

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3855 of 2014

The State of Maharashtra.

.. Applicant.

Versus

Ferozkhan Ismailkhan Pathan
And Others.

.. Respondents.

Shri. S.A. Ambad, Additional Public Prosecutor, for
applicant.

Shri. Sachin Deshmukh, Advocate, for respondent Nos.1
to 4.

CORAM: T.V. NALAWADE, J.

DATE : 4th AUGUST 2015

ORDER:

1) The application is filed for grant of leave to file appeal against the judgment and order of Special Case No.9/2007 which was pending in the Court of the Additional Sessions Judge Hingoli. In the case filed for offences punishable under sections 393, 506, 34 of the Indian Penal Code, section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act

and section 7(1)(d) of the Protection of Civil Rights Act, the respondents are acquitted by the trial Court. Heard Learned Additional Public Prosecutor. Some hearing was given to the learned counsel for the accused.

2) The alleged incident took place in the campus of one petrol pump on 17-12-2006. Report was given by Natha Kamble, the manager of the petrol pump. According to him, after 8.30 pm accused Feroz with another person came there. He filled petrol of Rs. 100/- but he refused to give price of the petrol by saying that he is a man of Jaggu Dada, the other accused. He gave abuses to Avinash, employee working at the petrol pump by taking name of his caste which is a scheduled caste. He returned with three persons on two motor cycles and they started quarreling not only the with Avinash but also with the complainant Natha. Allegations are made that abuses were given by taking name of caste to Natha and also to Sopan Kandhare. It is the case of the prosecution that when the incident was going on attempt was made to call police but on that count also threats were given. It is the case of the prosecution that during incident the accused

tried to snatch the cash bag from the complainant side which was containing cash collected at the petrol pump. When the police arrived, they ran away. Police prepared spot panchanama, they collected record like caste certificate and case was filed.

3) The prosecution examined 3 eye witnesses like PW 1 Natha, the complainant, PW 3 Avinash and PW 5 Sopan Kamble as the three were working at the petrol pump at the relevant time.

4) The evidence of PW 1 manager shows that he had tried to avoid to admit many things which could not be concealed. The evidence shows that owner of the petrol pump and these witnesses belonged to a particular political party and the accused No.4 belonged to other political party. Both the side had contested elections at different levels including the M.L.A. Suggestion is given that in the same month two petrol pumps were opened and the second petrol pump was opened in the property of the accused No.4. These suggestions are also denied. Vague allegations are made that all the accused gave

abuses by taking name of the caste to all the three witnesses. One witness named as Sopan Khandare is not examined.

5) The evidence shows that there were employees of other castes also but none of them is examined. Many customers must have come to the petrol pump at the relevant time. Attempt is made to show that police arrived when the incident was going on and the police witnessed the incident and only after seeing the police the accused ran away. No police officer has given such evidence.

6) The evidence on record shows that the panch witnesses on the spot panchanama are relatives of the complainant.

7) There is no circumstantial check to the allegations made against the accused. Even when they were assaulted and were referred to Government hospital, there is no such record produced. There are allegations that a glass bottle was thrown at the manager but there is no scratch on the bottle.

8) The trial Court has acquitted the accused. There is no convincing evidence as against the accused. So nothing can be achieved by granting leave to the State to file the appeal. In the result, the application is rejected. Leave is refused.

Sd/-
(T.V. NALAWADE, J.)

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