

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 500 OF 2016**

Tarabai Namdev Pawar and Ors.

...Applicant

Versus

The State of Maharashtra.

...Respondent

Mr. P.M.Arjunwadkar for the Applicant.

Mr. Rajan Salvi, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.**DATED: 31st AUGUST, 2017****PC:-**

1. Rule. With consent the Revision Application is taken up for final disposal forthwith.

2. The Accused Nos.2 to 6 have challenged the order dated 30th July, 2016, whereby the learned Additional Sessions Judge, Pune has directed the Applicants to face the trial in respect of offences under Section 323 r/w 34 of the Indian Penal Code and under Section 3(x) of Scheduled Caste and the Scheduled Tribes Act.

3. Heard Mr.P.M.Arjunwadkar, the learned Counsel for the Applicant and Mr.Rajan Salvi, the learned APP for the State. I have perused the Reference and considered the submissions advanced by the respective parties.

4. Pursuant to the First Information Report lodged by Smt.Amrapali Pawar, Crime No.23 of 2014 had been registered against the Applicants and the co-accused Santosh Pawar for the offences under Section 406, 498(A), 376, 354(C), 323, 504, 506 r/w 34 of the Indian Penal Code and Section 65,66(A)(E)(3) r/w 67 of the Information and Technology Act and under Sections 3(x)(xi)(xii) of the Scheduled Caste and the Scheduled Tribes Act.

5. These Applicants had filed a discharge application at Exh.42. By the impugned order, the learned Additional Sessions Judge, Pune partly allowed the said application and discharged these Applicants for the offences under section 406, 498-A, 354-C,376, 504, 506 r/w 34 of the Indian Penal Code, Sections 65, 66(A)(E)(3)r/w 67 of Information and

Technology Act and Section 3(xi)(xii) of Scheduled Caste and the Scheduled Tribes Act. The Applicants are however directed to face trial for the offences under Section 323 r/w 34 of the Indian Penal Code and under Section 3(x) of Scheduled Caste and the Scheduled Tribes Act.

6. Being aggrieved by the second part of the order more particularly Clause-3 of the operative order the Applicants herein have filed this Revision Application.

7. The short point which falls for consideration is whether the records of the case and the documents submitted therewith prima facie disclose that the Applicants were involved in committing offences under Section 323 of the Indian Penal Code and 3(x) of Scheduled Caste and the Scheduled Tribes Act. In this regard, a perusal of the First Information Report reveals that the first informant was in friendly relationship with the co-accused Santosh Pawar. The first informant has alleged that said Santosh Pawar had sexual relationship with her with a promise of marriage.

Subsequently, said Santosh married her but insisted that she should not inform the factum of marriage to anyone.

8. The first informant has further alleged that the accused Santosh had sexual relations with her by blackmailing her that he would make public an obscene video clip of their sexual relationship. The first informant has alleged that subsequently Santosh issued a legal notice and called upon her to join the matrimonial home. In April 2011, when she went to the matrimonial home, the accused Santosh asked her to bring Rs.2,00,000/- from her parents. The first informant has alleged that Santosh refused to treat her as his wife, refused to give her divorce and further told her that she could earn money by recording obscene video clips. She therefore, lodged a complaint against Santosh.

9. The first informant has alleged that the Applicants, who are the family members of Santosh refused to allow her to co-habit in her matrimonial home as she belongs to Mahar caste. The first informant has further alleged that on 29.12.2013

when she returned to her matrimonial home, the Applicants told her not to associate with Santosh and to give him divorce. They once again told her that she being of Mahar Caste, would not be allowed in the house. She claims that the Applicants rushed towards her to assault her.

10. The First Information Report, as well as the supplementary statement of the first informant indicates that her grievance is mainly against the co-accused Santosh Pawar. These Applicants are the family members of Santosh Pawar. The First Information Report as well as the supplementary statement of the first informant and the other material on record, does not indicate that these Applicants were involved in assaulting her or in causing hurt to the first Informant in any manner. The only allegation against these Applicants are that they have not allowed her to enter into the matrimonial house on the ground that she belonged to the Scheduled Caste. These allegations do not constitute the offence under Section 3(x) of Scheduled Caste and the Scheduled Tribes Act, as one of the essential ingredients of this Section is that

the insult or intimidation should be in a place within public view. In the instant case there are no allegations of such insult or allegations being made in any place in public view. Hence, the offence under Section 3(x) of the Scheduled Caste and Scheduled Tribes Act is not made out.

11. The First Information report and other documents submitted therewith, even if in its entirety are taken as true and correct, do not disclose the essential ingredients of offences under Section 323 r/w 34 of the Indian Penal Code and under Section 3(x) of Scheduled Caste and the Scheduled Tribes Act. Under the circumstances in my considered view, the learned Additional Sessions Judge, Pune has erred in directing the Applicants to face trial for the offences 323 r/w 34 of the Indian Penal Code and under Section 3(x) of Scheduled Caste and the Scheduled Tribes Act. The order of Sessions Court, is illegal and cannot be sustained.

12. Hence the application is allowed. The impugned order dated 30.7.2016, passed by Additional Sessions Judge, Pune in Criminal Case No.13 of 2015 to the extent of directing the Applicants to face trial for offences punishable under Section 323 read with 34 of the Indian Penal Code and under Section 3(x) of Scheduled Caste and Scheduled Tribes Act is hereby set aside.

13. The Applicants are discharged of the offences under Section 323 r/w 34 of the Indian Penal Code and 3(x) of Scheduled Caste and Scheduled Tribes Act. Their bail bonds stand cancelled.

(ANUJA PRABHUDESSAI, J.)