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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 766 OF 2003***

The State of Maharashtra.

... Appellant.

V/s.

1. Dr. Sushil Shubhamkaran Indoria, Age 34 yrs.

2. Shri Subhamkaran Badriprasad Indoria, Age 58 yrs.

3. Dr. Sau. Kavita Sushil Indoria, Age 33 yrs.

All R/at Rattwal Plaza Society,
A/8/105, Vartak Nagar, Thane (W)

4. Dr. Narayan Ganpatraman Iyyer, Age 34 yrs.

R/at Samarpan Co.Op. Society, Yashodhan
Nagar, Bldg. No.4, Room No.2,
Varkat Nagar, Thane (W), Dist. Thane.

... Respondents.

Mr. Amit Palkar, APP for the State - Appellant.

Mr. Subhash Jha i/b. B.L. Sharma & Sanjana Pardeshi i/b. M/s. Law
Global for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : JUNE 29, 2017.

ORAL JUDGMENT :-

By this Appeal, the State of Maharashtra has challenged

the order passed by the Additional District and Sessions Judge, Thane dated 24 February 2003 acquitting the Respondent – Accused of the offences punishable under Section 120(b), 448, 504, 506, 508 r/w. 34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

2. According to the prosecution, the complainant was working in the hospital run by the Respondents – accused. The complainant initially lodged a N.C. Complaint on 20 July 2001. Thereafter, on 23 July 2001, she filed a complaint to the Senior Police Inspector, Vartaknagar Police Station, Thane against the Respondents – accused. The gist of her complaint as follows : When the complainant had gone for duty on 13 July 2001, the concerned staff at that point of time was engaged in the game of playing cards. The Respondents – accused left after finishing their consultancy, and the complainant came back home after finishing her duty in the morning at 8.00 a.m. On 14 July 2001, she was called to the hospital wherein the Accused No.1 accosted her and told her that there has been a theft in the hospital. In the evening, the Accused No.1 and the other nurse and the police took search of her house without any authorization and the entire house was left in a state of disarray. Nothing incriminatory was found in the house. Thereafter, on 20 July 2001, the accused pretended to perform some ceremony proclaiming that it will bring out the truth. The accused asked her to

eat 'sacred rice', which according to them was brought from a tantrik, and it was sure to indicate who had committed the theft. The complainant was harassed in this fashion and therefore accused had committed an offence under Sections 323, 500, 504, 506, 384, 354 r/w. 34 of the Indian Penal Code.

3. Since, according to the complainant, no action was taken on this complaint, the complainant filed a private complaint in the Court of Judicial Magistrate, Thane which was numbered as O.M.A. No. 191 of 2001. In this private complaint the complainant further elaborated her story as regards the incident of 20 July 2001, where she was forced to eat rice and subjected to certain irreligious practices. The complainant stated that at that time the accused insulted to her with reference to her caste i.e. the 'Mahar' Scheduled Caste, to which she belongs.

4. On this complaint, an order was passed by the learned Sessions Judge on 26 September 2001 directing the Senior Police Inspector, Vartaknagar to make the investigation under Section 156 of the Code of Criminal Procedure. The case was tried by the learned Sessions Judge. On behalf of the prosecution, the son of the complainant Babandada Gaikwad, the neighbour of the complainant Dokim Jhon D'Mello, and Shrinivas Marathe, who was stated to be present when abuses relating to the caste given by the Respondents, were examined. Mr. Nandkumar Kurne, the Deputy Collector, who

gave caste certificate to the complainant and Vithal Dehere, the Investigating Officer, were also examined.

5. The learned Sessions Judge, after considering the evidence on record, came to the conclusion that the caste status of the complainant was not proved and that there is no satisfactory evidence to hold the accused guilty of the offences charged. Accordingly, acquitted the accused by Judgment and Order dated 24 February 2003.

6. Heard Mr. Amit Palkar, the learned Asstt. Public Prosecutor for the State and Mr. Subhash Jha, learned Counsel for the Respondents.

7. Taking up the offences under Section 3(1)(x) of the Act of 1989 first for consideration. Section 3(1)(x) makes an intentional insult or intimidation with an intention to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view, a punishable offence. Mr. Palkar submitted that the caste certificate duly issued was placed on record by the prosecution and even the Deputy Collector, who issued the caste certificate was examined and therefore, the learned Sessions Judge could not have doubted the caste status of the complainant. He submitted that the complainant had asserted the said fact in her complaint as well as the son of the complainant was examined, who had also asserted that they belong

to mahar caste which is a Scheduled Caste. Mr. Jha, the learned Counsel for the Respondents - accused submitted that the learned Sessions Judge was right in holding that there was no satisfactory evidence regarding the caste status. He further submitted, relying on the decision of the Apex Court in the case of *Masumsha Hasanasha Musalman v/s. State of Maharashtra*¹, that an every offence which involve a member of scheduled caste and scheduled tribe cannot be brought within the ambit of the Act of 1989 and the act must have direct nexus to the offences under Section 3(1)(x) of the Act. He submitted that the prosecution case itself show that the so called abuses were in a place which was not in public view.

8. Section 2(1)(c) of the Act of 1989 states that the words 'Scheduled Caste' and 'Scheduled Tribe' will have the same meaning as assigned to them under Article 366 of the Constitution of India. As held by the Apex Court in the case of *Masumsha*, the basic ingredients of Section 3(1)(x) are that, the victim is a member of a scheduled caste or a scheduled tribe; and the offence under the Penal Code is committed against the person on the basis that such a person belongs to a scheduled caste or a scheduled tribe. The learned Sessions Judge found that there was no satisfactory evidence regarding the fact that the complainant was a member of a scheduled caste. It will have to be seen whether this view taken by the learned Sessions Judge can be called as perverse.

¹ (2000) 3 SCC 557

9. According to the complainant abuses relating to the caste were given on 20 July 2001. A complaint was filed by her before the police on 23 July 2001. It was a detailed and well drafted complaint, and as submitted by Mr. Jha, drafted by an Advocate. In this complaint there is absolutely no reference at all in respect of the abuses relating to caste. If the incident had already taken place on 20 July 2001 and a detailed complaint was filed three days thereafter, there was no reason not to mention the abuses which would be acts punishable under Section 3(1)(x) of the Act of 1989. In view of this conduct of the complaint, the learned Sessions Judge rightly proceeded to examine the evidence with care.

10. The conduct of the complainant thereafter need to be noticed. An affidavit was filed before the Executive Magistrate on 7 August 2001 applying for a Caste Certificate and immediately a Caste Certificate was issued to the complainant on 20 August 2001. This Caste Certificate refers to an affidavit made by the complainant before the Executive Magistrate on 7 August 2001. Thereafter, a private complaint came to be filed on 26 September 2001 in which allegations are made in respect of the Act of 1989. Therefore, after the incident of 20 July 2001, caste certificate was applied for, two months thereafter a Caste Certificate was obtained. When the first complaint was filed the complainant did not refer to the incident of giving abuses related to the caste. Thereafter, a Caste Certificate was

applied for on 7 August 2001 and it is within couple of weeks that a Caste Certificate has been issued. Therefore, when the case was tried by the learned Sessions Judge, the learned Judge was right in insisting upon a cogent and reliable evidence relating to caste.

11. In the State of Maharashtra a Caste Validity Certificate is issued after the Caste Certificate. When a caste validity certificate is issued, a vigilance squad goes to the place of birth of the caste certificate holder and makes a detailed field enquiry. The complainant, except her own statement and her sons statement did not produce any evidence regarding her caste status. The Deputy Collector in the cross-examination admitted that he did not make any independent inquiry except the documents. He did not make any inquiry regarding the caste of the husband of the complainant nor did he bring any school leaving certificate or supporting document. Once this was the state of evidence and the manner in which the caste certificate was obtained, the learned Judge was right in holding that there was serious doubt regarding the caste status of the complainant, which is one of the ingredients for the offences under Section 3(1)(x).

12. Mr. Palkar sought to contend that the Act of 1989 has been amended and Chapter IV(A) has been brought in Section 15(A) provides that a victim needs to be heard in the proceedings under the Act. The amendment has been brought into effect in the

year 2015. Mr. Jha submitted that an enactment which provides for penal consequences cannot be held to be retrospective in nature and cannot be made applicable in the appeal against acquittal. I do not think it is necessary to enter into this legal debate in the present case, in view of the finding of the learned Judge about the complainant's claim of being a member of scheduled caste. Nothing is placed on record that a due enquiry ensued to determine caste status was carried out, nor cogent material was placed.

12. Turning now to the charge of offences punishable under Section 120(B), 448, 504, 506, 508 r/w. 34 of the Indian Penal Code. Mr. Palkar submitted that there is no discussion by the learned Judge in the impugned order about these offences. Mr. Jha submitted that there was no independent evidence in respect of the damage caused during the search and the search was carried out by the police authorities on a grievance made by the Respondents – accused regarding the theft and therefore, such action on the part of the Respondents – accused cannot amount to a criminal tress-pass.

13. It is not correct that there is no discussion at all in the impugned order by the learned Sessions Judge. The learned Sessions Judge has found that the evidence of the complainant and her son was contradictory. The learned Judge held that distribution of empty cartons and also asking the staff to participate in the so called divine method of eating rice was merely misplaced enthusiasm and

not a criminal act *per se*.

14. According to the prosecution, there were two incidents. First, which took place in the hospital where the complainant was subjected to insult and eating of rice. Second, the tress-pass at the residence of the complainant. The attempts of the complainant in trying to rope the Respondents under the provisions of the Act of 1989 by hurriedly applying to a caste certificate and not mentioning the main case in the first complaint will lead the Court to scrutinize her evidence and her son's evidence, who is an interested witness, with great care. Admittedly, for the allegations of tress-pass, there is no independent witness examined even though in the complaint, the complainant has asserted that these acts were in full view of the neighbours who had gathered. One neighbour has been examined, but he is a signatory to the panchnama, who was shown the state of the house of the complainant subsequently. There was no reason why no independent witness was examined, when according to the complainant herself, the entire episode took place in front of all the neighbours. Furthermore, as rightly contended by Mr. Jha, the accused had brought to the notice of the police authorities the aspect of theft, pursuant to which the police authorities had carried out the search and the accused had accompanied the police authorities. Once they had taken recourse to the informing the law enforcement agency, it cannot be said that the Respondents had committed a criminal tress-pass. No action is sought to be initiated against the

police authorities for any search if the complainant alleged that they had acted without any authority.

15. As regard the incident that took place in the hospital, again there is no witness who saw the incidence. The witness examined heard the voice of the complainant and the one male voice who stated to have given insult to the complainant. This witness had accepted that he had good relations with the complainant. He was not present inside the room when the incident stated to have taken place. As stated earlier, there is a serious doubt about this allegation, once the complainant had omitted to state so in her first complaint. It appears that the complainant was attempting to make the case serious by trying to get a Caste Certificate and thereafter subsequently in the private complaint incorporating these allegations.

16. In view of this position, it cannot be said that the learned Sessions Judge was not right in holding that it was unsafe to base the conviction of the accused on such conflicting evidence. While deciding an Appeal against Acquittal, the presumption of innocence, which is available to the accused during the trial, continues *per force* after the order of acquittal. The incident has taken place sixteen years ago. The Appeal is come up for hearing after fourteen years. The impugned judgment and order cannot be termed as perverse.

17. In these circumstances, no case is made out to reverse the order of acquittal. The Appeal is dismissed.

(N.M. JAMDAR, J.)