

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC. APPLICATION NO. 14604 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SALAT SANTIBHAI S/O SAMATBHAI & 3 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

Appearance:

MR JM BAROT(143) for the Applicant(s) No. 1,2,3,4

MR PRANAV TRIVEDI APP for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 28/02/2023****ORAL JUDGMENT**

1. By way of this application filed under Section 482 of the Code of Criminal Procedure, the applicants, seek to quashment of the **FIR** being **II.CR. No. 101 of 2016, registered with Vijapur Police**

Station, Mehsana, for the offences punishable under Sections 323, 504, 506(2), 114 of the IPC and under Section 3(1)(x), 3(2)(v) of the Schedule Castes and Schedule Tribe (Prevention of Atrocity) Act, 1989.

2. Facts and circumstances giving rise to file the present application are that, the incident in question arise on 07.06.2016 at the place mentioned in the case papers. Parties are neighbours. The applicants and their family members were used to take water from the house of the complainant. On the day of incident, the complainant had cautioned and scolded the applicants as the family members of the applicants always caused damages to the house, when they entered into open field of the house to take water. It is in this background facts, it is alleged that, aggrieved with the act of the complainant, the applicants assaulted him by using stick and intentionally abuses her by uttering castiest slur. The FIR for the alleged incident came to be filed on 08.06.2016 and accordingly, offence has been registered. The applicants have approached this Court by way of this quashing petition. Vide order dated 27.06.2016, the Co-ordinate Bench of this Court issued Rule and granted interim relief in terms of para-9C of the petition.
3. Despite service of notice of Rule, the respondent no. 2 chosen remained absent.
4. Heard learned counsel Mr. J.M. Barot appearing for and on behalf of the applicants. He urged that, due to petty issue of taking water from the tap, the complainant has misused the process of law by resorting

the provisions of Atrocities Act and other Sections of the IPC. He would further submit that, the principal accused Salat Shantibhai has already been expired on 26.05.2013. The applicant no. 4 – Sunil was juvenile at the time of incident. The applicant nos. 2 and 3 were not present at the time of incident. In such circumstances, he submitted that, this is a classic example of misusing of the provision of the Atrocities Act. He would submit that, even if the allegations by the first informant are accepted as true, none of the ingredients to constitute the offence punishable under Section 3(1)(x) and 3(2)(v) of the Atrocities Act is satisfied and therefore, continuation of the prosecution will amount to gross abuse of law.

5. On the other hand, learned State Counsel Mr. Pranav Trivedi, submitted that, plain reading of the FIR discloses commission of the cognizable offence under the IPC as well as Atrocities Act and therefore, Court must not embark upon an inquiry whether the allegations leveled are true or false in the proceedings under Section 482 of the Cr.P.C.
6. Having regard to the facts and circumstances of the present case, the question is whether the FIR and consequential proceeding therefrom are required to be quashed or not?
7. Having regard to the facts and circumstances of the present case and on perusal of the allegations leveled in the FIR, it is difficult to believe the version of the complainant that all the accused have insulted her by using castiest slur. It needs to be noted that age of the accused no. 4 at the time of incident was 9 years, and presence of

applicant nos 2 and 3 are seem to be doubtful. Prior to the FIR, the accused No. 1 Shantilal Salat has expired. In the case of **Gorige Pentaiah Vs. State of A.P. (2008) 12 SCC 531**, the Apex Court, in para-6 of the judgment, observed 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 appellant-accused 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."

8. In the case on hand, the complainant have not alleged that the applicants were not a members of the Schedule Caste and Schedule Tribe and she was intentionally insulted or intimidated by the accused applicants with an intent to in a place within a public view. In such circumstances, the basic ingredients of the offence under the Atrocities Act are missing in the compliant. Thus, therefore, this Court is of the considered view that, the allegations made in the FIR,

even if they are taken in its face value and accepted in its entirety do not prima-facie constitute offence under the provisions of Section 3(1)(x) and 3(2)(v) of the Act.

9. The applicants have been charged with Section 323, 504, 506(2) and 114 of the IPC. Before the incident, the accused no. 1 has already been expired. The death certificate shows that he expired on 26.05.2013. The accused no. 4 aged about 9 years was juvenile at the time of incident. The accused Nos. 2 and 3, who are sons of accused no.1, were not present at the place. In such circumstances, the case of assault and criminal intimidation as alleged by the complainant, cannot be believed. It is settled by catena decisions of the Apex Court that, Court must ensure that criminal proceedings is not used as an instrument or for seeking private vendetta or with ulterior motive to pressurize the accused. Thus, the allegations made in the FIR are seem to be inherently improbable for the reason that accused no.1, though expired, has been falsely implicated by the complainant, whereas, the accused nos 2 and 3, who were not present at the place, have also been arraigned as an accused.
10. For the aforesaid reasons, the continuation of the proceedings against the applicants are sheer abuse of process of law and court and for the ends of justice, this is a fit case to exercise inherent powers to quash the questioned FIR.
11. Resultantly, this application is allowed and the impugned **FIR being II.CR. No. 101 of 2016, registered with Vijapur Police Station, Mehsana** filed against present applicants is hereby quashed and set

aside and all other proceedings arising out of the aforesaid FIR are also quashed and set aside. Direct service permitted.

P.S. JOSHI

(ILESH J. VORA,J)