.R. need not contend all the allegations and that the office of the Principal is normally provided

services of stenographer, clerical staff etc. and therefore, it has to be assumed that the incident has taken place within the public view. He further

contended that no other material except F.I.R. be taken into consideration at the time of the dealing with the application invoking inherent power of

this Court under Section 482 of the Code of Criminal Procedure seeking quashing. He has also relied on the judgment in the case of Golugiri

Ramakrishna Reddy Vs. State of A.P., reported in 2005(4) RCR (Cri) 638, particularly paragraph No.6 of the said judgment and contended that the

Court should be cautious in cases seeking quashing.

8. Shri A. V. Palshikar, learned A.P.P. appearing for the respondent No.1, pointed out the provisions particularly Section 3 of the said Act of 1989 and

sub-clause (1) which is substituted by Act 1 of 2016. He pointed out the provisions of the Act of 1989 and the corresponding provisions as substituted by Act 1 of 2016. He relied on the photographs of the place where the respondent No.2 was working. He contended that as the offence is disclosed in the F.I.R. and therefore this is not the case where power under Section 482 of the Code of Criminal Procedure can be invoked. With these submission he prayed for dismissal of both the criminal applications.

9. Before considering the extensive submissions of either of the parties, it is necessary to set out the factual position.

(i) The respondent No.2 was appointed on a probation for a period of two years in the said College on the post of Assistant Professor in the department of Mechanical Engineer by appointment order dated 26.05.2010 and accordingly the respondent No.2 joined the said post on 28.06.2010.

Subsequently, the respondent No.2 was assigned the duties of Head of Department of Mechanical Engineering (ME) being the senior most faculty of the said department.

(ii) The work of submission of requirement of equipments, follow up for their timely receipt, timely readiness of laboratories and installation of equipments was assigned to respondent No.2, and all these activities were required to be completed by him before 15.06.2017 i.e. before commencement of the academic session 2017-18 as per the University's Notification dated 15.04.2017.

(iii) During the visit of the Secretary of the Sanstha on 05.07.2017, it was found that packing of the equipments was not opened and laboratory was not set up.

(iv) As per the contention of the management on 05.07.2017 at about 04.45 pm. after the visit of the Secretary, the respondent No.2 entered office of the Principal of the said college and used abusive, filthy and derogatory words against her and also against the Secretary of the Sanstha and, therefore, show cause notice dated 10.07.2017 was issued to him. The relevant portion of the said show cause notice dated 10.07.2017 is reproduced herein below :-

During the visit of the Honorable Secretary NYSS on 05.07.2017, you failed to explain the action plan for conducting practical for students of BE III semester of Mechanical department. The equipment / Machines were

found dumped in the laboratories, without demonstration / installation.

When asked by the Honâ??ble Secretary NYSS in this regard, you failed to explain the cause of delay in readiness of laboratories and installation of equipments.

Instead, at about 4.45 pm on 05.07.2017, you made false allegation of â??Caste Based Discriminationâ?? against the undersigned as well as the

Honâ??ble Secretary NYSS in the office of the undersigned alleging â??Main Sab Samajhta Hun. Aap log mere saath aisa kar rahe hain kyonki main

SC hun. Sagar Sir Perfect hain kya? Aap itne Perfect hain kya? Aur agar aisa tha to apko laboratories bana lena chahiye thaâ??.

Also, you wrote an e-mail to the undersigned at 6.30 pm on 05.07.2017, once again making false allegation (caste discrimination and insulting

publically) against the Honâ??ble Secretary NYSS. Whereas, as a matter of fact, you were asked to explain the reason for delay in set up and

functioning of laboratories of Mechanical department, which you failed to answer satisfactorily. These lapses on your part have been viewed very

seriously by the competent authority of NYSS, as you failed to carry out your duties as HoD Mechanical Department.â??

(v) The respondent No.2 has submitted his reply on 13.07.2017 to said show cause notice dated 10.07.2017, inter alia stating as follows :

â??On 05/07/2017, I have contacted you in the office and discussed about the readiness of the laboratories but not any allegation made against you

and against our honorable Secretary Shri Sagar Meghe Sir.

I am the employee of this Institute since last 7 years and never made any allegation of caste based Discrimination. On the contrary, I have been given

chance to work as an Head of the Department (HOD) and obliged. No doubt, I am belonging to SC category but I never felt that, I have been

discriminated.â?? (Emphasis supplied)

(vi) Thereafter show cause notice dated 29.07.2017 was issued to the respondent No.2 as he was found absent from workplace at about 11.30 am. till

12.00 noon on 29.07.2017, without permission from the competent Authority.

(vii) Further show cause notice dated 31.07.2017 was issued to the respondent No.2 for non settlement of advance drawn for Rashtrasant Tukdoji

Maharaj Nagpur University (Winter-2016 examination) when the respondent No.2 was assigned the duty of Chief Supervisor for the said examination.

(viii) As the explanations to the aforesaid show cause notices were not found satisfactory, charge-sheet dated 21.08.2017 was issued to the

respondent No.2 by the appointing Authority.

(ix) The applicant No.3 in Criminal Application No.477/2019 was appointed as the Presenting Officer and applicant in Criminal Application

No.570/2019 was appointed as the Enquiry Officer.

(x) Thereafter, enquiry was conducted by the said Enquiry Officer and report dated 14.09.2018 was submitted by him to the competent Authority. In

the Enquiry Report, it is inter alia held that, due to laps on the part of the respondent No.2 the receipt of the equipments was delayed and delay in

procurement of equipments occurred solely due to the respondent No.2, due to which the students of BE III semester of ME department suffered

academic loss, the equipments worth Rs.7.5 Lac procured on 29.06.2017 were lying in the laboratories in the packed condition as found during the visit

of the Secretary of the Institution on 05.07.2017 and that the respondent No.2 used abusive, filthy and derogatory words against the Principal and the

Secretary and also leveled wild and baseless allegations of "Caste Based Discrimination" against them on 05.07.2017 at about 4.45 pm. On

29.07.2017 the respondent No.2 was found to be unauthorizedly absent from 11.30 am to 12.00 noon and that the respondent No.2 retained with him

unspent amount of Rs.51,702/-against the advance of Rs.3 Lac drawn by him for theory examination for over 3 months.

(xi) Perusal of the Enquiry Report or relevant extracts of the Enquiry Report dated 14.09.2018 shows that the enquiry commenced with the first sitting

held on 06.09.2017 and thereafter 15 more sittings were held i.e. total 16 sittings were held, starting from 06.09.2017 up to 17.03.2018 and thereafter,

the Enquiry Report was submitted. During the said period on 31.10.2017 a complaint was filed by the respondent No.2 with the Incharge, Police

Officer, Hingna M.I.D.C., Police Station, District Nagpur against all the applicants inter alia contending that on 05.07.2017 the Principal has called him

in her cabin and stated as follows :

"You are useless fellow, you are scheduled caste category person and hopeless person. You are not working properly though you are taking the

salary without work. I will see tomorrow, how you will be the HoD"

It is significant to note that before filing the complaint the above referred

departmental enquiry was held on 06.09.2017, 21.09.2017, 28.09.2017 and 05.10.2017. The complaint lodged on 31.10.2017 is after a period of about 3 months and 25 days.

(xii) The police conducted enquiry and came to the conclusion that there is no substance in the complaint filed by the respondent No.2 and therefore, did not take any further action.

(xiii) Pursuant to the Enquiry Report dated 14.09.2018, a show cause notice dated 27.06.2018 was issued to the respondent No.2 by the competent

Authority i.e. applicant No.1 "Principal of the College, calling upon him to explain why punishment should not be awarded to him as per the Service

Rules considering the findings and conclusions of the said Inquiry Report.

(xiv) The said show cause notice dated 27.06.2018 was replied by the respondent No.2 vide reply dated 04.07.2018. It is to be noted that the findings

recorded in the Enquiry Report are not even denied and in any case no explanation whatsoever is given with respect to the said findings and only

contention was raised that Enquiry Officer has been appointed by the unauthorized authority and not by the appointing Authority as provided under

Section 105 of Maharashtra Public Universities Act, 2016 and therefore, no disciplinary action can be taken on the basis of the disciplinary

proceedings initiated by unauthorized authority and therefore the same has no legal binding and are not consistent with the provision of the

Maharashtra Public University Act, 2016 and that proper opportunity was not given to him during enquiry. Although narration of factual aspects is yet

to complete at this stage it is to be noted that although, we are not concerned with the legality or otherwise of the said show cause notices and the

Enquiry Report, we are examining this aspect only for the limited purpose as the basic contention raised by the Applicants is that as the disciplinary

action has been initiated against the respondent No.2 and therefore, for the malafide purpose the earlier complaint dated 31.10.2017 and thereafter the

impugned First Information Report dated 27.04.2019 was lodged by the respondent No.2 for preessurizing the Applicants. Therefore, from that angle it

is significant to note that serious charges which are held to have been proved in the Enquiry Report are not even dealt by the respondent No.2 in his

reply dated 04.07.2018.

(xv) Thereafter, the competent Authority i.e. Principal of the college submitted

application dated 07.01.2019 to the Registrar, of the Rashtrasant

Tukadoji Maharaj Nagpur University, Nagpur seeking approval for issuing termination of order to the respondent No.2. It is significant to note the

relevant contents of said letter dated 07.01.2019 which are reproduced as follows :

Perusal of the said inquiry report reveals that out of five charges imputed on him, three charges (Charge Nos. 1, 2 & 5) are completely proved

and two charges (Charge Nos.3 & 4) are partly proved (Annexure-1).

xvii) Consequently, Shri Charlie D. Fulzele was issued with Notice on 27.06.2018, calling upon him to explain as to why punishment should not be

awarded to him, as per the service rules, on the basis of the said inquiry report. Shri Charlie D. Fulzele submitted reply to the Show Cause Notice on

04.07.2018.

Apart from the above, during the Inquiry against Shri Charlie Fulzele, some incidents need to be taken note of while deciding the approval for issuance

of termination order to Shri Charlie Fulzele.

Shri Charlie D. fulzele filed false & baseless complaint against College Authorities to Backward Class Cell of RTMNU, alleging therein that the

College Authorities were affording discriminatory treatment to him on the basis of caste.

On receipt of letter from RTMNU, a committee of 3 members from college SC/ST committee was constituted to enquire into matter. The committee

found allegations made by Shri Charlie D. Fulzele as false and baseless. Further, the documents, as asked, were submitted to BC Cell of RTMNU on

11.06.2018 (Annexure-2).

Apart from the above, Shri Fulzele also lodged a complaint of caste based discrimination against him, with MIDC Police Station against the College

Authorities, just before the visit of NAAC committee visit, in order to sabotage the process. Thereafter, statement of the College Authorities, & other

employees of the college, who belongs to SC Category, were also recorded by MIDC Police Station on 16.11.2017. The witnesses of SC category of

the College, in their statement before the MIDC police station, have specifically stated that the said allegations of Shri Fulzele were not true &

therefore, the investigating officer of the said Police Station has not entertained the said complaint of Shri Fulzele.

The report dated 14.04.2018 submitted by the Inquiry Officer Adv. D. N. Mathur, was forwarded to the Management as well as College

Development Committee, which was duly considered all the aspects & has passed a resolution dated 25.08.18 & 13.08.18 respectively, thereby

deciding to terminate the services of Shri Charlie D. Fulzele. (Annexure 3)

In view of the above, you are requested to kindly consider the factual position pointed out above & grant approval for issuing termination order to Shri

Charlie D. Fulzele, Asst. Prof. from Rajiv Gandhi College of Engineering & Research, Hingna Road, Wanadongri, Nagpur, under RTMN U Statute

53, at the earlier.â??

(xvi) The above position clearly shows that the respondent No.2 made a complaint dated 31.10.2017 to the respondent No.1 as well as the complaint

dated 19.09.2017 to the Backward Class Cell of the University which is contrary to his reply dated 13.07.2017, relevant portion of which is reproduced

herein below :-

â??On 05/07/2017, I have contacted you in the office and discussed about the readiness of the laboratories but not any allegation made against you

and against our honorable Secretary Shri Sagar Meghe Sir.

I am the employee of this Institute since last 7 years and never made any allegation of caste based Discrimination. On the contrary, I have been given

chance to work as a Head of the Department (HOD) and obliged.

No doubt, I am belonging to SC category but I never felt that, I have been discriminated. However, we have organized Dr. Babasaheb Ambedkar

Jayanti behalf of the Institute under guidelines of the honorable Secretary Sagar Meghe Sir and the then Principal Bapat Sir, and garland of the statue

of Dr. Babasaheb Ambedkar by the hands of the Principal Bapat Sir, as Mate Chawk Nagpur.

I am doing my duty with most care, honestly, with responsibility since my joining to the beloved Institute. Even then I greatly regret if any words came

out on my part inadvertently to cause inconvenience to you. Madam,

I hope that my explanation will clear the misunderstanding if any.

Thanking you.â??

(xvii) In the report dated 17.10.2017 of the Committee appointed to enquire into the complaint of the respondent No.2 regarding harassment on the

basis of caste discrimination and untouchability it is found by the Committee that the allegations made by respondent No.2 against the applicant No.1

i.e. the Principal of the college are false and baseless and that the said allegations may be linked with the ongoing departmental enquiry initiated against him.

10. It is significant to note that in the above background of the matter, the present F.I.R. dated 27.04.2019 was registered by the respondent No.1, on

the basis of the report given by the respondent No.2. In the said report the respondent No.2 has mentioned the incident which has allegedly taken

place on 05.07.2017 as follows :-

. .

â?? 05.07.2017 . .

.

â??You are useless fellow, you are scheduled caste category person and hopeless person you are not working properly though you are taking the

salary without work I will see tomorrow, how you will be the HoDâ?

â??.

(Emphasis supplied)

11. In this background of the matter, it is significant to note that in the reply dated 13.07.2017 to the show cause notice, the respondent No.2 has

stated as follows :

â??On 05/07/2017, I have contacted you in the office and discussed about the readiness of the laboratories but not any allegation made against you

and against our honorable Secretary Shri Sagar Meghe Sir.

I am the employee of this Institute since last 7 years and never made any allegation of caste based Discrimination. On the contrary, I have been given

chance to work as an Head of the Department (HOD) and obliged. No doubt, I am belonging to SC category but I never felt that, I have been

discriminated.â??

Thus, it is clear that the above allegations made in the F.I.R. dated 27.04.2019 regarding the incident which has taken place on 05.07.2017 are totally

false. In this behalf it is further significant to note that the complaint dated 31.10.2017 made by the respondent No.2 is also different and the relevant

portion of the same is reproduced below for ready reference :

On 05.07.2017, she called me in her Principal's cabin and shouted loudly on me that "You are useless fellow, you are scheduled caste

category person and hopeless person. You are not working properly though you are taking the salary without work. I will see tomorrow, how you will

be the HoD? She has also uttered many insulting / irritating words which hurted me. Her language was insulting, unbearable and particularly /

typically caste based. The insulting is covered under the Section 3(1) (x) of the Scheduled Castes and The Scheduled Tribes (Prevention of

Atrocities) Act, 1989.

Thus, a bare perusal of the explanation dated 13.07.2017 of the respondent No.2 to show cause notice dated 10.07.2017, clearly shows that the

contents of complaint dated 31.10.2017 and the F.I.R. dated 27.04.2019 are after thought and contradictory to each other. It is very clear that the

allegations against the applicant No.1 in Criminal Application No.477/2019 i.e. Principal of the college are after thought and contrary to the reply dated

13.07.2017 of the respondent No.2 to the show cause notice dated 10.07.2017 wherein inter alia the respondent No.2 has stated that since last seven

years he was working in the said Institution and although he was belonging to the Schedule Caste category, he was never discriminated and in fact

given chance to work as Head of Department. It is further significant to note that there is improvement made in the F.I.R. dated 27.04.2019 as

compared to the complaint dated 31.10.2017 as following sentence was newly added :

" "

It appears that as respondent No.2 has lodged false complaint and F.I.R. which is completely contradictory to his reply dated 13.07.2017 and as to

prevent any further investigation regarding alleged incident dated 05.07.2017 he has specifically mentioned in the F.I.R.dated 27.04.2019 that when the

said incident took place, nobody was present except applicant No.1 i.e. Principal of the college and himself.

12. In view of this it is necessary to see even if allegations in F.I.R., dated 27.04.2019 are taken as they are without subtracting anything and without

adding anything, whether the offence under Section 3(1)(r) of the said Act as amended by Act (1) of 2016 which is in pari materia with Section 3(1)

(x) which is mentioned in FIR is attracted. Section 3(1)(r) is reproduced herein below for ready reference :

“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;”

It is absolutely essential to attract the offence under Section 3(1)(r) that at least prima facie it has to be seen that offence under said section had taken

place within public view. In this particular case, it is the specific contention of the respondent No.2 that the said incident has taken place in the cabin

of the applicant No.1 where only the applicant No.1 i.e. Principal of the college and the respondent No.2 were present. It is very significant to note

that, to attract the provision of Section 3(1)(r) of the Act of 1989, it is absolutely essential that the same should take place within public view i.e. in the

presence of public. The judgment relied upon by the learned Senior counsel for the applicants in the case of Pradnya Pradeep Kenekare and Anr., Vs.

State of Maharashtra, reported in 2005(3) Mh.L.J. 368 is squarely applicable to the facts of the present case. In paragraph No.8 of the said judgment

it is held as follows :

“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 provisions of section 3(1)(x) of the said Act

would be attracted only in case of insulting or intimidating a member of the scheduled 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 of 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."

Shri Sunil Manohar, learned Senior counsel appearing for the applicants in Criminal Application No.477/2019 also relied on the judgment in case of V .

P. Shetty Vs. Sr. Inspector of Police and Anr., reported in 2005(3) Mh.L.J. 1006, wherein it is held as follows :

"5. The plain reading of the complaint filed by the complainant undoubtedly prima facie discloses various accusations against the complainant by

the petitioner in the name of the Scheduled Castes and Scheduled Tribes. It also prima facie discloses abuses having been uttered by the petitioner and

addressed to the complainant on the ground of the complainant being a member of the Scheduled Caste. However, as rightly submitted by the learned

advocate for the petitioner, the complaint nowhere discloses those accusations having been made in a place within the public view. In various

decisions apart from the decision of Bai @ Laxmibai, this Court has time and again held that the expression "within public view" has specific

meaning and in order to attract the provisions of law under section 3(1)(x) of the Atrocities Act, the acts amounting to insult or humiliation to the

member of Scheduled Castes or Scheduled Tribes should be visible and audible to the public. Otherwise, it would not amount to an offence under the

said provision of law. Considering the same and considering the allegations in the complaint which relate to the acts by the petitioner in the closed

cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant "within the

public viewâ?. On this count itself, the petitioner is justified in contending that there was no case for recording the F.I.R. under the provisions of law comprised under section 3(1)(x) of the Atrocities Actâ??.

Thus, it is clear that the incidence of insult or intimidation has to occur in a place accessible to and in the presence of public and presence of both

these ingredients would be absolutely necessary to constitute an offence under the said provision of law. In this particular case, the F.I.R. itself

discloses that the incident in question has taken place only in the presence of the applicant No.1 who is accused and the respondent No.2 who is

complainant and therefore, the ingredients of the said offence are not at all attracted.

13. The further allegations in the F.I.R. are regarding appointment of the applicant No.2 in Criminal Application No.477/2019 as Head of Department

instead of the respondent No.2, allotting to him a room which is unclean and appointing the applicant No.3 in Criminal Application No.477/2019 as

Presenting Officer and applicant in Criminal Application 570/2019 as Enquiry Officer. It is significant to note that all these disputes are relating to his

service and therefore, they cannot be converted into the offences under the Atrocities Act. The learned Senior counsel for the applicants have rightly

relied on the judgment of this Court in the case of State of Maharashtra .Vs. Shashikant Eknath Shinde, reported in 2013(4) Bom.C.R.(Cri.) 80,1

wherein it is inter alia held that, the dispute pertaining to service matter cannot be brought under the provisions of the Atrocities Act taking advantage

of the fact that the complainant belongs to Schedule Caste and ultimately the F.I.R. in that case was quashed.

14. Shri B. J. Lonare, learned Advocate for the respondent No.2 has relied on judgment of High Court of Andhra Pradesh in the case of Golugiri

Ramkrishna Reddy Vs. State of A. P., reported in 2005 (4) RCR (Cri.) 638, to support his case and contended that, as the incident has taken place in

the chamber of the Principal of the college and therefore, it is public place and therefore, it has to be assumed that the incident has taken place in any

place within public view. The learned counsel for the respondent No.2 submitted that, the criteria to attract the ingredients of Section 3(1)(r) is

whether the said place is accessible to public. The judgment of the Honâ??ble Andhra Pradesh High Court on which the learned counsel for the

respondent No.2 has placed reliance show that the offence in the said case has taken place in the shop of the accused Nos.1 and 2 and in the light of

that factual position it has been held that the offence in the said case has taken place "in any place within public view". In the present case,

admittedly, the offence has taken place in the cabin of the Principal of the college and it is specifically mentioned by the respondent No.2 that

complainant in the F.I.R. that the alleged offence has taken place in the cabin of the applicant No.1 i.e. Principal of the college and at that time only

he was present along with applicant No.1, therefore, the said judgment is not applicable to the facts of the present case. Shri B. J. Lonare, learned

counsel for the respondent No.2 has also relied on the judgment of the Hon'ble Apex Court in the case of Swaran Singh and Ors., Vs. State

through Standing Counsel and Anr., reported in 2009(2) Mh.L.J. 22, to contend that the chamber of the Principal is place within the public view. In the

said case, the incident has taken place when the first informant stood near the car which was parked at the gate of premises and therefore it has been

held that the same is certainly a place within public view, since the gate of the house is certainly a place within public view. In the said judgment in

paragraph No.28, it is clearly held that it could have been a different matter had the alleged offence been committed inside a building, and also was not

in the public view. The learned counsel for the respondent No.2 has relied on paragraph Nos.27 and 28 of the said judgment, the same are reproduced

herein below for ready reference:

"27. Learned counsel then contended that the alleged act was not committed in a public place and hence does not come within the purview of

section 3(1)(x) of the Act. In this connection it may be noted that the aforesaid provision does not use the expression "public place", but instead

the expression used is "in any place within public view". In our opinion there is a clear distinction between the two expressions.

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.

The perusal of aforesaid paragraph Nos.27 and 28 clearly show that the same are not applicable to the facts of the present case as admittedly the

incident in question took place in the chamber of the applicant No.1 i.e. Principal of the college and where only respondent No.2 "complainant and

the applicant No.1 were present. The learned counsel for the respondent No.2 also relied on judgment of this Court in the case of Anis Ahmed S/o

Abdul Majid Ahmed vs. State of Maharashtra and Anr., reported in 2006(2) Mh.L.J. (Cri.) 237, particularly paragraph No.28 of the same. The said

paragraph No.28 is reproduced herein below:

"28. In the present case, the alleged incident took place in the Chamber of the Collector. It is true that there might be restricted entry in the

chamber of the Collector. However, it is stated that the Collector holds meetings in his chamber, he takes hearing of proceedings before him in the

chamber, he meets the public in his chamber. Thus it cannot be said that the chamber of the Collector is a secluded place not accessible to public.

Secondly at the time of the alleged incident, SDO and several Deputy Collectors were present in the chamber of the Collector. Though they might have

come to the chamber for official work, it cannot be said that the incident did not take place within public view.

It is clear that the factual position of the said case is totally different than the present case. In the said case, the incident has taken place in the

chamber of the Collector and at the time of the alleged incident, the S.D.O. and several Deputy Collectors were present in the chamber of the

Collector and therefore, it is clear that said incident has taken place within public view. So far as, the present case is concerned, admittedly the

incident in question has taken place in the chamber of the Principal where only the applicant No.1 " Principal of the college and the respondent No.2

" complainant were present.

15. A bare perusal of the F.I.R. lodged by the respondent No.2, clearly shows that the same was lodged on 27/04/2019 under Section 3(1)(x) and 3(1)

(xiv) of the said Act of 1989. The corresponding provisions after substitution by Act 1 of 2016 are Section 3(1)(r) which is similar to earlier Section

3(1)(x) and Section 3(1)(y) is similar to earlier Section 3(1)(xiv).

16. It is also alleged by the respondent No.2 that he was allotted a room No.18 which was laboratory room and the same was very unclean and he

was given stool instead of chair and thereafter on his complaint, stool was replaced by chair. According to the learned counsel for the respondent

No.2 as well as learned A.P.P., offence under Section 3(1)(b) is attracted. A bare perusal of contents of the F.I.R. clearly show that even said

Section 3(1)(b) is also not attracted. Said Section 3(1)(b) is reproduced herein below for ready reference:

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

(a) ".

(b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a

Scheduled Caste or a Scheduled Tribe;"

A bare perusal of Section 3(1)(b) and the averments in the F.I.R. clearly show that, there is no allegation that excreta, sewage, carcasses or any other

obnoxious substance was found in the premises or entrance of the premises occupied by the respondent No.2, the allegation is that the said room

No.18 was unclean and therefore to said allegations the ingredients of Section 3(1)(b) are not attracted.

17. So far as another allegation against the application No.2 i.e. Head of Department is that when he went outside in the college canteen, it was

mentioned in the Movement Register that, "For tea outside college premises not allowed, tea at your seating place is allowed". It is the contention

of the learned counsel for the respondent No.2 and learned A.P.P. that therefore

ingredients of offence under Section 3(1)(y) are attracted. The said

Section 3(1)(y) is reproduced herein below for ready reference :

“(1) (y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a 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 other section thereof

have a right to use or access to;”

A bare perusal of the allegations as set out in F.I.R. and Section 3(1)(y) clearly shows that the ingredients of said section are not at all attracted. It is

the contention of the management and the applicants that the respondent No.2 was not found at his work place and therefore, show cause notice was

issued to him. In any case, it is very clear that, no offence is made out under Section 3(1)(y) of the said Act of 1989.

18. It is significant to note that, the show cause notices issued to the respondent No.2 as well as charge-sheet of misconduct and the Enquiry Report

clearly shows that the respondent No.2 is facing departmental enquiry for serious misconduct and the same is held to be proved in the departmental

enquiry as more particularly set out in the extract of Enquiry Report. It is further significant to note that the application dated 07.01.2019 submitted by

the applicant No.1 “the Principal of the college to the University, seeking that approval be granted for issuing termination order to the respondent

No.2 is pending with the University and during that period F.I.R. dated 27.04.2019 came to be lodged by the respondent No.2, making various

allegations against the Principal of the college, Head of the Mechanical Department of the college against the Presenting Officer in the departmental

enquiry and also against the Enquiry Officer. Thus, it is clear that the F.I.R. dated 27.04.2019 has been maliciously instituted with an ulterior motive

for wreaking vengeance due to the initiation of the said department enquiry. It is also significant to note that after the said show cause notices dated

10.07.2017, 29.07.2017 and 31.07.2017 were issued and charge-sheet dated 21.08.2017 was served on the respondent No.2 and when the enquiry has

started and when about five sittings were held, complaint dated 31.10.2017 has been submitted by the respondent No.2 to the In-charge Police Officer,

Hingna M.I.D.C. Police Station, District Nagpur and as the police found no substance in the said complaint, no further steps were taken. It is

significant to note that the respondent No.2 has not taken any steps to pursue his complaint dated 31.10.2017 for almost two years and lodged the impugned F.I.R. dated 27.04.2019 after the proposal to terminate him from the service was submitted by the college Authorities with the University and when the same is pending. It is also significant to note that the contents of complaint dated 31/10/2017 and the F.I.R. dated 27/04/2019 are completely contradictory to the above referred reply dated 31/07/2017. Thus, it is clear that the F.I.R. has been lodged with complete mala fide purpose and with a view to bring pressure on the applicants.

19. In view of this position, it is very clear that the applicant's case falls under the criteria laid down by the Hon'ble Apex Court in the case of State of Haryana and Ors., Vs. Ch. Bhajan Lal, reported in AIR 1992 S.C. 60, wherein the Hon'ble Apex Court has laid down certain illustrations where the inherent powers under Section 482 of the Code of Criminal Procedure should be exercised. The present case squarely falls under the Clause Nos.1, 5 and 7 of the said case. The said clauses are reproduced herein below for ready reference:

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.

5. Where, the allegations made in the F.I.R. 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.

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.

20. This is a fit case to which the observations of the Hon'ble Apex Court made in the case of Kishan Singh (Dead) Through LRs. Vs. Gurpal Singh and Ors., reported in (2010) 8 SCC 775, are squarely applicable, wherein the Hon'ble Apex Court has held in paragraph No.22 as follows:

22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an

explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. â??

21. In the result, we allow both the applications and quash and set aside the F.I.R. - Crime No.0251, dated 27.04.2019, registered by the respondent

No.1 â?" Police Station Hingna M.I.D.C., Nagpur for the offences under Sections 3(1)(x) and 3(1)(xiv) i.e. Section 3(1)(r) and Section 3(1)(y) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as all the consequential actions.

Rule made absolute in the above terms.