

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPEAL NO.776 OF 2019

1. Tulshiram Vitthal Kundkar
Age : 66 years, Occu : Nil,
R/o. Govindpur, Tq. Majalgaon,
Dist. Beed
2. Vitthal s/o Tulshiram Kundkar
Age : 45 years, Occu : Labour
R/o. As above
3. Ashok Tulshiram Kundkar
Age : 25 years, Occu : Labour
R/o As above

... Appellants

Versus

1. The State of Maharashtra
Through Police Station Officer
Police Station, Majalgaon (Rural)
Tq. Majalgaon, Dist. Beed
2. Subhash Samindar Gaikwad
Age : 30 years, Occu : Labour
R/o Govindpur, Tq. Majalgaon,
Dist. Beed

.. Respondents

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Advocate for Appellants : Shri S.J. Salunke
APP for Respondents : Shri S.M. Ganachari

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CORAM : PR. BORA, J.
Dated: September 06, 2019

ORAL JUDGMENT :-

1. Heard Shri Salunke, learned counsel appearing for the appellants and Shri Ganachari, learned APP appearing for Respondent - State. The learned counsel for the appellants placed on

record the Track Consignment Report of Post Office. It is taken on record and marked as Exh.'X'. Respondent no.2 – informant though has been duly served and as has been submitted by the learned APP that the police machinery has also intimated respondent no.2 about filing of the present appeal before this Court, he has not caused his appearance in the matter.

2. Respondent No.2 had filed the report against the present appellants on 17.06.2019 alleging that, on 16.06.2019 at about 06:00 p.m. when he was sitting in front of Khandoba temple along with his cousin, the present appellants came there and on account of some previous dispute between them about putting hook over the electricity wires, abused the informant on his caste and also made assault on him by the iron rod, because of which, the bleeding injury was caused to his head. On such report lodged by respondent no.2, the crime was registered against the present appellants at Majalgaon Rural Police Station vide Crime No.166 of 2019 for the offences punishable under Sections 324, 323, 504 r.w. 34 of Indian Penal Code (hereinafter referred to as the 'I.P.C.') as well as under Section 3(1)(r) and 3 (1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act'). The appellants preferred Misc. Criminal Application

No.185 of 2019 before the Sessions Court seeking pre-arrest bail claiming that, a false complaint was registered against them. The learned Additional Sessions Judge had, however, rejected the application filed by the appellants vide the impugned order.

3. Shri Salunke, learned counsel appearing for the appellants submitted that, in fact, the appellants were abused by the informant. The learned counsel submitted that, the informant at the relevant time was under the influence of liquor and was not having any control over him. The learned counsel submitted that, except the wordy quarrel, nothing more happened on the said date, however, only with a view that, the appellants should be arrested, the false allegations are made as about the abuses by the appellants on the caste of the informant. The learned counsel, in the circumstances, prayed for allowing the appeal filed by the appellants.

4. Learned APP Shri Gujrati opposed the submissions made on behalf of the appellants. The learned APP submitted that, in the investigation, it is revealed that, the present appellants did abuse the informant on his caste. The learned APP submitted the investigation papers for my perusal, and more particularly, invited my attention to the statements recorded of two witnesses, which, according to the

learned APP, are the independent witnesses. The learned APP submitted that, having regard to the allegations as about causing bleeding injury to the informant, even otherwise the appellants have not made out any case for their release on pre-arrest bail. The learned APP further submitted that, the Injury Certificate is not yet received and in such circumstances, the request of the appellants cannot be considered at this stage of incomplete investigation.

5. I have given due consideration to the submissions made by the learned counsel appearing for the appellants and learned APP appearing for the respondent – State. I have perused the impugned order and the other documents placed on record by the appellants. I have also gone through the papers of investigation, which are made available for my perusal by the learned APP.

6. Perusal of the impugned order reveals that, the learned Sessions Judge has rejected the application mainly on the ground of bar under Section 18-A of the Atrocities Act. The learned Sessions Judge has not considered the other aspects of the matter. In view of the allegations which are revealing from the FIR, when I perused the statements of two witnesses which according to the learned APP are the independent witnesses, nothing is stated by these witnesses to the

effect that the appellants abused the informant undermining his caste. In view of the fact that, the person, who, according to the informant was sitting with him namely Dilip has also not stated anything about abuses on caste by the appellants, reasonable doubts are created about the allegations made by the informant. So far as the offence under Section 324 is concerned, though the FIR is lodged on 17.06.2019 and the alleged incident is stated to have happened on 16.06.2019, the investigation papers do not contain any Injury Certificate or Medical Report in respect of the informant. A reasonable inference can be drawn that, no such injury as alleged by the informant might have been caused. In the circumstances, it appears to me that, the appellants have certainly made out a case for their release on pre-arrest bail. Hence, the following order.

ORDER

- (i) The impugned order passed by Ld. Additional Sessions Judge, Majalgaon in Misc. Criminal Application No.185 of 2019 below Exh.1 on 08.07.2019 is set aside.
- (ii) The appellants, in the event of their arrest, be released on submitting P.R. Bonds in the amount of Rs.30,000/- each with one or more sureties in the like amount.
- (iii) The appellants shall co-operate the Investigating Officer to complete the investigation in the matter and remain present before

him as and when called.

(iv) The Appeal stands allowed in the aforesaid terms.

(PR. BORA, J.)