

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

CRIMINAL APPEAL NO.604 OF 2018

- 1) Sanjay s/o Mohan Kolage,
Age 37 years, Occu.Agril.& Politics,
 - 2) Vijay @ Kailas s/o Mohan Kolage,
Age 42 years, Occu.Agril.& Teacher,
Both R/o. Avhane Bk., Tq. Shevgaon,
Dist. Ahmednagar.
- ... Appellants**
[Ori. Accused]

VERSUS

- 1) The State of Maharashtra,
Through Investigating Officer,
(Sub-Divisional Police Officer,
Shevgaon, Sub-Division,
Shevgaon), Tq. Shevgaon
Dist. Ahmednagar.
 - 2) Kadubal s/o Shivaji Kharat,
Age 38 years, Occu. Labourer,
R/o. Avhane Bk., Tq. Shevgaon,
Dist. Ahmednagar.
- ... Respondents**
[Ori. Complainant]

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Mr. Narayan B. Narwade, counsel for the appellants
Mr. P.N. Kutti, APP for respondent No.1-State
Mr. N.B. Patekar, learned counsel for respondent No.2

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CORAM : S.M.GAVHANE, J.
RESERVED ON : 10.04.2019
PRONOUNCED ON : 26.07.2019

J U D G M E N T :

. With the consent of the learned counsel for the appellants, learned APP for respondent No.1-State and learned counsel for respondent No.2, the appeal

is finally heard at the admission stage.

2. By this appeal, both the appellants (original accused) have challenged the order dated 14.08.2018 passed by the Additional Sessions Judge, Ahmednagar in A Summary Case No.3 of 2018, rejecting the A Summary report filed by the police in Crime No.I-211 of 2017 registered against them in Shevgaon Police Station, for the offences punishable under Sections 324, 241, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as "the IPC") and under Sections 3(1) (r) (s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act").

3. Facts giving rise to this appeal in short are that the respondent No.2 (original complainant) and the appellants are residents of village Avhane (Bk.), Tq.Shevgaon and respondent No.1 is the State. The complainant filed report on 24.05.2017 in Shevgaon Police Station against the appellants, alleging that in the year 1981, out of land Gat

No.187, admeasuring 3 acres, 11 gunthas land had been give for cultivation by grand-father of the complainant to one Sona Nana Waghmare and Pandu Nana Waghmare, but they have mutated the land in their names and thereafter, in the year 1988, again transferred the land in the name of grand-father of the complainant. It is further alleged that before one and half years, Sona and Pandu Waghmare filed proceeding before the Sub-Divisional Officer, Pathardi and decision in the said proceeding went against them on 22.07.2016. Thereafter, on 28.07.2016, appellant No.1 got the said land transferred and civil suit is pending in the Court of the Civil Judge, J.D., Shevgaon. It is further alleged by the complainant that on 24.05.2017 at 9.30 am, when the complainant was proceeding from Gat No.187, the appellants obstructed the complainant and appellant No.1 Sanjay Kolage asked him not to go to Collector's office tomorrow as he has transferred the land in his name. At that time, appellant No.2 Vijay Kolage caught-hold the complainant and appellant No.1 assaulted the complainant and in the said assault, he

sustained injury to his lips and other injuries were caused to him. Upon the above report of the complainant in the Police Station, Shevgaon, the complainant was sent in Rural Hospital, Shevgaon for treatment. Thereafter, he was referred to Civil Hospital, Ahmednagar. Then the aforesaid crime was registered against the appellants. On 25.05.2017, supplementary statement of the complainant was recorded.

4. The appellants had filed Criminal Writ Petition No.856 of 2017 before this Court for quashing the FIR and by order dated 28.06.2017, notices were issued and interim relief in terms of prayer clause "C" was granted in favour of the appellants. Thereafter, by order dated 13.11.2017, said Criminal Writ Petition No.856 of 2017 was rejected.

5. After the investigation was made, the investigating officer on 27.02.2018 submitted A Summary report in the Court of Special Judge/Sessions Judge, Ahmednagar and requested for grant of A

Summary as there was no sufficient evidence against the appellants. The learned Special Judge issued notice to the complainant - present respondent No.2 on 15.03.2018. Thereafter, after going through the A Summary report, the learned Additional Sessions Judge had rejected the Summary on the ground that there is evidence against the appellants, by order dated 14.08.2018.

6. Above said order dated 14.08.2018 is impugned in the present appeal by the appellants on several grounds mentioned in the appeal and mainly on the grounds that the appellants had not abused and assaulted the complainant, which fact is clear from the statements of witnesses recorded by the investigating officer and the said witnesses had categorically stated that there is a civil dispute pending between the parties. Only in the supplementary statement of the complainant, it is mentioned that the appellants abused him on his caste, which is after thought and just to implicate the appellants for the offences under the Act. If really, the appellants would have abused complainant

on his caste, he would have disclosed the same in the FIR itself, but he has not mentioned the same in the FIR. The learned Special Judge has rejected A Summary on technical ground stating that A Summary cannot be granted as the names of both the appellants are mentioned in the FIR. It is contended that after taking into consideration, the entire evidence, B Summary was to be granted, but it appears that only because the investigating officer had requested for A Summary, the learned Special Judge rejected it by the impugned order. The learned Special Judge could have granted B Summary instead of rejecting the A Summary.

7. Mr.N.B. Narwade, learned counsel for the appellants made submissions in the light of grounds referred to above. It is submitted that there is no material against the appellants. Therefore, instead of A Summary, police should have filed B Summary. It is submitted that the impugned order be set aside and appropriate order be passed and the matter may be remanded to the Special Court by allowing the appeal.

8. Mr.P.N.Kutti, learned APP for the respondent

No.1-State supported the impugned order and submitted that the appeal is filed to prolong the case.

9. Mr.N.B. Patekar, learned counsel for the respondent No.2-complainant, referring the reply affidavit of the respondent No.2 submitted that after the investigation, the investigating officer should have filed report or charge-sheet in the Court. But submitted 'A" Summary report. In the following circumstances, 'A' 'B' or 'C' Summary report can be filed by the investigating officer.

"A- Summary Report:

- i. Where the magistrate classifies the case as true but un-detected.
- ii. Where there is no clue whatsoever about the culprits or property or when the accused is known but there is no evidence to justify his being sent up to the magistrate for trial.

B- Summary Report:

- i. Where the magistrate classifies the case as maliciously false.
- ii. Where there is no evidence or prima facie case against the accused persons.

- iii. When case is False or Frivolous.
- iv. Usually a final report will lead to Acquittal of the accused upon acceptance by the court.

C- Summary Report:

- i. When the case is neither true or false.
- ii. Filed due to mistake of facts or the offence complained about is of a civil nature."

The learned counsel has relied upon the decision in the case of **State of Gujarat V/s. Shah Lakhamshi Umarshi and Anr., 1965, DJLS (Guj.) 148.** In the said case, in paragraph 4, it is observed as under:

"4. Now if upon an investigation under Chapter XIV it appears to the officer in charge of the police station or to the officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, says [Section 169](#), release the accused, if in custody, on his executing a bond, to appear, if and when required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial. If on the other hand if appears to the officer in charge of the police-station, upon an investigation under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of the accused to a Magistrate, such officer is required under [Section 170](#) to forward the

accused to a Magistrate empowered to take cognizance of the offence and try the accused or commit him for trial or, if the offence is bailable, take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate. In either case, on the completion of the investigation, the officer in charge of the police station has to submit a report to the Magistrate under [Section 173](#) in the prescribed form furnishing various details. Sub-section (1) of that Section provides that every investigation under the Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police station shall:

"(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

What is to be done by the Magistrate on receiving the report under [Section 173](#) is a matter we shall presently consider but before we do so, it is necessary to advert

to one or two other matters. We must first refer to Section 173 Sub-section (3) for in the minority judgment of D. N. Das Gupta J., in the Calcutta case strong reliance has been placed on this provision and the power of the Magistrate to call for a charge-sheet is found in this provision. Section 173 Sub-section (3) enacts that "whenever it appears to the Magistrate from the report forwarded under [Section 173](#) that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit." Thus provision in our opinion does not confer any power on the Magistrate to call for a charge-sheet but that we shall discuss later when we deal with the arguments of the parties. The other matter which it is necessary to point out is that neither [Section 173](#) -- nor for the matter of that any other provision of the Code -- uses the expression "charge-sheet" or "final report" [Section 173](#) talks only of a report to be submitted by the police on completion of the investigation and that report has to be submitted whether the case falls within [Section 169](#) or [Section 170](#). Neither [Section 173](#) nor any other provision of the Code gives any particular nomenclature to a report made by the police in a case falling within [Section 169](#) or to a report made by the police in a case falling within [Section 170](#): in both cases the report is genetically a report under [Section 173](#). But when we turn to the Bombay Police Manual which contains inter alia Rules and Regulations made by the Inspector General of Police, we find that a distinction is made between the two types of cases. The report to be made by the police in a case falling within [Section 170](#) -- where there is sufficient evidence to justify the sending of the accused to the Magistrate -- is called a "charge sheet" in Rule 218 and that Rule says that the charge-

sheet shall be in Form C. P. C. 20 and shall comply with the requirements specified in that Rule where the case falls within [Section 169](#)--that is, there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, the report to be submitted by the police is termed as "final report" and Rule 219 directs that such final report shall be submitted by the Police Station Officer through the Superintendent of Police or the Sub Divisional Officer and while forwarding such final report, a request should be made to the Magistrate to classify the case and to issue an appropriate summary of his order. There are three kinds of summary which can be asked for by the Investigating Officer when he is of the opinion that there is no sufficient evidence to justify the forwarding of the accused to the Magistrate. A request for "A" Summary is to be made when the police officer investigating the case is of the view that the offence is true but undetected and where there is no clue whatever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up for trial, "B" Summary is to be asked for when the complaint is maliciously false and "C" Summary when the complaint is neither true nor false, that is, due to mistake of facts or is of a civil nature. Whether the report to be submitted under [Section 173](#) should be a charge-sheet or a final report, therefore, depends upon whether the case falls within [Section 170](#) or [Section 169](#) and having regard to the words of subjective satisfaction used in both these Sections as indicated by the use of the expression "If it appears to the officer in charge of the police station", that in its turn depends upon the opinion formed by the officer in charge of the police-station or the investigating officer as to whether there is sufficient

evidence or not for placing the accused on trial. As observed by the Supreme Court in [H.N. Rishbud v. State of Delhi](#), AIR 1955 SC 196 at page 201: "..... the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police-station" and that opinion determines whether the report under [Section 173](#) is to be a charge-sheet or a final report. The charge-sheet is submitted when the police-station officer is of the opinion that there is a case for placing the accused on trial while the final report is submitted when the police-station officer is of the opinion that there is no such case and in the latter case the police-station officer may ask for one of these summaries, namely, "A", "B" or "C".

10. It is further submitted that in the present case, A Summary report was filed by the investigating officer in the Special Court. Said report is rejected by the Special Court by the impugned order. The impugned order is interlocutory order. Said order is not appealable under Section 14A of the Act. As such, according to the learned counsel for the complainant, the appeal is not maintainable. To support the said submission, the learned counsel for the complainant has relied upon Full Bench decision of the **Allahabad High Court** in the case of **Amendment Act, 2015 V/s. Nil with Criminal Miscellaneous Bail**

**Application and Criminal Writ Public Interest
Litigation** reported in **2018 Cri. LJ, 5010 (FB)**.

11. Considering the submission of the learned counsel for respondent No.2-complainant that the appeal is not maintainable in the first place, I would like to consider the aspect, whether the appeal is maintainable? Here, it necessary to refer Section 14A of the Act regarding appeals. Said section reads thus:

"14A. Appeals. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(1.1) Notwithstanding anything contained in sub-section (3) of [section 378](#) of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is

satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

12. In the case of **Amendment Act, 2015** (*supra*), the Full Bench of Allahabad High Court in paragraph 9 interpreted the above provision as regards the interlocutory order in the above provision in Section 14A of the Act and made observations in paragraphs 9 and 84, which read thus:

"9. From a plain reading of this provision, which commences with a non obstante clause, it appears to us that an appeal, notwithstanding anything contained in the **Cr.P.C.**, shall lie from any judgment, sentence or order, not being an interlocutory order, passed by a Special Court or an Exclusive Special Court to the High Court, both on facts and on law. Sub-section (2) makes provision for an appeal, though an order granting or refusing bail, is fundamentally interlocutory in nature. In other words, although an order granting or refusing bail is an interlocutory order, notwithstanding anything contained in sub-section (3) of **Section 378 Cr.P.C.**, an appeal shall lie to the High Court against an order of the Special Court or the

Exclusive Special Court granting or refusing bail. Thus, this is the only specie of interlocutory orders (i.e. granting or refusing bail) which is made appealable, and no other interlocutory order is appealable, in light of the express language of sub-section (1) of [Section 14A](#) of the Amending Act. In other words, sub-section (1) of [Section 14A](#) of the Amending Act, provided that an appeal shall lie to the High Court from any judgment, sentence or order, not being an interlocutory order, of an exclusive Special Court/Special Court. At the cost of repetition, we observe that an appeal is not maintainable against other interlocutory orders. This is perhaps, in view of the scheme of the [Amending Act](#), which provides for proceedings of trial on a day to day basis and to conclude the same not only expeditiously but within the time frame stipulated. That seems to be the underlying intent of the Legislature, while drafting the [Amending Act](#) and in not providing a remedy of appeal against any other interlocutory order passed by the Special or Exclusive Special Court. We, at this stage, make it clear that we are dealing only with the provisions contained in [Section 14A](#) of the Amending Act. In other words, we are dealing with the questions that fall for our consideration in the light of the provisions of [Section 14A](#) of the Amending Act. Insofar as [Section 14](#) is concerned, we will deal with the same independently while addressing the last question framed by us. In short, we observe that insofar as sub-section (1) and sub-section (2) of [Section 14A](#) are concerned, no appeal is provided against any interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under sub-section (2) of [Section 14A](#) of the Amending Act. This conscious and

explicit exception appears to have been made bearing in mind that an order granting or refusing bail is directly concerning the liberty of the accused and, therefore, although other interlocutory orders are not made appealable, an appeal is provided against an order granting or refusing bail. Thus, sub-section (2) carves out an exception to the general exclusion of an appeal against interlocutory orders which are not appealable under Section (1) of [Section 14A](#).

84. In the light of the law laid down by the Supreme Court, we would now like to consider the expression 'intermediate order' and its effect on the rights of the parties under [Section 14A](#) or the powers of this Court in entertaining the appeal against such orders. The word 'order' as it appears in sub-section (1) of [Section 14A](#) against which, an appeal would lie, is made subject to the condition of it 'not being an interlocutory order'. In short, the appeal would lie against an order(s), not being interlocutory in nature passed by a Special Court/Exclusive Special Court, to the High Court, both on facts and on law. Sub-section (2) also uses the word 'order' carving out a singular exception and allowing an appeal against an order of the Special Court/Exclusive Special Court, granting or refusing bail, which is ordinarily interlocutory in nature. Sub-section (3) also uses the word 'order', but the meaning of the word 'order' in sub-section (3) is confined to the order appealed from. In other words, sub-section (3) only provides for the limitation for preferring an appeal within the time stipulated in that provision, namely, from the date of the judgment, sentence or order 'appealed from'. Thus, from a plain reading of the provisions

of [Section 14A](#), it is clear to us that the word/expression 'order' though not ostensibly making a distinction between a 'final order' or an 'intermediate order' it must be interpreted to contemplate all orders which are either final in nature or which are likely to put an end to the lis before the Special Court. It is these specie of orders alone that would be appealable. In other words, the word/expression 'order' employed in this Section would mean those orders which are either final in nature or which if set aside would result in a termination of proceedings before the Special or Exclusive Special Court. Such orders would always be subject to the appellate power of the High Court under [Section 14A](#) of the Amending Act.

13. In the present case, by the impugned order, the learned Special Judge has rejected A Summary report filed by the police in the crime registered against the appellants on the report filed by respondent No.2. If the learned Special Judge would have accepted 'A' summary report, the proceeding against the appellants would have terminated. Thus, the appellants are aggrieved by the impugned order. If said order is continued, the appellants will have to face the trial against them. If said order is set aside, it would result in a termination of proceeding against the appellants before the Special Court.

Therefore, in view of the observations of the Full Bench of **Allahabad High Court** in paragraph 84 reproduced (*supra*), the order impugned in the present appeal can be said to be final in nature and not an interlocutory order and appeal lies against the said order as per Section 14A of the Act and more particularly as per section 14A(1) of the Act. Therefore, submission made by the learned counsel for respondent No.2 that the impugned order is interlocutory order and therefore, the appeal under Section 14A of the Act is not tenable is not acceptable.

14. Once it is held that the present appeal against the impugned order is maintainable, it is necessary to see, whether the impugned order is sustainable? There is no dispute that respondent No.2 had filed report in the police station against the appellants and treating the said report, crime was registered against the appellants for the offences under Sections 324, 241, 506 read with Section 34 of the IPC and under sections 3(1) (r) (s), 3(2) (va) of the Act as mentioned earlier. The

investigation was made by the investigating officer. On perusal of the copy of FIR, it appears that the appellants on 24.05.2017 obstructed respondent No.2 and threatened him. It is also seen that appellant No.1 assaulted on cheek, stomach and private part of respondent No.2 by fighter and he sustained injury to lips. On perusal of supplementary statement of respondent No.2, which was recorded on the next day i.e. on 25.05.2017, it is seen that appellant No.1 had abused the respondent No.2 on his caste and they had threatened to kill him. Thus, there is *prima facie* involvement of the appellants for the offences alleged against them. Therefore, it is not the case that there is no evidence or *prima facie* case against the appellants as stated in the A Summary report filed by police.

15. On perusal of the impugned order, it is seen that the learned Special Judge has referred the FIR and observed that as per the FIR, incident took place on 24.05.2017 at about 9.30 am and the respondent No.2 was assaulted by the appellants and he was examined by the medical officer and corresponding

injuries were noticed by the medical officer on the person of respondent No.2 and as such, there is sufficient material to proceed against the appellants and hence, the investigating officer has committed mistake in submitting A Summary report. It is also observed by the learned Special Judge that A Summary report can be submitted only if the accused are not traceable. It was submitted by the learned counsel for the appellants that instead of submitting B Summary report, police submitted A Summary report and therefore, report submitted by the police be treated as B Summary report and accordingly, necessary order may be passed or the matter may be remanded to the Special Judge.

16. For the reasons discussed above in the present case neither 'A' summary nor 'B' summary report can be filed by the investigating officer. Therefore, no directions as requested by the learned counsel for the appellants can be given, since, there is material against the appellants to proceed as observed by the learned Special Judge. Therefore, there is no ground to accept either A Summary report

submitted by the police or to treat said report as a B Summary report, as submitted by the learned counsel for the appellants. Thus, there is no ground to interfere with the impugned order of the learned Special Judge in rejecting A Summary report submitted by the police. Therefore, the appeal being devoid of merits, the same is liable to be dismissed. Accordingly, it is dismissed. No costs.

[S.M. GAVHANE, J.]

sarowar