

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5862 OF 2018

Shahnazar Shamsuddin Quershi and anr. ... Petitioners

Versus

The State of Maharashtra ... Respondents

Mr. Vikas Shivalkar for the petitioners.

Mr. Ramji Kotali a/w Mr. Ambadas Bansode for respondent no. 2.

Smt. Aruna Pai, APP for the State.

CORAM : B.P. DHARMADHIKARI &
NITIN W. SAMBRE, JJ.
DATE : DECEMBER 03, 2019

P.C.:

This petition is by accused in the Crime No. 761 of 2018 for the offences punishable under provisions of section 324, 323, 504, 506, 34 of IPC and section 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short "the SC/ST Act"). Submission of the learned counsel for the petitioners is even if what is stated in the FIR is accepted at its face value, allegation to the extent of making out case under the provisions of the SC/ST Act does not make out an offence. According to him, the allegations against the petitioners in the FIR if are perused, it is claimed that the

offences as attributed to the petitioners under the provisions of the SC/ST Act, which was not taken place in public view and that being so, necessary ingredients of section 3(1)(r) and (s) of the SC/ST Act are not satisfied.

2. While countering the submissions, the learned counsel for the complainant i.e. respondent herein and the learned APP has invited attention of this Court to wordings in the FIR so as to claim that the offences under the SC/ST Act had taken place in the public view and that being so the provisions of section 3(1)(r), are very much attracted. It is also claimed that it is a matter of appreciation of evidence and investigation in the matter is still going on. That being so, at this stage, the Court should be slow in causing any interference and as such rejection of the petition is sought.

3. With the assistance of the learned APP, we have perused the investigation papers.

4. In the FIR, specific attributions are made against the petitioners of assaulting the brother in law of the complainant. The said incident claims to have occurred at the house of the petitioners. It is then claimed that the petitioners along with other co accused has approached the house of the complainant and at the said place caste based utterances were made.

5. The spot panchanama which is part and parcel of the investigation papers if perused no spot is specifically marked therein so as to attract the provisions of section 3(1)(r) so as to infer that the offences under the SC/ST Act has committed by the petitioners in public view. Learned counsel for the complainant though has invited attention of this Court to the involvement of the people from the community while taking away the complainant and family members from the spot of incident, however, involvement of the said people from the community is only to the extent of taking away the complainant and family members from the spot of incident. That by itself will not pursue this court to infer that the members from the community were present on the spot of incident particularly when there is no specific mention about the same in the FIR and the other documents.

6. In the aforesaid backdrop, this Court is convinced that the provisions of SC/ST Act are prima facie, incorrectly invoked in the given facts and circumstances and as are narrated in the FIR and other documents. As such, petition is allowed in terms of prayer clause (d).

7. The Investigating Officer is at liberty to proceed further with the investigation as regards the other offences under the IPC.

8. Petition stands partly allowed accordingly.

(NITIN W. SAMBRE, J.)

(B.P. DHARMADHIKARI, J.)