

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1354 OF 2015

SHAKUNTALABAI W/O SITARAM MHASKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Narayan B. Narwade
APP for Respondent No. 1/State : Miss R. P. Gaur
Advocate for Respondent No. 2 : Mr. A. G. Ambetkar

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 7th DECEMBER, 2015

P.C. :-

1. Mr. Narwade, learned counsel submits that the complaint, read as it is, does not attract the provisions of Section 3(1)(10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the learned counsel, apart from the complainant, there was no third person who could hear the conversation. Even the driver of the complainant, who had taken the complainant, as per the case of the prosecution, could not hear the conversation. As such, the offence alleged is not attracted. The learned counsel relies on the Judgment of the Division Bench of this Court in the case of *Pradnya Pradeep vs. State of Maharashtra*, reported in **2005 (3) Mh.L.J. 368**.

2. The learned APP and the learned counsel for respondent No. 2 submits that it is not necessary that some third person should hear the conversation. The driver was present there. The complainants had told the driver about the conversation that has taken place. Even the relatives have also given statements about the conversation and the abuses uttered by the accused to the complainant. The Wasti is a public place wherein there are more than 5 to 10 houses. As the houses belong to the persons professing the same cast as the accused, they are not coming forward.

3. We have considered the submissions. The Division Bench of this Court, in the case of **Pradnya** (*supra*), in paragraph No. 8, has observed as under :

“8.*The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under section 3(1)(x) of the said Act. In the provision of law comprised under section 3(1)(x) of the said Act, the word “view” refers to that of ‘public’ but prefixed by the expression “in any place within”. Being so, the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The*

presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under section 3(1)(x) of the said Act."

4. The learned counsel for respondents are not in a position to show any other Judgment taking a contrary view.

5. In the present case also, there was no third person present. Even the driver, who had taken the complainant on his jeep, states that he did not hear the conversation between the accused and the complainant. The words uttered by the accused, as alleged by the complainant, were not heard by any third person.

6. In view of the Judgment delivered by the Division Bench of this Court in the case of Pradnya (*Supra*), the offence could not be made out. In view of that, the complaint bearing No. II-1/2015 dated 07.01.2015 registered with Pathardi Police Station, District Ahmednagar, for the offence punishable under Sections 504, 506 r/w 34 of the Indian Penal Code and for the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, so also the charge sheet filed pursuant thereto, is quashed and set aside. Criminal Application is

accordingly allowed.

7. These observations are limited to the extent of the present complaint and certainly would not be relevant in respect of the civil dispute between the parties.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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