

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION FOR LEAVE TO APPEAL (PVT) NO. 2172 OF 2023

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SITARAM
WAGHMARE

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Dr. Milind Vivekanand Nagarkar

Aged 48 years, Occ.: Doctor

Indian Inhabitant, residing at

C/202, Yashopuram Vasant

CHSL, Opp. V.K. High School,

Ghaate Aali, Panvel- 410 206.

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...Applicant

Versus

1. Leena Vivek Masal,

Age 51 years, residing at Room No. 7,

Plot No. 6, JNPT Employee's Society,

Dronagiri, Opp. JNPT Township, Sheva,

Navi Mumbai -400 707.

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2. Manisha Uday Sonar,

Age 48 years, residing at B54/1, Sector 3

JNPT Township, 400 707.

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3. The State of Maharashtra,

through Public Prosecutor,

High Court, Bombay.

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...Respondents

Mr. Rushikesh Nabar i/b Dr. Uday P. Warunjikar for the Applicant.

Mr. Amit Icham for Respondent No.1.

None for Respondent No.2.

Mr. D. J. Haldankar, APP for the Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 16th OCTOBER, 2026

JUDGMENT :

1. Heard learned counsel for the Parties. Perused the record.

2. By this application under Section 378 (4) of the Code of Criminal Procedure, 1973 ('CrPC' for short) Applicant-Orig. Complainant is seeking leave to file appeal against judgment and order dated 10.11.2022 passed by Additional Sessions Judge, Panvel- Raigad, in Special (Atrocity) Case No. 14 of 2019 (Old No. 6 of 2013). By the said impugned order, Respondents-Accused Nos. 1 and 2 are acquitted of offences punishable under Sections 3(1)(viii), 3(1)(ix) and 3(2)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said Act' for short).

BACKGROUND

3. The case of the Applicant-Orig. Complainant in short is as follows. That he is a medical practitioner by profession having brilliant academic carrier. That he belongs to *Hindu Chambhar* community. That Respondent-Accused No.1 is running a beauty parlour in JNPT township and her husband is employee of JNPT. That Respondent -Accused No.2 is housewife. That on 30.06.2005, when the Applicant was on duty in the JNPT Hospital along with 3 staff-nurses and 2 attendants, at about 10:25 p.m. Respondent -Accused No. 1 and one JNPT Employee came for treatment of body ache, fever etc. That the Applicant examined Respondent-Accused No.1 in sitting position in front of 3 staff nurses and prescribed necessary medicine. That staff nurse gave injection and tablet. That on 01.07.2005 at about 11:00 a.m., Applicant was called at Nhava Sheva Police Station. That when he came to the police station, police officers abused him, the Applicant was humiliated at the police station and he was booked for offence punishable under Section 354 of the Indian Penal Code, 1860, ('IPC' for short). That Accused No. 1 had lodged false complaint of molestation and gave false evidence thereby

causing defamation of the Applicant. That Accused No.2 had given false evidence. That police officers abated a false crime and JNPT officials acted on such false crime. That JNPT officials were also present there, who also abused the Applicant referring to his caste. That President of JNPT and labour trustee designed a plot to remove the Applicant. That Accused Nos. 6 and 4, gave publicity to the arrest of the Applicant in print media. That Applicant was charged and tried in R.C.C. No. 114 of 2005 for outraging modesty of the women. That Trial was conducted against the Applicant and Learned Judicial Magistrate, First Class, Uran by its judgment and order dated 30.06.2006 has acquitted the Applicant. That due to false report lodged by Respondent-Accused No.1 and due to the Trial against Applicant (in which he is acquitted) Applicant suffered humiliation, insult and harassment.

4. Hence, after acquittal, present complaint was filed against as many as 14 accused, out of which accused Nos. 3, 5, and 9 are police officers and Accused Nos. 4, 6, 7, 8 and 9 are office bearers of JNPT. However, the complaint was dismissed against accused Nos. 3, 4 and 6 to 14 and Accused No.5 was discharged. Charges were framed. Remaining Accused Nos. 1 & 2 - Respondents denied the charges and claimed to be tried. The Applicant examined himself by entering into witness box.

5. The Additional Sessions Judge who heard and tried the case was pleased to acquit Respondents by the impugned order. In these circumstances, the Applicant- Orig. Complainant is before this Court seeking leave to file appeal against acquittal.

6. The advocate for Applicant is appointed through legal aid as per order dated 25.11.2024.

SUBMISSIONS

7. Learned counsel for the Applicant-Complainant submitted as under. That the learned Sessions Judge proceeded on the footing that the prosecution was obliged to prove that JNPT authorities designed a plot and that Respondent Nos. 1 and 2 acted in furtherance of a conspiracy with JNPT officials for removal of the Applicant. That this was never the charge. That charge was confined to Sections 3(1)(viii), 3(1)(ix) and 3(2)(ii) of the said Act and no charge of criminal conspiracy under Section 120B of IPC and no allegation of designed plot with JNPT officials was framed. That the learned Sessions Judge has considered extraneous requirement not provided under law. That the learned Sessions Judge has traveled beyond the charge. That Sections 3(1)(viii), 3(1)(ix) of the said Act do not require proof of intention or motive unlike Sections 3(1)(ii) and 3(1)(x) of the said Act. That deliberate use of intent in some sub-clauses and its conspicuous absence in other sub clauses ought to have been considered. That the learned Sessions Judge insisted proof of a conspiratorial design is illegal. That order dated 30.06.2006 of acquittal of the Applicant shows that the complaint of Respondent No.1 was false and the circumstances indicated concoction prior to lodging of the complaint. That the order of acquittal is not appealed by the State or by Respondent Nos. 1 and 2, which has attained finality. That unchallenged findings in the order of acquittal ought to have been treated as compelling, if not conclusive evidence of falsity of complaint filed by Respondent Nos. 1 and 2. That caste certificate and caste validity certificate are exhibited documents establishing that Applicant belongs to the Scheduled Caste. That it is for the Respondent-Accused to demonstrate that they do not belong to higher caste than that of the Applicant-Complainant which burden is

not discharged. That the observations of the learned Sessions Judge that there is no 'whisper' in the complaint about the Respondent No.1 and 2 not being members of Scheduled Caste and Scheduled Tribe inverts the burden of proof. That Applicant's motive for filing private complaint is irrelevant for the ingredients of the offence alleged. That it was not proved that he filed a private complaint solely to seek reinstatement. That the Applicant suffered loss of employment, denial of reinstatement even after honourable acquittal and also suffered financial and emotional hardship due to conduct of Respondent Nos. 1 and 2. He relied on the judgment of *Shivkumar @ Baleshwar Yadav Vs. The State of Chhattisgarh in Criminal Appeal No.4502 of 2025 (SLP) (Criminal) No. 14625 of 2024 judgment dated 14.10.2025* in support of his submission about presumption under Section 8(c) of the said Act. According to learned counsel for the Applicant, the Respondent - Accused was having personal knowledge of the Applicant or his family and therefore Court ought to have presumed that the Respondent - Accused were aware of the caste of the Applicant.

8. *Per contra*, learned counsel for the Respondent No. 1 submitted that the presumption under Section 8(c) of the said Act cannot apply in the facts of the case because the said section has been introduced in the said Act much after filing of complaint. That the Respondents are already acquitted on appreciation of evidence and there is reinforced presumption of innocence. That unless perversity is shown in the impugned order, leave should not be granted. That the Applicant has only examined himself, who is obviously an interested witness and therefore his evidence has been rightly found as not sufficient proof beyond reasonable doubt. He submitted that since Section 8(c) was not on the statute book on the date of complaint, the

argument about the Respondent-Accused having personal knowledge of the Applicant or his family does not arise. In any case, it is submitted that there is nothing on record to indicate that Respondent Nos. 1 and 2 had any personal knowledge of the Applicant or his family. He invited the Court's attention to various admissions given by the Applicant-Complainant in cross-examination. That the acquittal of the Applicant-Complainant from the offence punishable under Section 354 of the IPC, in itself, will not make the allegations leveled by Respondent Nos. 1 and 2 as false and therefore even the ingredients of Sections 3(1)(viii), 3(1)(ix) and 3(2)(ii) of the said Act are not made out.

REASONS AND CONCLUSION

9. I have considered the rival submissions and perused the record.

10. At the outset, it is material to note that Applicant has examined himself and there are other independent witnesses. The Applicant-Complainant has admitted that his caste is nowhere displayed at JNPT Hospital where he was working as a Doctor. He has admitted that when Respondent Nos. 1 and 2 had came for treatment there was no interaction referring to the caste of Applicant. He has also admitted that in the report that was lodged by Respondent No.1 and even in the trial (in respect of offence under Section 354 of IPC) there was no mention about Applicant belonging to a particular caste. He has also admitted that another lady i.e. Smt. Sangita Dharmendra Patil had made complaint to JNPT against the Applicant of outraging her modesty and as a result he was suspended from 27.05.2004 to 08.02.2005. He has also admitted that when the medical officer examines a lady patient, one male person or her husband is asked to stand nearby,

however, when he examined Respondent-Accused No.1, though a male member by name Mr. Patil was present, he did not ask Mr. Patil to stand nearby. It appears that after resuming duties post suspension, after 4 months, the incident about outraging modesty had occurred.

11. At this stage, it would be apposite to reproduce sections 3(1) (viii), 3(1)(ix) and 3(2)(ii) of the said Act, under which the offence is alleged.

"3.(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

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3.(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or

upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

xxxx"

12. It is therefore clear that for offence under above sections to be proved, there has to be evidence beyond reasonable doubt that false malicious or vexatious suit or criminal or other legal proceedings are instituted against member of a Scheduled Caste or that any false or frivolous information is given to public servant thereby causing such public servant use his lawful power to the injury or annoyance of a member of a Scheduled Caste.

13. Similarly evidence is necessary to prove beyond reasonable doubt that the Respondents-Accused have given fabricated false evidence intending thereby to cause the Applicant to be convicted of an offence with imprisonment for a term of 7 years or upwards.

14. The Legal proceedings involved in the present case which were started against the Applicant-Complainant was criminal prosecution under Section 354 of IPC, he was punishable for a term which shall not be less than 1 year but may extend upto 5 years i.e. not 7 years or upwards. In that view of the matter, Section 3(2)(ii) cannot be attracted.

15. Next, it is necessary to consider the judgment and order of acquittal of the Applicant dated 30.06.2006. Perusal of the said judgment indicates that according to Respondent No. 1 (who was complainant therein) the Applicant, as a medical practitioner, intentionally pressed her breasts and repeated the act of pressing her

breasts even after she exhibited her resistance. It was argued before the learned Judge in that case that woman is the best Judge to analyse the sense of touch by a male. It came on record in the said judgment that the Applicant examined Respondent No. 1 at nurses counter by making her sit on the stool in front of her lady friend. Learned Judge in that judgment has held that there was an isolated cabin just next to the spot of incident and if the Applicant had any bad intention then he could easily facilitated himself for doing the crime by asking Respondent No.1 to examine her in closed cabin but he chose to examine her in nurses counter. This has been held as an act of 'gentlemanship' by the learned Judge in that judgment. The learned Judge found that the offence of molestation is not sufficiently proved and therefore the Applicant was acquitted.

16. Even if that be so, the said acquittal *per se* will not mean that allegation of Respondent No.1 is false malicious or vexatious or amounts to giving false or frivolous information to JNPT officials or amount to fabricating false evidence intending to cause the Applicant to be convicted of an offence. It is beyond doubt that a woman is the best judge to evaluate nature of a male's touch. The certificate of 'gentlemanship' given by the learned Judge in the earlier proceedings will not automatically make the allegations of Respondent Nos. 1 and 2 false.

17. In that view of the matter, the conclusion drawn by the learned Sessions Judge in the present case, acquitting Respondent Nos. 1 and 2 cannot be said to be perverse and the view taken by the learned Sessions Judge is the most probable view, even if the learned Sessions Judge has considered the aspect of conspiracy with JNPT officials in

detail. The learned Sessions Judge has considered the aspect of JNPT officials designing a plot and conspiring to remove the Applicant and has held that those allegations are not proved, because it was alleged in complaint. Overall, it cannot be said that other aspects about ingredients of the alleged offence are not considered at all.

18. So far as the argument of learned counsel for the Applicant that the burden of proving caste of Respondent Nos. 1 and 2 (accused) is on accused and reliance on the judgment of **Ashabai Machindra Adhagale Vs. State of Maharashtra and Ors. (2009) 3 SCC 789** is concerned, the said argument is misconceived, in as much as, in the said judgment, the accused had filed proceedings for quashing of FIR under the said Act contending that caste of accused is not mentioned in the FIR. Since the accused had filed proceedings for quashing, the burden was held to be discharged by the accused. In the present case at hand, the Complainant is challenging acquittal and it is the Complainant who wants the Court to hold that offence is proved. In that context, no fault can be found with the view adopted by the learned Trial Judge that there is no whisper in the complaint about caste of the accused. Therefore, the said argument does not have any merit.

19. Lastly, so far as the aspect of Respondent Nos. 1 & 2 having personal knowledge of Applicant or his family is concerned, first and foremost, it is material to note that Applicant has filed present complaint on 24.07.2013 and section 8(c) of the said Act has come into force on 26.01.2016. Therefore presumption under section 8(c) can not be applied to Respondents. Even assuming that such presumption is to be considered, it can not be held as proved in the teeth of following admissions given by the Applicant in cross-examination :

- i) That there was no enmity between Applicant and Respondent No.1.
- ii) That there was no occasion for the Applicant to visit the house of Respondent Nos. 1 and 2 and whenever Respondent Nos. 1 and 2 came to him as patient, there was no occasion to discuss his caste.
- iii) That in the complaint filed by Respondent-Accused No. 1 against the Applicant and in the trial against him (for offence Section 354 of IPC), there was no issue of Applicant belonging to a particular caste.
- iv) That he received advice from his advocate and he also realised himself that if action is to be taken against JNPT authorities then the same is to be taken in the present private complaint by making Respondent No. 1 and 2 as accused party and for this reason Respondent No. 1 and 2 were included as accused.
- v) That he has not challenged dismissal of the complaint against other accused including JNPT officials and he could not independently take action against JNPT officials.
- vi) That he has sympathy towards Respondent Nos. 1 and 2.

20. In the teeth of aforesaid admissions, it cannot be said that it is proved that Respondent Nos.1 and 2 were having personal knowledge of the Applicant or his family. Therefore, there is no question of presumption against the Respondent Nos. 1 and 2. Nothing is shown to the Court to prove contrary.

21. In the peculiar facts and circumstances narrated above the judgment of *Shivkumar @ Baleshwar Yadav (Supra)* relied upon by the Applicant [about presumption under section 8(c)] will not advance his case.

22. For reasons indicated above, the impugned order does not require any scrutiny in appeal. No case for the grant of special leave to appeal is made out.

23. **Accordingly, Leave Application is rejected.**

(M.M. SATHAYE, J.)