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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1160 OF 2019

Pandharinath Dharamji Dhokane ...Appellant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr.Aniket Nikam i/b Vivek Arote for the Appellant
Ms Jyoti S. Lohokari, APP for the State
Mr.P.P.Kalantri for applicant/intervenor

CORAM : P.N.DESHMUKH,J.
DATE : SEPTEMBER 23, 2019

P.C.:

1 Heard learned counsel for appellant, learned APP for State and learned counsel for respondent No.2-complainant. The appeal is for grant of bail before arrest in connection with Crime No.244 of 2019 registered with Sinnar Police Station, District Nashik.

2 The learned counsel for the appellant by referring to the contents of the FIR contended that no offence under the relevant provisions applied in the present crime can be said to have been made out. As even according to the report, what is stated in it is caste of the complainant and nothing else. It is submitted that thus from the report, it cannot be said that the appellant knowingly or intentionally abused the complainant on his caste and thus submitted that appeal be allowed. In support of his submissions, learned counsel relied upon the order of Co-ordinate Bench in Criminal Application No.1540 of 2015 wherein reliance is placed in the case of Vilas Pandurang

Parmar vs. State of Maharashtra [2012 (4) Bom. Cases Reporter(cri) 408] and contended that the appeal be allowed.

3 The learned APP opposed the appeal alleging that from the report, appellant's involvement is clearly established who is found to have abused the complainant on his caste and on instructions makes a statement that investigation is on the verge of completion.

4 The learned counsel for respondent 2 submitted that there is delay in lodging the report as the complainant had sustained injuries and was admitted in the hospital and as such he lodged report after his discharge on the second day.

5 It is the case of the prosecution that on 22.7.2019 at about 6.00 pm., when the complainant was travelling on motorcycle from Ambedkar Chowk, Rajwada of Pandurli Village, he saw public rush and thus stopped there to enquire whether appellant and other accused persons alleged to have abused him on his caste asking him to take back case filed by him under the Act That based on the allegations as aforesaid FIR came to be registered.

6 According to settled law, as relied by appellant In order to attract the provisions of 3(1) (x), which is pari materia with the amended provisions of sections 3(1) (r) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to take cognizance of offence, it is necessary for the complainant to disclose that the persons who has accused of commission of offence under the said Act, is not a member of the SC or ST and such incident occurred in public view. As such

mere reference of caste does not come within the ambit of above Act but what is necessary to attract the same is there has to be intention to humiliate the complainant by disclosing that he belongs to scheduled caste. It is only when the accusation with intention to insult or humiliate the person belong to scheduled caste or scheduled tribe by a person who does not belonging to any such caste is established, he can said to have committed the offence under the above referred provision.

7 In the background of submissions advanced as aforesaid, perusal of the FIR, would reveal reference of caste of the complainant only. As such, it cannot be said that the appellant had intentionally and knowingly abused the complainant on caste basis. In the circumstances, appeal is allowed in following terms:

(I) In the event of arrest of the appellant-Pandharinath Dharamji Dhokane in connection with Crime No.244 of 2019 registered with Sinnar Police Station, District Nashik, he shall be released on bail on his executing P.R bond in the sum of Rs.15,000/- (Rupees fifteen thousand only) with one surety in the like amount;

(II) The appellant shall attend the Investigating Officer as and when called till the filing of the charge sheet.

(P.N.DESHMUKH,J.)