

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.81 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

RAKESH RADHESHYAM MITTAL & ANR.)...RESPONDENTS

Mr.PH.Gaikwad-Patil, APP for the Applicant – State.

Mr.Surendra Janrao, Advocate for the Respondents.

CORAM : A. M. BADAR, J.

DATE : 17th FEBRUARY 2017

P.C. :

1 This is an application for leave to file appeal by the State seeking to challenge acquittal of respondents of offences punishable under Sections 3(1)(ii), 3(1)(v) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the learned Special Judge, Pune.

2 Heard the learned APP appearing for the State. He argued that impugned judgment and order of acquittal is perverse. As against this, by showing me provisions of Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989, the learned advocate appearing for the respondents argued that there is no evidence to infer commission of alleged offence. He argued that there is no evidence to show that there was dumping of waste matter, excreta, carcasses or any other obnoxious substance, nor there is any evidence to show that the informant had been dispossessed from his house property. The learned advocate argued that the alleged incident took place in the first floor of the housing society and therefore, it is not a public place.

3 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses as well as the impugned judgment and order. The learned trial court acquitted accused persons by holding that evidence of prosecution is doubtful, caste certificate is not duly proved and the FIR does not reflect that accused persons belonged to Marwadi community.

4 Evidence of informant Rupesh Sonawane is gaining corroboration from evidence of PW4 Guruprasad Mane and PW5 Orpe Dnyaneshwar, so far as the offence punishable under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned. Requirement is that of public view. *Prima facie*, it is seen that both these witnesses have witnessed the incident of intentional insult and intimidation. The certificate at Exhibit 50 was duly placed on record by the prosecution and it was referred to in the cross-examination causing its exhibition. The certificate states that the informant belongs to “Navbaudha” which is included as a Scheduled Castes in the Constitution (Scheduled Castes) Order, 1950. Therefore, oral argument of the other side that “Navbaudha” does not fall under the category of Scheduled Castes, at this stage, cannot be accepted. *Prima facie*, the impugned judgment and order appears to be perverse and therefore the order :

i) Leave granted.

ii) The application be considered as Memo of Appeal.

- iii) Admit.
- iv) Issue notice to respondents.
- v) Learned advocate waives notice for respondents.
- vi) Call for Record and Proceedings.
- vii) In the meanwhile, action under Section 390 of the Code of Criminal Procedure before the trial court.

(A. M. BADAR, J.)