

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 5112 of 2019**

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KANTIBHAI RAMABHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

MR JAYANT PANCHAL for MR TATTVAM K PATEL(5455) for the

Applicant(s) No. 1

for the Respondent(s) No. 2

MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the

Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE S.H.VORA****Date : 28/08/2019****ORAL ORDER**

Prima facie, it appears that the respondent No.2 remained continuously absent from the service, for which, various notices from the year 2015 onwards were issued and served. Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 obliges the complainant in opening recital, to plead the case that the accused is not the member of the said Act. No such plea is taken in the F.I.R. itself and, therefore, amended provision of section 18 of the said Act would not come into play in the present proceedings in view of the decision rendered in the case of George Pentaiah v/s. State of Andhra Pradesh reported in 2008 (12) SCC 531 and therefore, present petition deserves consideration.

Notice returnable on 27.11.2019. Learned APP waives

service of notice for the respondent – State. Meanwhile, no coercive steps shall be taken against the petitioners. However, the investigation shall go on in accordance with law. Meanwhile, charge sheet shall not be filed without prior permission of the Court. Direct service permitted.

(S.H.VORA, J)

SHEKHAR P. BARVE