

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**Cr.M.P. No. 01 of 2021**

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Krishna Ballam Tiwary @ Krishna Ballabh Tiwari, aged about 61 years, s/o late Laxman Tiwari, resident of House No.203, Panki Road, Baralota, PO-Baralota, PS-Daltonganj, District-Palamau (Jharkhand)

..... Petitioner

-- Versus --

1.The State of Jharkhand

2.Govind Kachhap, son of not known to the petitioner, resident Engineer, Water Supply And Sanitation Division, Medninagar, Palamau, PO and PS-Medninagar, District-Palamau

..... Opposite Parties

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Indrajit Sinha, Advocate

Mr. Ankit Vishal, Advocate

For the O.P.No.2 :- Mr. Kumar Vaibhav, APP

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**7/02.08.2021** Heard Mr. Indrajit Sinha, the learned counsel assisted by Mr. Ankit Vishal, the learned vice counsel appearing on behalf of the petitioner and Mr. Kumar Vaibhav, the learned counsel appearing on behalf of the O.P.No.2.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The present petition has been filed for quashing of the entire criminal proceeding as well as the First Information Report of Palamau SC/ST P.S.Case No.09 of 2019, registered for the offence punishable under sections 341,323,504 and 506 of the Indian Penal Code and section 3(1)(d) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending in the court of learned Special Judge, SC/ST Act, Palamau at Daltonganj.

4. On the written report of the informant –Govind Kachhap, the case was registered alleging therein that the petitioner has abused him by naming his caste and also assaulted by fists and slaps and also thrown chairs of the office and that for the aforesaid sections the F.I.R was lodged.

5. Mr. Indrajit Sinha, the learned counsel appearing alongwith

his junior Mr. Ankit Vishal, the learned vice counsel on behalf of the petitioner submits that now the matter has been compromised between the O.P.No.2 and the petitioner and for that one I.A. being I.A. No.1653 of 2021 has been filed.

6. Mr. Kumar Vaishav, the learned counsel appearing on behalf of the O.P.No.2 submits that there is a compromise and there is no societal interest is involved in the case and in that view of the matter it can be quashed. He submits that the said I.A is also supported by affidavit of the O.P.No.2 namely, Govind Kachhap.

7. Mr. Indrajit Sinha, the learned counsel for the petitioner submits that in the light of "*Gyan Singh v. State of Punjab*", reported in *2013 1 SCC Cr.160*, the case stands covered and the FIR can be quashed. He further relied in the case of "*Shiji v. Radhika*" reported in *(2011) 10 SCC 705* and submits that it is well settled principle that in the cases where there is no chance of conviction against the accused and if the entire exercise of trial is continued to be exercised in futility, the Court can interfere. He relied in paragraph no.17 of the said judgment, which is quoted hereinbelow:

*"17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC."*

8. He further submits that recently the Hon'ble Supreme Court has considered the case of public view in the case so far as SC/ST Act is concerned in the case of "*Hitesh Verma v. State of Uttrakhand*", reported in *(2020) 10 SCC 710*. Paragraph nos.14 and 15 of the said judgment are

quoted hereinbelow:

*“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 v. State. 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 (sic). The Court held as under: (SCC pp. 443-44, para 28)*

*“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.”*

*(emphasis in original)*

**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."*

9. In view of the above and considering the submissions of the learned counsel appearing on behalf of the petitioner as well as the O.P.No.2 and also looking into the I.A. being I.A. No.1653 of 2021 supported by the affidavit of O.P.No.2, the Court comes to the conclusion that there is no societal interest involved and there is no chance of conviction in view of the further development as it has been considered by the Hon'ble Supreme Court in the cases stated supra.

10. Accordingly, the entire criminal proceeding as well as the F.I.R of Palamau SC/ST P.S.Case No.09 of 2019 registered for the offence punishable under sections 341,323,504 and 506 of the Indian Penal Code and section 3(1)(d) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending in the court of learned Special Judge, SC/ST Act, Palamau at Daltonganj is quashed and set aside.

11. Cr.M.P. No.01 of 2021 as well as I.A.No.1653 of 2021 stand allowed and disposed of.

12. I.A., pending if any, also stands disposed of.

**( Sanjay Kumar Dwivedi, J)**

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