

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

CRIMINAL APPEAL NO. 1362 OF 2018

1 Vasant Devram Pokharkar.
2 Jalindar Devram Pokharkar. ..Appellants.
V/s.
The State of Maharashtra & anr. ..Respondents.

WITH

CRIMINAL APPEAL No. 81 of 2019

Pradip Jalindar Pokharkar. ..Appellant.
V/s.
The State of Maharashtra & anr. ..Respondents.

Mr. Satyavrat Joshi I/b. Mr. Nitesh J. Mohite, advocate for appellants. .
Mr. Dheeraj Panchange, advocate for respondent No. 2.
Mr. S.R. Agarkar, APP for State.
Mr. A.R. Mahanvar, PSI, Rajgurunagar, Khed, Pune.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 15, 2019.

P. C. :

1 Heard the learned Counsel for the appellants, learned Counsel for the respondent No. 2 and the learned APP for State.

2 These are appeals under section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is the case of

Talwalkar

the prosecution that on 13/10/2018 Bhaguji Kondaji Burase lodged a report at the police station that on that day, when the appellants were planting trees in Gat No. 197/45 i.e. in front of the house of complainant on the public road, the complainant is alleged to have questioned their act of planting trees on the public road. Thereafter, the appellants assaulted the complainant and his family members. It is pertinent to note that it is stated in the FIR that a civil suit is pending between the parties i.e. between the appellants and the complainant in respect of the Gat No. 197/45.

3 The learned APP submits that the investigation is completed and charge-sheet is filed. However, Investigating Officer has not collected the papers of civil suit and charge-sheet is filed. It is alleged by the complainant that the appellant herein had assaulted the complainant and his family members by referring to their caste and hence, had humiliated them in public view. It is also stated that they had obstructed the driver who had taken them in public vehicle and therefore, they had to go to S.T. Stand and then approached to the police station. On the basis of the said statement, Crime No. 435 of 2018 was registered at Khed Police Station, Pune Rural for offence punishable under section 324, 143, 147, 148, 149 of the Indian Penal Code and under section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 and 3(1)(r)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe Amendment Act, 2015.

4 It is a matter of record that the present appellant Pradip Pokharkar had approached the police station to report the same incidence and he had reported that he and his family members were assaulted by the family of the complainant. Vasant Pokharkar had sustained injuries. Similarly, Pradip Pokharkar, the complainant had sustained a fracture on his tibia. Jalinder had also sustained injuries. Jalinder was in fact, suffering from vertigo and he was assaulted by a stick and therefore, sustained contused lacerated wound which had to be sutured by administering local anesthesia. Similar injuries were sustained by the complainant in Crime No. 435/2018. It appears to be a cross-case in respect of the same incident. Civil suits are pending between the parties. The appellant herein was planting trees on public road and hence, there was no question of obstructions by the complainant.

5 The learned APP submits that investigation is completed and charge-sheet is filed. It appears from the record that the parties have filed these cases to satisfy their personal vendetta. The learned Counsel for the appellants submits that Crime No. 435 of 2018 has been

registered only as a counter blast to the registration of Crime No. 434 of 2018. Learned Counsel for the complainant submits that the recitals of the FIR by itself would indicate that since the driver of the vehicle was obstructed, they had to go to public transport and hence, there was a delay in lodging the FIR.

6 Be that as it may, persons on both the sides have been injured. At this stage, it would be difficult to ascertain as to who was the aggressor party. In any case, charge-sheet is filed.

7 The learned Counsel for the complainant has placed reliance to the Judgment of the Apex Court in the case of **Manju Devi v/s. Onkarjit Singh Ahluwalia @ Omkarjeet Singh & ors. Reported in AIR 2017 SC 1583**. That was a case where the complainant was molested and was subjected to indignation and therefore, the Hon'ble Apex Court was constrained to observe that -

“A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. **Section 3(1)(xi) of the SC/ST Act** which deals with assaults or use of force to any woman belonging to a Scheduled Caste or Scheduled Tribe with the intent to dishonour or outrage her modesty is an aggravated form of the offence.

The Apex Court in the given facts of the case had observed that -

“in the light of the specific averments in the complaint made by the complainant, we are of the considered opinion that section 18 of the sc/st act creates a bar for invoking **Section 438 of the Code.**”

8 It is clear that the facts of the said case would not be relevant in the present case.

9 The Hon'ble Apex Court has considered Judgment in the case of **Vilas Pandurang Pawar and anr. V/s. State of Maharashtra & ors., reported (2012) 8 SCC 795**, wherein it was observed that -

“The scope of Section 18 of the SC/ST Act read with [Section 438](#) of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, **unless it prima facie finds that such an offence is not made out.**”

10 As against this, Learned Counsel for the appellants submits that by virtue of Article 141 of the Constitution of India, the fundamental right/statutory right of citizen cannot be withdrawn and further, more particularly, that once there is a subsequent Judgment, the preceding judgment laying down the law or the ratio cannot be considered as it is deemed to be over ruled.

11 Hence, in view of the above discussion, appeals deserve to be allowed and the interim relief granted vide order dated 8/11/2018 deserves to be confirmed in the interest of justice.

12 Hence, following order is passed :

ORDER

(i) The appeals are allowed.

(ii) In the event of arrest in Crime No. 435 of 2018 registered at Khed Police Station, Pune, the appellants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- each with one or more solvent sureties in the like amount.

(iii) The appellants shall report to the police station as and when called by the Investigating Officer and cooperate with the investigating agency to the best of their capacity.

13 The appeals are disposed of accordingly.

The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]