

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2963 of 2022**

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PRATAPBHAI KANUBHAI DODIYA
Versus
STATE OF GUJARAT

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Appearance:

MR RUTVIJ S OZA(5594) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 04/04/2022

ORAL ORDER

Notice returnable on 29.06.2022. Learned APP waives service of notice for the respondent-State.

Learned advocate for the petitioner has submitted that Sections 3(1)(R)(S) and 3(2)(5A) of the Atrocities Act would not be applicable in the present case, even Section 506(2) of the Indian Penal Code, 1860 would not be applicable at all, as there is no threat of life to the complainant. He has submitted that it is not averred that the words were spoken by a person, who was not a member of the Scheduled Caste or Scheduled Tribe. He has also submitted that according to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the petitioner was not a member of the Scheduled Caste or a Scheduled Tribe and the respondent no.2 was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. He has submitted that in the entire complaint, nowhere it is mentioned that the petitioner was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent in a place within public view.

Learned advocate for the petitioner has submitted that when the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the petitioner to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law. He has submitted that as per the decision of the Supreme Court in the case of Gorige Pentaiah vs. State of Andhra Pradesh, 2008 (12) SCC 531, there has to be an averment in the FIR that the complainant is from the Scheduled Caste or Scheduled Tribes and the accused persons are not from the said caste and this averment is not in the present complaint and hence, the elements of an Atrocity Act could not be applicable in the present case.

In view of the facts and circumstances, in the meantime, no coercive steps shall be taken against the petitioner-accused. However, the investigation shall proceed further. The petitioner-accused shall fully cooperate with the investigation. The petitioner-accused shall remain present as and when summoned by the Investigating Officer. The Investigating Officer shall prepare a report/ draft-charge-sheet and produce it before this Court, after the investigation is over.

In case, the petitioner-accused does not cooperate with the investigation, it will be open for the Investigating Officer to invite the attention to the learned APP for such non-cooperation.

Direct service is permitted.

(A. S. SUPEHIA, J)

ABHISHEK