

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1072 OF 2018

Mr. B. Basha & Ors. Appellants

Vs.

The State of Maharashtra & Anr, Respondents

Mr. Niranjan Mundargi a/w Mr. Akshay Udeshi I/by M/s Sanjay Udeshi & Co. for the Appellants.

Mr. S.H. Yadav, APP for the State.

Mr. Shantanu R. Phanse for Respondent no.2.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 27th November 2018

P.C.:

1 Heard the respective counsel.

2 This is an appeal under Section 14-A the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The appellants herein have impugned the order dated 6th February 2018.

3 It is submitted that on 31st March 2017, the respondent no.2 filed a complaint before the Special Court at Khed

Rajgurunagar, Pune alleging therein that the present appellants have committed an offence punishable under Sections 342, 384, 363, 323, 504, 506 read with 34 of Indian Penal Code and Section **3(1)(xi)** of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“The SCST Act”) on 27th April 2016. It appears that this is a case of cross-complaint and that the appellant no.1 had also lodged a report in respect of the same incident, which is registered at Chakan police station alleging therein that the respondent no.2 has committed an offence punishable under Sections 342, 363, 323, 504 read with 34 of Indian Penal Code on 27th April 2016.

4 It is true that the complainant belongs to scheduled caste. The verification of the complainant was recorded and by an order dated 6th February 2018, the learned Additional Sessions Judge, Khed-Rajgurunagar, Pune has passed the following order :

“Issue process against accused nos.1 to 4 under Sections 342, 384, 363, 323, 504, 506 read with 34 of Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act”.

Although the order was passed in February 2018, the date of incident will have to be considered and therefore what would be relevant is the provisions of the statute as contemplated in the original SCST Act of 2005. Section 3(1)(xi) of the said Act reads as follows :

3. Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(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;**

5 It is an admitted position that in the present case, no woman is involved. The original complainant is one Mr. Mukund Gautam Gaikwad and hence the provisions of Section 3(1)(xi) of the SCST Act would not be applicable. It is, in view of this, the order of issuance of process as far as Section 3(1)(xi) of the SCST Act is concerned is deserves to be quashed and set aside. However, the complainant i.e. the respondent no.2 in the given circumstances and in view of the observations made hereinabove would be entitled to

file an application seeking return of the complaint and filing the same before the appropriate Court. It is clear that the prosecution of the appellants for the offence punishable under Section 3(1)(xi) of the SCST Act by the Special Court would be an abuse of process of law and hence, the same deserves to be quashed and set aside. Hence, the following order :

ORDER

- I) The appeal is partly allowed and stands disposed of.
- II) The order of issuance of process against the appellants dated 6th February 2018, passed by the learned Additional Sessions Judge, Khed-Rajgurunagar, Pune for Sections 3(1)(xi) of the SCST Act is hereby quashed and set aside.
- III) Respondent no.2 may take appropriate steps according to law.
- IV) In the eventuality that the complainant files the same complaint before the Court of the Magistrate, the learned Magistrate shall decide the said complaint on it's own merits without being influenced by the observations of the Special Court or of this Court.

(*Smt. Sadhana S. Jadhav, J*)