

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 1356 OF 2023**

Shailendra Bankebihari Singh

Age : 51 yrs; Occ : Business,

Residing at : 103, Air India Maharaja CHS,

Plot No-16, Sector-9, Vashi,

Navi Mumbai-400 703.

... Petitioner

V/s.

1) The State of Maharashtra

Through Pali Police Station,

Sudhagad Vide C.R. No.189/2022.

2) Laxman Raja Waghmare

Age : 66 yrs; Occ : Wage Labour,

Residing at : Ghodpapadadiwasiwadi,

Varadagaon, PO. Jambhulpada,

Sudhagad, Dist-Raigad.

... Respondent

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Rashmi Tiwari, Ms. Asmi Desai,
Ms. Sonam Pandey i/b Ms. Bhairavi Waravdekar, for the Petitioner.
Mr. Vinod Chate, A.P.P. for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.**

**RESERVED ON : 7th AUGUST, 2025
PRONOUNCED ON : 12th MARCH, 2026.**

JUDGMENT (Per : A. S. GADKARI, J.) :-

1) By this Petition under Article 226 of Constitution of India read with Section 482 of Criminal Procedure Code, 1973 ('Cr.P.C.'), the Petitioner is seeking relief of quashing and setting aside the FIR bearing CR No.189 of 2022, dated 27th December 2022, registered with Pali Police Station, Taluka Sudhagad, District Raigad, under Sections 3(1)(r), 3(1)(s) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 504 of the Indian Penal Code, 1860.

2) Heard Mr. Rajiv Chavan, learned senior Advocate for the Petitioner and Mr. Vinod Chate, learned APP for the Respondent No.1-State. Perused entire record and the Affidavit in Reply filed by the Respondent No.2 dated 21st August, 2023.

3) Record indicates that, by an Order dated 14th February, 2023, this Court had directed that, the investigation of the present crime to continue however chargesheet will not be filed without leave of the Court. The said relief was thereafter continued from time to time. By an Order dated 1st December, 2023, the Petition was admitted and the ad-interim relief granted by Order dated 14th February, 2023, was confirmed as interim relief.

3.1) It be noted here that, the Respondent No.2 has been duly served with the Notice of the Petition and after admission of Petition, Rule Notice has also been duly served upon Respondent No.2. The note put up by the Registry clearly mentions about the said fact. Despite service of notice and

granting an opportunity, non appeared for Respondent No.2.

4) It is the prosecution case that, the Respondent No.2 belongs to Hindu religion and of Katkari Caste. That, there is a water hand pump next to Jambhulpada Kalamb Road adjacent to the village of the Respondent No.2, where the women from the said village fills water. From there, a road leading to the farm house of the Petitioner proceeds. On the side of the said road, there is a cattle shade of Respondent No.2. Recently Petitioner compounded the area where the Respondent No.2 has usage of the footway. The Petitioner had knowledge that, the Respondent No.2 belongs to Katkari community and people of village as Katkaris. That, the land adjacent to Ghodpapad Adivasiwadi was brought by Petitioner and he put a compound of wires thereof three months prior to the date of lodgment of crime. It blocked the said road of Respondent No.2 leading to the said water hand pump. Therefore villagers of Ghodpapad Adivasiwadi had conveyed a meeting of villagers. In the said meeting, the Respondent No.2 alongwith Dnyaneshwar Harishchandra Ghogarkar, Harishchandra Aagasha Waghmare, Ram Nathu Waghmare, Ankush Barku Waghmare, Dnyaneshwar Shantaram Ghogarkar, Govind Tulshiram Waghmare, Kaluram Chander Pawar, Nivrutti Laxman Waghmare and Suresh Kisan Walekar, were present and requested the Petitioner to leave some space for their usage, upon which Petitioner told them 'you do your work, I will do the work as per my method' and left the spot.

4.1) That, on 25th November 2022, at about 5.00 p.m., when the Respondent No.2 was tethering the cattle in his cattle shed the Petitioner came there and started bickering with him in loud voice in Marathi language. At that time, the wife of Respondent No.2 namely Smt. Laxmi Waghmare, his daughter Smt. Vitha Deepak Jadhav, and Shri. Kaluram Pawar from the said village as well as sister of Respondent No.2 namely Smt. Anusaya Harishchandra Ghogarkar, her daughter Ms. Rani Dnyaneshwar Ghogarkar were present. It is alleged that, the Petitioner abused the Respondent No.2 on his caste. The Petitioner, thereafter constructed compound on the said land and blocked the road of hand water pump. In this brief premise, present crime is registered on 27th December, 2022.

5) Mr. Chavan, learned senior Advocate appearing for the Petitioner pointed out the material on record including the contents of the F.I.R. and submitted that, the lodging of present crime is manifestly attended with malafide and is maliciously instituted with ulterior motive to wreak vengeance against the Petitioner. He submitted that, there is unexplained delay of about 30 days while lodging the crime. That, the incident of alleged abuses on caste to the Respondent No.2 has taken place in a cow shade, which was neither a public place nor was within the public view. He submitted that, there is no independent witness to the said incident and the witnesses cited by the Respondent No.2 are either his friends or close relatives. In support of his contentions, Mr. Chavan, relied on following decisions.

(i) *Swaran Singh and Others Vs. State Through Standing Counsel and Anr, reported in (2008) 8 SCC 435,*

(ii) *Hitesh Verma Vs. State of Uttarakhand and Anr, reported in (2020) 10 SCC 710,*

(iii) *Javed Raza Shroff Vs. State of Maharashtra, (through the office of the Government Pleader) and Anr, 2022 SCC OnLine Bom 7223 : (2023) 1 Bom CR (Cri) 352,*

(iv) *Jagdish Sajjankumar Banka Vs. State of Maharashtra & Anr, reported in 2023 SCC OnLine Bom 581 : 2023 Cri LJ (NOC 199) 66.*

6) Mr. Chavan, therefore prayed that, present Petition be allowed by quashing the said crime.

7) Learned APP vehemently opposed the Petition. He submitted that, the delay in lodging F.I.R. is meager. That, the Petitioner being an Adivasi and semiliterate person, after consulting his fellow villagers has lodged the crime. He submitted that, from the F.I.R a *prima-facie* case is made out. That, the alleged incident has occurred at a 'public place' and within the 'public view'. That, the judgments relied upon by the learned senior Advocate are not applicable to the present case. He submitted that, the Respondent No.2 has filed an Affidavit dated 21st August, 2023, and the same may be considered. He therefore prayed that, the Petition may be dismissed.

8) Record indicates that, on 26th August, 2015, Petitioner had purchased an agricultural land admeasuring 91.5 ares in village Jambhulpada, Taluka Sudhagad, District Raigad, by executing a Sale-deed.

That, on 12th August, 2022, the concerned Surveyor conducted survey of the said land. At the time of the said survey the Respondent No.2 realized that, he has erected a shade/hut in the land of the Petitioner and therefore approached the Petitioner for willful and amicable settlement. The Respondent No.2 accordingly executed Consent Letter dated 9th August, 2022. The said Consent Letter is duly signed by the Petitioner and Respondent No.2. As per the Consent Letter, the Petitioner has paid the Respondent No.2 a sum of Rs.1,30,000/- by way of cheques and Rs.30,000/- in cash. The Petitioner thereafter erected boundaries on his said agricultural land. The said boundaries/compound was of iron angles and wires. On 10th November, 2022, caretaker of the Petitioner namely Mr. Roshan G. Gaikwad informed him that, some unknown person have uprooted the 66 iron angles and iron wires fixed thereof and stolen it. The Petitioner therefore registered CR No.156 of 2022 on 16th November, 2022, with Pali Police Station, District Raigad, under Sections 379 and 427 of the Indian Penal Code, 1860, against unknown persons.

8.1) At the time of conducting survey, Petitioner had also noticed that, in his land some houses and/or shades were illegally constructed and therefore he made a Complaint dated 21st November, 2022, with Group Grampanchayat, Jambhulpada, Taluka Sudhagad and requested it to stop construction of the said houses and also to remove the said encroachment. The said Group Grampanchayat therefore issued a Notice dated 27th

December, 2022, to the Respondent No.2 and called upon him to produce necessary and relevant documents before the Sarpanch of the said village for verifying the claim of the Petitioner. As the villagers of the said Ghodpapad Adivasiwadi were facing difficulties for getting water from the hand pump, as stated in the F.I.R., an meeting was conveyed wherein apart from the other villagers Mr.Kaluram Pawar, was also present. The said fact is stated by the Respondent No.2 in paragraph No.2 of his F.I.R. In this admitted facts on record present crime is registered on 27th December, 2022, for an alleged offences committed by the Petitioner on 25th November, 2022.

9) Perusal of F.I.R. clearly indicates that, there is delay of about 30 days in lodging the crime. The said delay has not at all been explained by the Respondent No.2. It appears from the record that, the Respondent No.2 is a semiliterate person. The alleged incident of abusing the Respondent No.2 on his caste took place in the evening of 25th November, 2022, in the cow shade of Respondent No.2. At that place all the family members and the said Kaluram Pawar were present. The witnesses are either close relatives of the Respondent No.2 or friend or interested persons only and there was no independent witness present thereof. The said incident did not take place either in the 'public view' or at a 'public place'.

10) The Hon'ble Supreme Court in the case of *Swaran Singh and Others Vs. State Through Standing Counsel and Anr (supra)*, has held that, abuses on the caste should be in the presence of independent witnesses. The

independent persons may not be those persons who are close relatives, friends of the complainant. The Hon'ble Supreme Court has further elaborated the terms 'public place' and 'public view' in the said decision.

10.1) As per the contents of F.I.R., the allegations of abusing the Respondent No.2 on his caste were within the four walls of his cow shade and therefore in view of the decision in the case of *Swaran Singh and Others Vs. State Through Standing Counsel and Anr (supra)*, it cannot be said to be a place within the public view, as none of the said witness present at the scene of offence, was an independent witness.

11) The Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors., reported in 1992 Supp (1) SCC 335*, while enumerating the powers under Section 482 of the Indian Penal Code and Article 226 of the Constitution of India, in para No.102 has observed as under :-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR 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.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (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.."*

12) After considering the entire material available on record it clearly appears to us that, the case of the Petitioner is covered by clause (7) of Paragraph No.102 of the decision of the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors., (supra)*.

13) In view of the above, Petition is allowed in terms of prayer clause (B)

13.1) Rule is made absolute in the aforesaid terms.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)