

(2023) 05 GUJ CK 0029

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7573, 8137 Of 2014

Minaben Laxminarayan Joshi & 3 Other(S)

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 294(b), 354(A), 406, 420, 506(1), 507
Gujarat Police Act, 1951 — Section 135(1)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3, 3(ii), 3(1), 3(1)(x)

Citation : (2023) 05 GUJ CK 0029

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Maulin G Pandya, E.Shailaja, K.M. Antani

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. Since the challenge in both these applications are to the selfsame FIR, those were heard analogously and are being disposed of by this common judgment and order.

2. At the outset, Mr. Sandip Patel, the learned counsel appearing for the applicant-original accused No.1 in Criminal Misc. Application No.8137 of 2014 submits that he does not want to press the said application qua the applicant-accused No.1 so far as the offence under the provisions of the Indian Penal Code are concerned. Accordingly, Criminal Misc. Application No.8137 of 2014 is disposed of as not pressed qua the applicant-original accused No.1, namely, Laxminarayan @ Laxmikant Misarilal Joshi so far as the offence under the provisions of the Indian Penal Code are concerned. The investigation shall proceed further so far as the offence under the Indian Penal Code are concerned.

3. For the sake of convenience, Criminal Misc. Application No.7573 of 2014 is

treated as the lead matter.

4. By this application Under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the applicants-original accused Nos.2 to 5 seek to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-146 of 2014 registered with the Naranpura Police Station, Ahmedabad for the offence punishable under Sections 354(A), 406, 420, 294(b), 506(1), 507 read with Section 114 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act as well as Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act")

5, The facts, giving rise to the present application may be summarized as under;

5.1 On 15th May, 2014, the complainant lodged a complaint alleging that almost two years ago, she read an advertisement in the daily newspaper regarding the work of astrologer being carried out by the accused No.1. Therefore, as the complainant was not getting married, she went to the residence of accused No.1, namely, Laxmikant M. Joshi to know about her future, and upon discussion with him, the accused No.1 told her that to get out from such problem, she has to perform some rituals, for which, she has to pay Rs.3,00,000/- to the accused No.1. Therefore, keeping trust upon him, the complainant paid the said amount of Rs.3,00,000/- to the accused No.1 in installments. However, despite making such payment, as she could not get any result, she demanded back the said amount, due to which, disputes have been cropped up between the complainant and the accused No.1.

5.2 It is alleged in the complaint that on 14th May, 2014, she went to the house of the accused No.1 along with her friend, and at that point of time, the accused No.1 started abusing her by uttering words against her caste and also made an assault upon her. At that time, the wife of the accused No.1 was also there who was also abusing her. Thereafter, one another person came there, who might be the son or the nephew of the accused No.1, and he also started abusing her and threatened to kill her. The accused No.1 also made a phone call to his daughter and son-in-law. They also came there and all these five accused persons, altogether, started abusing her and threatened to kill her.

5.3 Thereafter, the complainant went to the police station and lodged a complaint against all the aforesaid accused persons. The accused Nos.2 to 4 happen to be the wife, son, daughter and son-in-law respectively of the original accused No.1 who have filed the Criminal Misc. Application No.7573 of 2014, whereas the original accused No.1 has filed a separate petition being Criminal Misc. Application No.8137 of 2014.

6. Learned advocate Mr. Maulin Pandya appearing for the applicants in Criminal Misc. Application No.7573 of 2014 has submitted that the first information report registered against the applicants herein is absolutely illegal, frivolous, vexatious and bogus one and filed with a view to abuse the criminal machinery against the applicants. Mr. Pandya has further submitted that if the allegations levelled

against the accused persons in the first information report are to be read with great scrutiny, even though, prima facie, no case is made out against the present applicants. Learned advocate Mr. Pandya has read the entire complaint and vehemently submitted that in the first portion of the FIR, the entire sequence of events of incident and allegations are levelled against Laxmikant M. Joshi, i.e, the original accused No.1. The role played by the present applicants are mentioned in the second part of the first information report, wherein, the allegations are to the effect that they have supported the original accused No.1. They are not, at all concerned with the earlier transactions whatsoever took place between the complainant and the accused No.1. If the entire allegations levelled against the applicants are to be read, they are vague and general in nature.

7. Mr. Pandya has further submitted that a bare perusal of the complaint itself shows and suggests that nowhere in the entire complaint, it is mentioned that the present applicants have uttered any abusing words against the caste of the complainant and, therefore, the contents of the FIR do not suggest any case to be drawn under the provisions of the Atrocities Act. Learned advocate Mr. Pandya has put reliance upon the judgment in the case of Swaran Singh & Ors. vs. State through Standing Counsel & Ors. reported in (2008) 8 SCC 435 and submitted that no case could be made out of any offence of cheating, criminal breach of trust, outrage the modesty of a woman etc. in the present case and to support his submissions, he has also relied upon the judgment of this Court in the case of Dharmendrabhai Nandubhai Patel vs. State of Gujarat, reported in 2012(1) GLR 237.

8. Learned advocate Mr. Pandya has further submitted that it is an undisputed fact that as per the case of the prosecution, the so called incident has occurred in the house of the accused No.1 and if the allegations levelled by the first informant under the provisions of the Atrocities Act are accepted as true, none of the ingredients to constitute the offence under Section 3(1)(x) of the Atrocities Act is satisfied.

9. Mr. Pandya has further submitted that at this juncture, the true meaning and scope of the expression 'public view' is required to be considered in its true spirit and proper perspective. It is necessary that the derogatory and or the humiliating words to constitute an offence, should be uttered in the presence of the independent persons. Learned advocate Mr. Pandya has submitted that the first information report does not disclose the fact that any other person was present at the time when the alleged insult or intimidation by the accused took place which was with an intent to humiliate her in any public view. Learned advocate Mr. Pandya has further submitted that if the entire body of the complaint is to be read as a whole, it appears that nowhere in the entire complaint, anything has been mentioned as regards the actual utterances against the caste of the complainant by the applicants herein. Thus, in the absence of any specific mention as regards what kind of derogatory words were being used by the accused persons which constitutes the offence under the provisions of the

Atrocities Act, the first information report is required to be quashed and set aside.

10. Mr. Pandya has also submitted that to constitute the offence under the Atrocities Act, it is mandatory requirement on the part of the complainant to disclose in the body of the complaint itself as to what kind of derogatory words were being used against her caste and religion. He has further submitted that if the offence under the Atrocities Act are being registered only on the basis of the statements or allegations of utterance of derogatory words against the caste of anybody, then in that case, nobody in the Society would be safe. Another aspect which is to be taken into consideration is that such kind of incidents must take place at any place within the public view. Mr. Pandya has submitted that herein in the present case, as per the case of the prosecution, the so called incident had occurred in the house of the accused No.1 and the complainant herself went to the house of the accused No.1. He has also submitted that in the present case there is no independent eyewitness, who had witnessed the said incident. Therefore, he prays that there being merit in this application, the same may be allowed and the impugned FIR may be quashed and set aside.

11. Learned advocate Mr. Sandip Patel appearing for the applicant-original accused No.1 in Criminal Misc. Application No.8137 of 2014 has submitted that he is confining his arguments pertaining to the Atrocities Act only. At this juncture, he is not pressing for the rest of the sections of the Indian Penal Code. Mr. Patel has submitted that in principle, he has adopted the arguments canvassed by the learned advocate appearing in Criminal Misc. Application No.7573 of 2014 in toto. However, to crystallize the position of law more clear, he wants to make further submissions in supplement to what has been submitted by learned advocate Mr. Pandya. He has submitted that nowhere in the body of the complaint, any accusations or allegations have been levelled against the accused No.1 with regard to utterance of derogatory words against the caste of the complainant. Further, the so called incident took place within the four corners of the house which was not viewed or seen by any public. He has submitted that, therefore, when the incident is occurred at the place which was not within the public view, in that event, the ingredients of Section 3(1)(x) of the Atrocities Act would not be attracted in the present case.

12. Mr. Patel has submitted that even for the sake or arguments, without admitting it, if the allegations levelled by the first informant are accepted as true, even though none of the ingredients found in the complaint which would ultimately constitute the offence punishable under Section 3(1)(x) of the Act. It is submitted that continuance of the prosecution will amount to gross abuse of the process of law, more particularly, the provisions of the Atrocities Act which are meant for laudable object. He, therefore, prays that the proceedings, so far as the offence under the provisions of the Atrocities Act are concerned, be quashed.

13. Learned advocate Ms. E. Shailaja appearing on behalf of the original complainant has vociferously submitted that the incident had occurred in the first

room of the house of the accused No.1 and the said house is situated in the Society. Therefore, it could be said to be part of the premises which can be viewed by the public and construed as a public place and, therefore, offence under Section 3(1)(x) of the Act could be said to have been committed by the accused persons in the 'public view'. She has further submitted that although at the time, when the Atrocities Act was brought into force, it required the acts on the part of the accused to have been committed within public view, yet taking into consideration the change scenario, and the attempts being made by the people belonging to the upper caste and community to abuse the members of the Schedule Castes and Schedule Tribes in the private place, the provision comprising of under Section 3(1)(x) has to be harmoniously construed and the expression 'public view' appearing in the said provision of law should not be understood to have a restricted meaning. According to learned advocate, considering the same, the drawing room of the accused No.1 where the first informant was abused by the applicants -accused in the presence of her friend, should be construed as the place 'within the public view'. She, therefore, prays that this Court may not quash the proceedings in exercise of the inherent powers under Section 482 of the Cr.P.C.

14. Learned AGP Mr. K.M. Antani appearing for the State has submitted that a bare perusal of the complaint, prima facie, shows that the ingredients of the provisions of the Atrocities Act are found out in the body of the complaint. The allegations levelled against the accused persons are grave in nature, and it appears from the same that a prima facie case could be said to have been made out against the accused persons. He has further submitted that immediately after registration of the complaint, within no time, present petitions are being preferred by the accused persons and obtained stay of the investigation. Therefore, just to bring the true and correct picture, at least, the investigation is required to be carried out and for that purpose, without considering the present applications, the Investigating Machinery may be given free hands to conduct the inquiry and the applicants are required to be put to trial for the offence punishable under the provisions of the Atrocities Act and, therefore, he prays that the present applications may be rejected.

15. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the prosecution against the applicants should be quashed.

16. Before advertng to the rival submissions, I would like to quote Section 3(1)(x) of the Atrocities Act, which reads thus;

"Section3(1)(x) – intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or a Schedule Tribe in any place within public view."

17. Thus, a plain reading of the above provision would indicate that the ingredients of the said provision would be attracted only when a person,

intentionally insults or intimidates with intent to humiliate any member of a Schedule Caste or a Schedule Tribes in any place within public view, which is not there in the present case.

18. Now let me quote with profit few decisions of the Apex Court as well as of this High Court on the issue involved in the present case.

19. In the case of Dhiren Prafulbhai Shah vs. State of Gujarat, reported in 2016-GLR-4-2785, this Court, in paras-20,21, 22 and 23 held thus;

"20. What is the true meaning and scope of the expression "public view" used in Section 3(1) (x) of the Act? Is it necessary that the derogatory or humiliating words to constitute an offence, should be uttered in the presence of the independent persons? Or would it be sufficient, if these are used, in the presence of any one or two members of the public, whether they are relatives, friends, associates or otherwise connected with the complainant? These are questions which require determination.

21. The Law with regard to the interpretation of the statute is well settled by several authoritative pronouncements of the Supreme Court. While interpreting any statute, the aspects which need consideration are (i) what was the law applicable before the Act was passed; (ii) what was the mischief or the defect for which the law earlier did not provide; (iii) what was the remedy the Legislature provided; and (iv) the reason for the remedy. The Court is required to adopt a construction which suppresses the mischief and advances the remedy and to add force, life, cure and remedy pitfalls, if any, according to the true intent of the makers of the Act. For this, reference may be made to a sevenjudge Bench decision of the Supreme Court in Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661; and Directorate of Enforcement Vs. Deepak Mahajan, AIR 1994 SC 1775.

22. It is also well settled that FIR can be quashed, if the allegations taken in entirely at their face value, prima facie do not constitute any offence; if the allegations are absurd or inherently improbable, if there is any legal bar to the institution of such proceedings; and if the criminal proceeding is manifestly attended with mala fide and/or maliciously instituted with ulterior motive for wreaking vengeance, etc. In this regard reference may be made to the principles laid down by the Supreme Court in State of Haryana Vs. Bhajan Lal, 1992 Suppl. (1) SCC 335, and several other judgments.

23. Basic ingredients for the offence under Clause (x) of Subsection (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows:

(a) there intimidation SC or ST; should be intentional insult or by a person, who is not a member of SC or ST;

(b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have

knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and

(c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present."

20. In the case of Thakor Dashrathji Babuji vs. State of Gujarat, reported in 2022-JX(Guj.)0-924, this Court has held thus;

"11. The expression 'any place within public view' has been clarified in the judgment at paragraph-14 of the decision in the case of Hitesh Verma Vs. State of Uttarakhand & Anr., reported in (2020) 10 SCC 710, referring to the case of Swaran Singh & Ors. Vs. State, Through Standing Counsel & Ors., reported in

(2008) 8 SCC 435, it has been observed as under:

"14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors. The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.

12. In the case of Swaran Singh (supra), the Hon'ble Apex Court has noted the distinction of the expression 'public place', not being found in Section 3(1)(r), but instead, there has been use of the expression 'not any place within public view'. Section 3(1) is substituted by Act No.1 of 2016 with effect from 26.1.2016.

13. In the case of Hitesh Verma (supra), while referring the case of Swaran Singh (supra), the distinction between a 'public place' and 'in any place within public view', has been expounded, which becomes applicable in the facts of the present case, which clarifies that utterance of the words is not in presence of any member of the public nor in the society within public view, the alleged incident is alleged to have taken place at the turning near house no.8. Hence, Section 3(1)(r) would not be applicable to the facts of the case, equally would be true for the FIR bearing CR no.I-195/2017, where there is no allegation that any such abuse was even in any place or any public view. The whole allegation is that the applicant had abused him on phone. Hence, to that case too, Section 3(1)(r) would not be made applicable."

21. In the case of Hitesh Varma vs. The State of Uttarakhand & Anr., Criminal

Appeal No.707 of 2020, the Supreme Court has held as under;

"14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors. 5 . The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due

to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe."

22. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Subclauses (I) to (xv) of Section 3(1) of the Act enumerated various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Subclause(x) is the only clause where even offending "utterances" have been made punishable. The Legislature required intention as an essential ingredient for the offence of "insult", "intimidation" and "humiliation" of a member of the Scheduled Castes or Scheduled Tribe in any place within "public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.

23. The plain reading of the F.I.R. filed by the first informant undoubtedly prima facie discloses various accusations against the first informant by the applicants in the name of the Schedule Castes and Schedule Tribes. It also prima facie discloses abuses having been uttered by the applicants and addressed to the first informant in the presence of her friend. However, as rightly submitted by the learned advocate for the applicant, the F.I.R. nowhere discloses those accusations having been made in a place within the "public view". 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 Schedule Castes or Schedule 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 also the allegations in the F.I.R. which relate to the acts of the applicants-accused in the drawing room of the house of the accused No.1, and in the absence of any stranger, can hardly be said to be accusations by the applicant to the first informant "within the public view". On this count itself, the applicant 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 Act.

24. So far as the contention of the learned advocate appearing for the first informant regarding the interpretation to be given to the expression "within

public view" cannot be accepted. In fact, to construe the said expression in the manner the learned advocate appearing for the first informant wants me to construe, the same would virtually amount to legislate upon the said provision in the statute and that is beyond the scope of the powers of the Court. That falls entirely within the domain of the legislature. Therefore, the said contention is required to be rejected and, hence, rejected.

25. I am well supported in my view by two decisions of the Supreme Court (i) Asmathunnisa Vs. State of A.P. reported in 2011 Cri.L.J. 2594; and (ii) Swaran Singh and Ors Vs. State through Standing Counsel and Anr. Reported in 2008 Cri.L.J. 4369.

26. In the case of Asmathunnisa (Supra), the Supreme Court considered the question whether in the absence of real aggrieved person present at that point of time, when the offence is alleged to have occurred, could it be said that such person was insulted "within public view". The Supreme Court took notice of the Kerala High Court decision in Para9, which reads as under:

9. In this connection, learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in E. Krishnan Nayanar v. Dr. M.A. Kuttappan and others, 1997 Cri LJ 2036. The relevant paragraphs of this judgment are paras 12, 13 and 18. The said paragraphs read as under:

"12. A reading of Section 3 shows that two kinds of insults against the member of Scheduled Castes or Scheduled Tribes are made punishable one as defined under subsection (ii) and the other as defined under subsection (x) of the said section. A combined reading of the two subsections shows that under subsection (ii) insult can be caused to a member of the Scheduled Castes or Scheduled Tribes by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood, and to cause such insult, the dumping of excreta etc. need not necessarily be done in the presence of the person insulted and whereas under subsection (x) insult can be caused to the person insulted only if he is present in view of the expression "in any place within public view". The words "within public view", in my opinion, are referable only to the person insulted and not to the person who insulted him as the said expression is conspicuously absent in subsection (ii) of Section 3 of Act 3/1989. By avoiding to use the expression "within public view" in subsection (ii), the Legislature, I feel, has created two different kinds of offences an insult caused to a member of the Scheduled Castes or Scheduled Tribes, even in his absence, by dumping excreta etc. in his premises or neighbourhood and an insult by words caused to a member of the Scheduled Castes or Scheduled Tribes "within public view" which means at the time of the alleged insult the person insulted must be present as the expression "within public view" indicates or otherwise the Legislature would have avoided the use of the said expression which it avoided in subsection (ii) or would have used the expression "in any public place".

13. Insult contemplated under subsection (ii) is different from the insult

contemplated under sub-section (x) as in the former a member of the Scheduled Castes or Scheduled Tribes gets insulted by the physical act and whereas in the latter he gets insulted in public view by the words uttered by the wrongdoer for which he must be present at the place.

xxx xxx xxx

18. As stated by me earlier the words used in sub-section (x) are not "in public place", but "within public view" which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view, the entire allegations contained in the complaint even if taken to be true do not make out any offence against the petitioner."

27. In Para10, the Supreme Court reached to the following conclusion, which in my opinion clinches the issue in hand. Para10 reads as under:

"10. The aforesaid paragraphs clearly mean that the words used are "in any place but within public view", which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present."

28. As clarified by me the issue was little different before the Supreme Court, but the ratio that is discernable is that the "insult" if any, must be viewed by the "public".

29. The legal position would become more clear considering the ratio of the decision in the case of Swaran Singh Case (Supra).

30. In Swaran Singh's Case (Supra) the facts are that the complainant was working as a car driver under one Shri Umesh Gupta. He belonged to the Khatik caste. He used to stand near the car parked at the gate. His grievance was that every now and then Smt. Simran Kaur and her daughter while passing through used to abuse him by his caste. On 10.12.2014, in the morning while he was cleaning the car, both the mother and the daughter threw dirty water on him and abused him on his caste which was witnessed by the guard of the apartment and one another driver. While drawing distinction between public place and a place within public view, the Apex Court held as follows:

31. I may quote the observations made in Paras-27 and 28 as under;

"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."

32. Ultimately, in Para34, the Supreme Court concluded by observing as under:

"34. However, a perusal of the F.I.R. shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the F.I.R. to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against appellant no. 1."

33. I may also quote the judgment of the Supreme Court in the case of 'Gorige Pentaiah v. State of Andhra Pradesh and others reported in (2008) 12 SCC 531: (2008 AIR SCW 6901). The relevant paragraph of this judgment is as under:

"6. .. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellantaccused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

34. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based upon sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

35. In the case of State of Karnataka vs. L. Muniswamy, reported in (1977) 2

SCC 699, it is observed by the Apex Court that the wholesome power under Section 482 of the Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature and this case has been followed in a large number of subsequent cases of this Court and other Courts.

36. It appears that so far as the applicants in the Criminal Misc. Application No.7573 of 2014 are concerned, the allegations levelled against them are in the second part of the complaint, and as per the said allegations, they came into picture subsequently, i.e, when the complainant went to the house of the accused No.1 for demanding back her money and they are not at all concerned with the earlier transactions whatsoever took place between the complainant and the accused No.1. It also appears that nowhere in the complaint, there is any single allegation against them so far as the offence under Sections 406, 420 etc. of IPC are concerned. It is found out from the record that in the body of the complaint, the complainant has not mentioned anything about her caste or community. Secondly, it is imperative on the part of the complainant to mention, in the operative part of the complaint, that she belongs to a particular caste, community or religion and the said fact was within the knowledge of the accused persons and with an intent to insult or humiliate her, certain words/phrases have been used by the accused persons. Nowhere in the entire body of the complaint, the complainant has made any kind of accusation/allegation against the applicants herein about the specific role played by them. Whatever sequence of events of the incident narrated in the complaint are vague and general in nature. Nowhere in the entire body of the complaint, specific role played and actions taken by a particular accused is mentioned. The complaint is conspicuously silent about the specific role played by the individual accused, and in that event, in the absence of any specific role attributed to any of the accused in the entire body of the complaint which would attract the provisions of the Indian Penal Code as well as the Atrocities Act, I do not find it proper to allow the investigation to continue against the present applicants-accused. Therefore, I am of the opinion that the impugned complaint is required to be quashed and set aside. Hence, I pass the following order

ORDER

(i) The Criminal Misc. Application No.7573 of 2014 is allowed. The First Information Report being C.R. No.I-146 of 2014 registered with the Naranpura Police Station, Ahmedabad is hereby quashed and set aside qua the applicants-original accused Nos.2 to 5 only. All consequential proceedings pursuant thereto

shall stand terminated.

(ii) The Criminal Misc. Application No.8137 of 2014 is allowed in part. The First Information Report being C.R. No.146 of 2014 registered with the Naranpura Police Station, Ahmedabad so far as Section 3(1)(x) of the Atrocities Act is concerned, is hereby quashed. I clarify that this shall not come in the way of the Investigating Agency so far as the other offences under the Indian Penal Code are concerned. The investigation shall proceed further in accordance with law against the applicant-original accused No.1 so far as the offence under the provisions of the Indian Penal Code are concerned, and the same shall be completed at the earliest and an appropriate report shall be filed before the competent court so far as the original accused No.1 is concerned.

(iii) Rule is made absolute to the aforesaid extent. No order as to costs.