

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

CRIMINAL APPEAL NO. 1085 OF 2019

Ashpak Hajimiya Shaikh .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr. F. N. Momin a/w. Mr. Gautam Jain for the Appellant.

Ms. Rushita Jain for the Respondent No.2.

Mr. V. V. Gangurde APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 25th SEPTEMBER, 2019.

P.C:-

1. This appeal is preferred by the appellant for grant of bail in Crime No. 215 of 2019 registered at Padgha Police Station, Tal-Bhiwandi, Dist. Thane, for the offence punishable under Section 354 (D) of Indian Penal Code and Section 3(1) (F) (2) of The Schedule Tribe and Schedule Caste(Prevention of Atrocities) Act, 1989, contending that appellant is falsely implicated and in fact no provisions of The S.C.S.T. Act are attracted, as there is nothing on record to establish that appellant had knowledge of caste of

complainant and therefore, it cannot be said that appellant intentionally and knowingly committed any crime under The Schedule Tribe and Schedule Caste (Prevention of Atrocities) Act.

2. Learned counsel further contended that if no such provisions are attracted, only offence which can be considered against appellant is under Section 354 of Indian Penal Code, which is punishable upto 3 years and therefore, prayed that appeal be allowed.

3. Learned APP opposed the appeal contending that there is direct evidence against the appellant since, contents of report as well as statements of Manisha Savar, sister-in-law of complainant and Deepak Savar, brother of complainant's husband is corroborated to it. Learned APP further contended that in the additional statement of complainant recorded on the following date of report, complainant's caste is recorded.

4. Learned counsel appearing for respondent No. 2 referring to her affidavit in reply submitted that since appellant as well as complainant are residing as neighbour

and in fact are studying in same school, appellant had knowledge of complainant's caste and therefore, contended that appeal be dismissed.

5. Perusal of report by complainant would reveal that 15 to 20 days prior to incident dated 17th July, 2019, appellant while traveling with complainant in his vehicle, took to her saying that she should find out some time for him as she finds out for her husband and inquired about age of her children. 15 days thereafter appellant again met complainant in saloon when complainant was with her minor son where appellant is alleged to have further stated to her that if she would join him for roaming in his car. Thereafter, complainant left the saloon with her son to home appellant followed on his motorcycle and caught hold of her hand expressing his mind to pay her whatever money complainant would demand and left the spot. Contents of report as aforesaid are found corroborated by the statement of Manisha and her husband Deepak to whom complainant stated of incident and accordingly report came to be lodged by the complainant.

6. Though it is submitted that reference to complainant's caste appears in her additional statement, except for bare affidavit of respondent No. 2 on record that appellant being neighbour and since was studying with complainant in the same school, there is nothing to hold that at the time of incident appellant had knowledge of caste of complainant. All the more, complainant in her report stated that she belongs to S.C.S.T. Caste. Submissions of respondent No. 2 as aforesaid, by itself are not sufficient to establish knowledge of caste of complainant by appellant.

7. In the background of above facts and on perusal of chargesheet made available by the learned APP, in fact, it is noted that no case is made out for the the offence punishable under Section 3 (1) (F) (2) of the said Act.

8. Having considered the facts as aforesaid and as there are no antecedents, appeal is allowed. Hence, following order:-

ORDER

1. Appellant shall be released on bail on executing P.R. Bond of Rs. 25,000/- with one surety in the like amount.

2. Pending trial, appellant shall not enter into territorial jurisdiction of Padgha Police Station and shall not tamper with any of the witnesses.

(P. N. DESHMUKH, J.)