



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3176 OF 2023

Kedar Kishor Bhusari
Age: 42 years, Occu.: Legal Practitioner,
R/o.82, Baliram Peth, Jalgaon.

.. Applicant

Versus

1. State of Maharashtra
Through Investigating Officer,
Jalgaon Police Station,
Taluka and District Jalgaon.
2. Pawan Ramesh Ghosar,
Age: 39 years, Occu.: Business,
R/o. Gat No.302/07, Plot No.14/15,
Narmada Niwas, Dudh Federation Road,
Bharatnagar, Jalgaon.

.. Respondents

...
Mr. S. V. Dixit, Advocate for the applicant.
Mr. N. R. Dayama, APP for respondent No.1/State.
Mr. H. V. Tungar, Advocate for respondent No.2 (Appointed).
...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 07 APRIL 2025
PRONOUNCED ON : 30 APRIL 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed initially for quashing the FIR vide Crime No.238 of 2023 dated 07.08.2023 registered with Jalgaon City Police Station, District Jalgaon and later on, by way of amendment, for quashing the proceedings in Special Case No.232 of 2023, pending before the learned Special Judge, under the Atrocities Act/Additional

Sessions Judge, Jalgaon for the offences punishable under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”).

2. Heard learned Advocate Mr. S. V. Dixit for the applicant, learned APP Mr. N. R. Dayama for respondent No.1/State and learned Advocate Mr. H. V. Tungar, who is appointed for respondent No.2 .

3. Learned Advocate appearing for the applicant submits that the applicant is a practicing Advocate and the contents of the FIR and charge-sheet would show that he had absolutely no intention to insult a particular caste in the video, which he had sent to the Assistant Commissioner of Jalgaon Municipal Corporation. Even respondent No.2/informant himself in the FIR states that there is a WhatsApp group of his community and on 05.08.2023, around 20.47 hours, one of the member of that group Mr. Golu Karosiya had shared the video of the present applicant. If the said video is seen it is in the voice of present applicant and it can be seen that there is a heap of garbage and debris, pigs were wandering near the garbage and thereby causing nuisance. The workers from Municipal Corporation were not picking the garbage daily and, therefore, applicant was annoyed. He had used the words that the pigs are sent from “*Bhangiwada (भंगीवाडा)*, *Mehtarwada (मेहतरवाडा)*”

and, therefore, the authorities should pick the garbage/debris. In the FIR also, it is stated that the said video was sent by the present applicant to Assistant Commissioner, Mr. Uday Patil, who had then shared it on the WhatsApp group of workers of Municipal Corporation "Health Department". Respondent No.2 states that he is member of Scheduled Caste and he relies on some Notification / Circular issued by the Government, wherein the Government has insisted that instead of using word like "*Bhangiwada*", it should be referred as "*Rukhiwada*" (रुखीवाडा) or "*Walmikiwada*" (वाल्मिकीवाडा) and the caste "*Bhangi*" (भंगी) should not be used. Instead of that word "*Rukhi*" (रुखी) or "*Walmiki*" (वाल्मिकी) should be used. Even if that circular is taken as it is, the statement that has been made by the present applicant is absolutely not intending to insult anybody. The statement of witnesses are also on the same line and those witnesses have come to know about the video only after it was forwarded by Golu Karosiya. The applicant wanted Assistant Commissioner to take action and even the applicant could not have imagined that said Assistant Commissioner, on his own, would forward the video in the group of the informant. It also reveals that the informant is not the member in the WhatsApp group of "Health Department". If there are uncontrolled forwards to the said video, the applicant cannot be held responsible for the same and, therefore, it would be an abuse of process of law. if he is asked to face the trial.

4. Learned APP as well as learned Advocate, who has been appointed to represent the cause of respondent No.2, strongly opposed the application. Learned Advocate for respondent No.2 relies on the Circular dated 16.04.2003 issued by Social Welfare, Cultural, Sports and Special Assistance Department of the Government of Maharashtra stating that word "*Bhangi*" used in the Government Administration Department, Schools, Colleges, Institutions in its record should be replaced by word "*Rukhi* or *Walmiki*". The place which is earlier known as *Bhangiwada* should now be recognized as *Rukhiwada* or *Walmikiwada*. He submits that from the video it can be seen that it is in the voice of applicant and the applicant is not denying the same. The applicant by showing the situation on 05.08.2023 in the main Chowk in Baliram Peth says that "Pigs were roaming around, which is causing annoyance to people. The persons who are the garbage are not coming daily and that is why the pigs from *Bhangiwada* and *Mehtarwada* are left towards the said garbage. Action should be taken as the Public Health is in danger." This dialogue indicates that those pigs are intentionally left by the persons residing, in his words, in *Bhangiwada* and *Mehtarwada*. This amounts to insult of the community and it has been so taken by the witnesses. The statement of witness Uday Madhukar Patil would show that he has received the said video from the applicant. He has stated that the complaints received by him are put on the WhatsApp group of

Health Department of Municipal Corporation Jalgaon with an intention that the grievance of those complaints is redressed immediately. In the said group, Main Chief Inspector of Health Department, Health Inspector, Unit Heads and Mukadam are included. Statement of witness Hemant @ Golu Chotu Karosiya would show that he had forwarded it to the group by name "*Shriman Jaychand Bhagat Ji Sonwal Gurudev*," which is of the community of the informant and the witness himself. Certainly, the applicant should respect the members of other communities also and whatever action was taken by him is only with an intention to insult a members of Scheduled Caste. This not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5. Before turning towards whether the ingredients of the offence are made out or not, certain facts are required to be taken note of. First of all, the applicant is not disputing that he had prepared the said video. The second fact that is emerging is that the informant or any member of his WhatsApp group was not present when the video was prepared by the applicant. The investigation has not been revealed that when the applicant was preparing the video, there was any member of Scheduled Caste present at the spot and the applicant was aware that the said person is member of Scheduled Caste or Scheduled Tribe. The third fact which is coming on record through FIR and the charge-sheet is that

after the video was prepared by the applicant, he had sent it to the WhatsApp of Mr. Uday Patil, the Assistant Commissioner, Municipal Corporation, Jalgaon. This Court, time and again, has taken note of the fact that the communications on WhatsApp between two individuals is encrypted and, therefore, unless the person receiving it forwards it to third person, the third person will not get any knowledge about the said communication between the earlier two persons. Therefore, in the present case, what witness Uday Patil has stated in his statement under Section 161 of the Code of Criminal Procedure is important. In the aforesaid paragraph, the portion of his statement has been stated regarding why the WhasApp group has been created by him under the name “Health Department” and who are included in the said group as members. The purpose he has stated is that when he receives complaints from common people daily on WhasApp, he forwards it to the group with an intention that the said grievance would be redressed by the appropriate worker or the Superior, whose duty it is to maintain the cleanliness or health related issues. He also states that he had received the video from the applicant on his personal number of WhatsApp. He has sent the video clip and then he says that without applying mind and in hurry, he forwarded the said video on the Whatsapp group “Health Department” under the impression that the said complaint is in respect of not picking the garbage. He then states that thereafter he received

complaints about the said video and, therefore, he had re-looked at the said video, wherein the disputed words were used and, therefore, he deleted the said video from the WhatsApp group. Thus, it is to be noted that the said forward by witness Uday Patil was not under the control of the applicant. Prosecution at this stage has not come with the case that Mr. Uday Patil is a member of Scheduled Caste i.e. of the same community to which the informant belongs. When witness Uday Patil states that without application of mind and in hurry he had forwarded the said video under the impression that it is the complaint in respect of not picking the garbage, then it probably appears to be the same intention of the applicant behind sending video to Mr. Uday Patil.

6. Even in the statement of witness Hemant @ Golu Chotu Karosiya it can be seen that he is working as Sweeper on contract with Civil Hospital, Jalgaon. He states that in the evening of 05.08.2023, he received video clip on his mobile from one Pawar. He has not stated in his statement under Section 161 of the Code of Criminal Procedure that he is member of WhatsApp group "Health Department" which is created by witness Uday Patil. Now, witness Golu Karosiya has not stated the full name of said Pawar from whom he had received the clip. Interestingly, the investigating officer has not taken statement of said Pawar. Whether said Pawar is member of WhatsApp group "Health Department" has not been collected. Thus, this appears to be another

classical example of forwards on the WhatsApp groups and WhatsApp of individuals without application of mind or without considering the consequences.

7. We have seen the said circular dated 16.04.2003. In fact, it appears that there was a circular issued prior to that i.e. circular dated 09.11.2000 issued by the Government, wherein those guidelines were given as to where words “*Rukhi*” and “*Walmiki*” and “*Rukhiwada*” and “*Walmikiwada*” are required to be used, however, paragraph No.2 of the said circular dated 16.04.2003 stipulates thus :-

“२. वर नमूद केलेले परिपत्रक “रुखी” किंवा “वाल्मिकी” या शब्दाचा शब्दप्रयोग दैनंदिन व्यवहार, व्यावहारिक देवाणघेवाण व प्रचलित शासकीय पत्रव्यवहारात व्हावा या उद्देशाने काढण्यात आले आहे, परंतु याचा कोणताही विपरित परिणाम संविधानात उल्लेखिलेल्या शब्द किंवा तत्सम शब्द, सफाई कामगार बंधूसाठी केलेल्या कायदेशीर तरतूदीवर आणि त्यानुसार त्यांना मिळत असलेल्या फायद्यांवर होणार नाही”

It is stated that the Circular dated 09.11.2000 has been issued with an intention that words *Rukhi* and *Walmiki* should be used in daily transactions, communications and Government communications, however, the circular does not affect the words which are used in the Constitution of India, which gives benefit to the Sweepers under Legal Provision. Thus, it is to be noted that the intention of the circular is

limited and the circular does not intend to replace the words those are already there in the Constitution of India. The reliance of the informant on this circular is uncalled for or in a sense that it cannot be so used as the informant intends to use it.

8. Turning back to the first point regarding the facts, we have already noted that the prosecution in the charge-sheet has not stated that at the spot, where the applicant was preparing the video, any member of Scheduled Caste was present. For proving the offence under Section 3(1)(r) of the Atrocities Act, it has to be proved by the prosecution even *prima facie* that the person who is not the member of Scheduled Caste or Scheduled Tribe has intentionally insulted or intimidated a member of Scheduled Caste or Scheduled Tribe in any place within public view. Further, for proving offence under Section 3(1)(s) of the Atrocities Act, the prosecution even *prima facie* will have to show that the said person who is not the member of Scheduled Caste or Scheduled Tribe has abused any member of Scheduled Caste or Scheduled Tribe by caste name in any place within public view. Thus, in order to prove these two offences, a particular community should be targeted or a particular member of Scheduled Caste or Scheduled Tribe should have been targeted. If we consider the specific statement which is stated to have been uttered in the impugned clip it states “...कचरा उचलुन घेणारे सुध्दा रोज येत नाहीत त्याच्यामुळे हे डुक्कर इकड भंगीवाडा मधुन, मेहतरवाड्यामधुन इकड

सोडले जात आहेत. याचेवर त्वरीत कारवाई करावी याच्यामुळे सार्वजनिक आरोग्य धोक्यात आलेले आहे...” These words cannot be considered as targeting or insulting or intimidating members of *Rukhi* or *Walmiki* caste. Certainly, the intention behind stating that, was to point out that pigs have come from a particular area which might be known with a name since years together. It was also submitted by the learned Advocate for the applicant that the applicant had two pet dogs and those pet dogs were let for answering nature’s call at night time on 12.11.2022. Nobody takes them, but on their own, when they were let go, they come back and, therefore, as usual, the wife of the applicant had kept the gate open after she had let the dogs go out. But those did not return on the next day. On the third day, she came to know from another person that two persons had killed the pet dogs of the applicant with sharp weapon. Then offence vide Crime No.346 of 2022 was lodged by his wife on 14.11.2022 for the offence under Section 429 of Indian Penal Code and under Section 11(1) (L) of the Prevention of Cruelty to Animals Act, 1960. Those persons against whom the said FIR has been lodged appears to have instigated the informant. We are not going to consider the said angle, as there is no concrete evidence put on record on behalf of the applicant, however, it appears from the FIR that the statement of the applicant while recording the video has been fabricated by the informant and the other witnesses from his community in their own way and, the person to whom the said

video was sent had not taken that clip having meaning which the informant and the others want to intend now. Therefore, under such circumstance, it would be an abuse of process of law if the applicants is asked to face the trial. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.238 of 2023 dated 07.08.2023 registered with Jalgaon City Police Station, District Jalgaon as well as the proceedings in Special Case No.232 of 2023, pending before the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Jalgaon for the offences punishable under Sections 3(1)(r), 3(1)(s) of the Atrocities Act, stand quashed and set aside as against the applicant - **Kedar Kishor Bhusari**.
- III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.7,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm