

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

**CRIMINAL APPLICATION NO. 6835 OF 2015**

Jivraj s/o. Dnyanoba Dapkar .. Applicant

Versus

State of Maharashtra & Anr. .. Respondents

Mr. P.M. Shah, Sr. Counsel with Mr. G.K. Naik-Thigle,  
Advocate for the applicant.

Mr. A.R. Borulkar, A.P.P. for respondent/State.

Mr. P.M. Nagargoje h/f. Mr. V.P. Narwade, Advocate for  
respondent No.2.

**CORAM : A.V.NIRGUDE &  
V.L.ACHLIYA, JJ.**

**RESERVED ON : 14.07.2016  
PRONOUNCED ON : 08.08.2016**

**O R D E R : [PER : A.V. NIRGUDE, J] :-**

1. The applicant is accused No.1 in Crime No.358 of 2015 dated 02.09.2015, registered with Degloor Police Station, initially alleging offence punishable under section 354(a)(2) r/w 354(d) r/w 509 & 34 of the Indian Penal Code. On 17.09.2016 a supplementary statement of the complainant, who is respondent no.2 here, was recorded and offence punishable under section 3 (1)(xi) &

(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act") was also added. Charge-sheet was filed on 20<sup>th</sup> October, 2015. Upon registration of offence, the applicant was arrested and was released on bail.

2. The applicant/accused No.1 seeks quashing of the complaint as well as charge-sheet that has been filed against him.

3. During the arguments, we indicated to learned Counsel for the applicant that at this stage the crime and the case cannot be quashed. So he urged us to consider as to whether subsequently added offences punishable under sections 3 (1) (xii) & (xii) of the Atrocities Act are sustainable in the facts and circumstances of the case.

4. In order to examine this aspect of the case, we went through the record. We found that respondent No.2-

complainant filed a detailed complaint to the District Superintendent of Police on 04.08.2015, on the basis of which this offence was registered on 01.09.2015.

5. The complainant is a Talathi was working in Nanded district. Her husband is also a Government servant and was working at the relevant time in Amravati district. Her request for transfer to Amravati was allowed in August 2014. However, due to exigencies of administration in Nanded district, she was not relieved by her superior officers. She stated that the applicant, who at the relevant time was her superior and working as a Tahasildar suggested to her that she should meet the Additional Collector – one Shri Swami(Accused No.2), so that he would consider her difficulty and relieve her. Accordingly, she went and met Shri Swami and explained her position. Initially she was informed by the accused that she would be relieved very shortly. Thereafter, both the accused started her sexual harassment. They started demanding sexual favour etc. The complainant

gave details of number of incidences that took place between the complainant on one side and the accused on the other. As said above, from the narration in the F.I.R., we have no difficulty in coming to a conclusion that there is strong prima facie case against both the accused. On 16.09.2015, for the first time, respondent No.2 disclosed to Police that she belonged to a scheduled caste. Her caste was mentioned in her service book. She also disclosed that the applicant and other accused were aware about her caste status. She stated that both the accused demanded sexual favour from her also because she belonged to a scheduled caste. As soon as she disclosed this information, as said above, offence punishable under sections 3 (1) (xi) & (xii) of the Atrocities Act was added to the case.

6. The question is — whether the offences punishable under the provisions of the Atrocities Act are attracted to the facts of the case? Our answer is in negative.

7. All throughout, the F.I.R. which described various incidences that took place over a span of time, did not indicate that sexual harassment, eve-teasing and demand of sexual favour were made having regard to the fact that respondent No.2 is a member of scheduled caste. The misconduct alleged against the applicant and other accused is -on the face of it and till 16<sup>th</sup> September, 2015- was apparently because respondent No.2-victim was a young woman and was working under the applicant and other accused. Apparently, if we go by narration in the F.I.R., their conduct can be attributed to a strong unbridled and shameless surge of adrenal. They indicated to her that they had desired her. On the other hand they they knew that they had control over her and she helplessly depended on their favour.

8. We are not disputing the fact that the applicant and other accused do not belong to a scheduled caste. On the other hand, complaint disclosed -and we have no

doubt about her truthfulness- that she is a member of scheduled caste. The question is - whether her harassment would amount to offence punishable under section 3 (1) (xi) & (xii) of the Atrocities Act? The relevant provisions read as under :-

**"3.(1) Punishments for offences of atrocities :-**  
Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

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(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty.

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;"

9. In order to appreciate the submissions at bar as well as the allegations made against the applicant and the accused, we must also pay careful attention to the statement of objects and preamble of the Act.

10. There is no doubt in our mind that there are instances in our society, wherein members of scheduled castes and scheduled tribes are treated shabbily only because they belong to such community. There is strong prejudice harboured in the mind of some members of the society against them. Because of this prejudice, there is division between the members of the society. On one side there are member of scheduled castes, scheduled tribes and other backward castes. On the other hand, there is larger section of society which does not belong to such scheduled castes, tribes etc. Apparently they are financially stronger. Historically this section of society exploited other section of society on the basis of "caste hierarchy". Because of such social hierarchy, some members of society belonging to higher strata thought that lower strata of society should remain always subservient to them. At one stage, in our history, most of the lower strata of the society, depended financially and otherwise on higher strata of the society. This arrangement continued for number of years. This uneven

position in the society developed strong prejudices. But this situation did not last long. Due to changes that occurred in social situation since last more than 60 years, members of lower strata of the society have gained and availed opportunities to make progress -financial and otherwise. Their situation in the society is now changing. In villages, where agriculture is the main occupation, land owners are facing difficulty in finding labour which came from poorer section. The members of Scheduled castes of the society, no longer depend on land owners. Sometime this leads to develop bitterness amongst the members of non-scheduled caste communities. Out of such bitterness sometime they tend to insult/humiliate a member of lower strata of the society on the basis of their so called lower caste.

11. This malady has also crept in urban and semi-urban areas of our country. In urban areas, apparently in day to day life, there is no difference between members of scheduled caste and others. Both stand on

equal footing in urban area as workforce. In case of Government Service, due to certain policy adopted by us in the Constitution of India, some employees belonging to scheduled castes/scheduled tribes/other backward classes perceptibly make progress faster than others. This causes heartburn to other employees who are unable to make such progress. Because of this situation, in some work places, we find different groups of employees on the basis of caste hierarchy. There is apparently animosity between such groups. (Due to this divide the prejudices based on caste hierarchy continued). Thus our urban social structure has deep rooted fractures based on caste hierarchy. In such situation there is certainly possibility of commission of offence which is described under section 3(1)(xi) & (xii) of the Atrocities Act. But a culprit while suffering such atrocity would get sooner than later sense and smell the caste based prejudice of the culprit. A victim belonging to a scheduled caste would sense easily the casteist prejudice and animosity in the conduct of the tormentor. If in a

given case a complaint is lodged, the victim would not leave out this casteist angle. If a woman belonging a scheduled caste or tribe is subjected to sexual harassment she would feel insulted because of sexual harassment. In addition she would also sense the casteist angle if present in the perpetrators conduct. Such sixth sense is always present in persons who apprehend caste based prejudice in our society. In case such act is committed from casteist angle with intention to harass or humiliate such person then only the provision of such act would be attracted. Only for the reason that the complainant or victim belongs to schedule caste or schedule tribe the offences under S.C. & S.T. Prevention of Atrocities Act, would not be attracted. She/he would promptly mention it in her/his complaint.

12. In this case, respondent No.2 is an educated person and has written down a long complaint, giving details of incidents that took place during long duration. By no stretch of imagination, it can be said

that the misconduct attributed to the applicant and the accused was a result of casteist attitude and prejudice. As said above, the applicant and the other accused acted due to their sexual urge and attraction to opposite sex. While dealing with the victim, they were apparently emboldened by the fact that they were her superior officers and therefore have control over her. Their actions did not smack of casteist prejudice. On the face of it, the complainant while writing her long complaint, did not even indicate that the accused treated her shabbily because she belonged to different caste.

13. We, therefore, hold that the offence punishable under section 3 (1) (xii) & (xii) of the Atrocities Act is not attracted to the facts of the case. Hence, the impugned F.I.R. and criminal case is quashed and set aside against the applicant and other accused to the extent of offence punishable under section 3 (1) (xii) & (xii) of the Atrocities Act. The prosecution should continue against the applicant and other accused for

offence punishable under various sections of the Indian Penal Code.

14. The Criminal Application is accordingly partly allowed and disposed of.

**[ V . L . ACHLIYA , J . ]**

**[ A . V . NIRGUDE , J . ]**