

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.670 OF 2017

VAIBHAV MORESHWAR KULKARNI)...APPLICANT

V/s.

THE STATE OF MAHARA SHTRA)...RESPONDENT

WITH

CRIMINAL APPEAL NO.671 OF 2017

**SHARDHA @ SHARDHABAI MORESHWAR)
KULKARNI AND ANOTHER)...APPELLANTS**

V/s.

THE STATE OF MAHARA SHTRA)...RESPONDENT

Mr.Yogiraj Purwant, Advocate for the Appellants.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 29th OCTOBER 2018

ORAL JUDGMENT :

1 None for respondent no.2, even after service of second notice of final disposal.

2 Heard. Admit. Heard finally, considering the fact that appeals pertain to rejection of application for anticipatory bail moved by the appellants/accused.

3 The appellants/accused in these appeals are accused in Crime No.402 of 2017 registered with Police Station Karmala, District Solapur. The crime in question is registered on the basis of report lodged by respondent no.2 Anita Kambale. The crime is registered for offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code as well as under Sections 3, 3(2) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4 Heard the learned counsel appearing for appellants/accused in both these appeals. He argued that the First Information Report (FIR) does not reflect that the crime in question took place within public view. It is also argued that offences punishable under the Indian Penal Code are not punishable with terms of 10 years or more. Therefore, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. However, the learned Special Judge rejected the applications for anticipatory bail on erroneous premises.

5 The learned APP opposed the appeals by contending that specific averments are there.

6 I have considered the submissions so advanced and also perused the record made available. The crime in question is registered on the basis of the report lodged by respondent no.2 Anita Kambale on 5th July 2017. She is owner of the field Gat

No.26 at Mouze Nibhore in Karmala Taluka of District Solapur. The appellants/accused are her adjoining land owners. The respondent no.2/ First Informant averred that on 5th July 2017, when she had cut the branches of the pomegranate trees and kept them on the bandh of the field, the appellants/accused came there. Appellant/accused Shardha Kulkarni prohibited her from throwing the branches on the bandh. Appellant/accused Vaibhav Kulkarni gave casteist abuses and threatened her. Thereafter, appellant/accused Shardha and her husband Moreshwar assaulted her as well as her father-in-law. They had given casteist abuses and threatened them.

7 The averment made in the FIR itself goes to show that the incident took place in the field and no public person had witnessed the incident in question. It is averred in the FIR that there was assault on the respondent no.2 and her father-in-law. However, offences alleged against them by the prosecution are punishable under Sections 323 and 324 of the Indian Penal Code. Similarly, penal provisions of Sections 504 and 506 of the Indian

Penal Code are also invoked. None of these offences are punishable for a terms of 10 years or more, and as such, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable. Similarly, as the offence alleged did not take place in any place within public view, the other penal provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are also not applicable to the case in hand. So far as offences punishable under the Indian Penal Code are concerned, custodial interrogation of appellants/accused is not warranted.

8 The learned Special Judge erred in holding that applications for anticipatory bail moved by appellants/accused cannot be entertained in view of bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. That finding is erroneous in the wake of the fact that no prima facie case for offences under the said Act is made out. Therefore, the order :

ORDER IN CRIMINAL APPEAL NO.670 OF 2017

- i) The appeal is allowed.
- ii) The impugned order dated 29th July 2017 passed by the learned Additional Sessions Judge, Barshi, below Exhibit 1 in Criminal Miscellaneous Application No.229 of 2017 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.402 of 2017 registered with Karmala Police Station, Solapur, for offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code as well as under Sections 3, 3(2) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.at

the instance of respondent no.2/First Informant Anita Kambale, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

- v) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused shall not in any manner tamper with the prosecution witnesses.
- vii) The appellant/accused should attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed off.

ORDER IN CRIMINAL APPEAL NO.671 OF 2017

- i) The appeal is allowed.
- ii) The impugned order dated 29th July 2017 passed by the learned Additional Sessions Judge, Barshi, below Exhibit 1 in Criminal Miscellaneous Application No.230 of 2017 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.402 of 2017 registered with Karmala Police Station, Solapur, for offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code as well as under Sections 3, 3(2) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.at

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(A. M. BADAR, J.)