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

CRIMINAL APPLICATION NO. 1184 OF 2014

The State of Maharashtra,
Through Police Station, Renapur,
Tq. Renapur, Dist. Latur

..APPLICANT
(Orig. Complainant)

VERSUS

1. Jivaji s/o Sandipan Khadap,
Age: 19 years, Occu: Agri.,
2. Bhausahab s/o Rajabhau Khadap,
Age: 19 years, Occu: Agri.,
3. Dattatraya s/o Rajabhau Khadap,
Age: 20 years, Occu: Mechanic,

(Respondent No. 3 abated as
per Court's order dated 05/01/16
passed in Cr.Appln. 1185/14)
4. Amol @ Ankush Ramu Khadap,
Age: 20 years, Occu: Agri.,
5. Sou. Chandrakalabai w/o Rajabhau
Khadap, Age: 45 years, Occu: Household
& Agri. Labour
6. Sou. Devaibai w/o Ganpati Khadap,
Age: 62 years, Occu: Household &
Agri. Labour
7. Deepak s/o Sandipan Khadap,
Age: 20 years, Occu: Agri.
8. Mahesh s/o Shivaji Khadap,
Age: 18 years, Occu: -
9. Somnath @ Someshwar Ramdas Khadap,
Age: 18 years, Occu: Agri.

All R/o. Lakhmapur, Tq. Renapur,
Dist. Latur

..RESPONDENTS
(Orig. Accused)

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Mr R. V. Dasalkar, Addl. Public Prosecutor for applicant

CORAM : N.W. SAMBRE, J.

DATE : 7th March, 2016

ORDER :

The State, being aggrieved by the judgment and order dated 5th October, 2013, passed by Special Judge & Ad hoc Addl. Sessions Judge-1, Latur, in Special Case (Atrocities) No.14 of 2010, acquitting respondents - accused of offences punishable under sections 147, 148, 323, 504, 506 read with section 149 of the Indian Penal Code, under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act") and under section 7 (1) (d) of the Protection of Civil Rights Act, 1955 (for short "PCR Act"), has filed the present application seeking leave to file appeal against acquittal of the respondents.

2. Learned Addl. Public Prosecutor, with a view to make out a ground for grant of leave to appeal, would urge that the learned Special Judge, while dealing with the prosecution evidence brought before him has failed to take into account the testimonies of injured complainant Ramdas Sadashiv Sasane (P.W.4) and his son Jaipal (P.W.6). According to him, the background of the incident is in relation to drawing of water from common source meant for public. He would submit that the respondents - accused have abused and assaulted the complainant and his family members in public view. Accused have also committed an offence

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punishable under section 7 (1) (d) of the PCR Act, in addition to the offence punishable under section 3 (1) (x) of the Atrocities Act.

3. Apart from above, according to learned Addl. Public Prosecutor, the injury certificates at Exhs.59 and 65 of the injured persons, who were family members of the complainant Ramdas Sadashiv Sasane (P.W.4) were not appropriately appreciated. He would then submit that as the complainant and his family members were restrained from taking water from common source meant for public, untouchability is practised by the respondents – accused, which invites the punishment pursuant to provisions of section 7 (1) (d) of the PCR Act.

4. Learned Addl. Public Prosecutor would then urge that the view taken by the learned Special Judge is too stretched so as to extend acquittal in favour of the respondents – accused. According to him, leave to appeal needs to be granted in the present case.

5. With the assistance of the learned Addl. Public Prosecutor, I have perused the impugned judgment of acquittal rendered by the learned Special Judge with the deposition of concerned witnesses. The complaint in question, which was the point of initiation of prosecution against the respondents – accused, was filed on 4th June, 2009, in which complainant Ramdas alleged that the respondents have uttered caste based insulting words in public view. The narration appears to be that the incident took place at public water source and at the courtyard of the complainant's house.

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6. The complainant Ramdas examined himself at Exh.48 (P.W.4), P.W.1 Rajashri Sasane at Exh.39 and P.W.2 Kishor Sasane at Exh.40. The above referred two witnesses are claimed to be eye-witnesses to the incident and P.W.3 Vasant, a witness to the spot panchnama, the injured witnesses, i.e. complainant Ramdas (P.W.4) and Jaipal (P.W.6) were examined at Exhs.48 and 54, respectively. Exh.52 – a memorandum of recovery was supported by P.W.5, whereas Medical Officer P.W.7 Dr. Surekha deposed at Exh.58. The recovery panch P.W.8 Maheboob Shaikh was examined at Exh.66 and recovery panch P.W.9 Vijaykumar deposed at Exh.68. Finally, the Investigating Officer deposed at Exh.77.

7. Learned Special Judge then proceeded to consider the case *qua* the prosecution sought to bring home the guilt of the accused persons in three parts, (i) an offence under the Atrocities Act; (ii) under the provisions of the Indian Penal Code and (iii) under the provisions of the PCR Act.

8. While dealing with the offence under the Atrocities Act, the learned Special Judge, based on admission of the parties, has noted that the complainant based on caste certificate belongs to scheduled caste, whereas respondents – accused belong to Maratha, an advanced caste. The learned Special Judge then proceeded to consider the exact words attributed against the complainant and his family members and the place of utterance by the accused. The learned Judge observed that in view of the law laid down by this Court in the matter of Mahesh Sakharam Patole &

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ors. vs. State of Maharashtra, reported in 2009 (2) Bom. C.R. (Cri.) 867, the incident in question had taken place at a private place, i.e. residential house of the complainant. The learned Special Judge thereafter noted that the offence as such, claimed to have been committed under the Atrocities Act was not proved and, therefore, acquitted the respondents – accused.

Learned Judge considered the contents of complaint Exh.20 and the evidence of Ramdas and Jaipal about the place of occurrence of the incident i.e. utterance of abusive words and inferred in the background of evidence adduced that the incident did not take place in public view.

9. While dealing with the offences under the provisions of the Indian Penal Code, learned Special Judge considered the omnibus allegations against the respondents – accused. Having regard to the evidence of the complainant and his son, the learned Special Judge noted that the story narrated in the complaint was sought to be improved, by making additions. The learned Special Judge thereafter noted that the complainant Ramdas and his son have stated in their evidence a contradictory story to that of P.W.1 Rajashri. The Court then noted that general and omnibus allegations are made against the accused.

10. In the above background and particularly having regard to the injury certificates at Exhs.59 to 65, the learned Special Judge noted that the prosecution has failed to bring home the guilt of the accused under the provisions of the Indian Penal Code.

11. In the light of the law laid down by this Court, in the matter of Sarita Shyam Dake vs. Sr. Police Inspector, Mumbai & ors., reported in 2008 (3) Mh.L.J. 385, while dealing with the offence under the PCR Act and particularly under section 7, learned Special Judge has noted that the said provisions could be attracted in case if a person incites or encourages any other person or class of persons or the public generally to practice “untouchability”. Learned Special Judge, in the background of the provisions of the Atrocities Act noted that just because the person has committed the offence under the said Act, cannot be termed to have or presumed to have committed an offence under the provisions of the PCR Act. Learned Special Judge, keeping in mind the said view of the matter and the fact that there was hardly any material on record to connect the respondents – accused with commission of the offence punishable under section 7 (1) (d) of the PCR Act, has acquitted them.

12. Upon overall appreciation of the evidence, as noted herein above and particularly in the light of the submissions made by the learned Addl. Public Prosecutor, no case for grant of leave to appeal is made out. I further find that there is no perversity in the reasoning of the learned Special Judge to warrant an interference. The view taken by the learned Special Judge is a possible view.

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13. In that view of the matter, there is no merit in the application and the application is rejected. Leave refused.

(N.W. SAMBRE, J.)

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