

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

CRIMINAL APPEAL NO.287 OF 2020

Abdul Saeed Abdul Wahab Shaikh
Age: 45 years, Occu. Business
R/o. Plot No.45, Parimal Hsg. Society,
Garkheda Parisar, Aurangabad

... Appellants

Versus

1. The State of Maharashtra
2. Rahul Sahebrao Chabukswar
Age: 41 years, Occu.Business
R/o Galli No.6, Hussain Colony,
Garkheda Parisar, Aurangabad

... Respondents

**WITH
CRIMINAL APPEAL NO.290 OF 2020**

Abdul Raees Abdul Wahab Shaikh
Age: 45 years, Occu. Business
R/o. Plot No.45, Parimal Hsg. Society,
Garkheda Parisar, Aurangabad

... Appellants

Versus

1. The State of Maharashtra
2. Rahul Sahebrao Chabukswar
Age: 41 years, Occu.Business
R/o Galli No.6, Hussain Colony,
Garkheda Parisar, Aurangabad

... Respondents

.....
Mr. Satej S. Jadhav, Advocate for appellants.
Mr. R. B. Bagul, APP for respondent No.1-State.
Mr. A. K. Bhosale, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th August, 2020

COMMON JUDGMENT :

. Both the appeals are admitted.

2. Both the appeals have been filed by the respective appellants who are accused in same offence i.e. Crime No.24 of 2020 registered with Pundlik Nagar Police Station, Aurangabad dated 29-01-2020 and therefore, they are proposed to be disposed of by this common judgment. Both the appeals have been filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act') and both the appellants had filed application under Section 438 of the Code of Criminal Procedure before the Special Judge. Their applications have been rejected and therefore, they have approached this Court in appeals.

4. Heard learned Advocate Mr. S. S. Jadhav for appellants, learned APP Mr. R. B. Bagul for respondent No.1-State and learned Advocate Mr. A. K. Bhosle for respondent No.2-original informant.

5. It has been vehemently submitted on behalf of the appellants that the respondent has filed the FIR with concocted story. He himself is renowned history-sheeter. There are about more than 15 cases registered against him

including extortion and attempt to commit murder. The FIR shows that the alleged incident had taken place on 29-12-2019 as well as 01-01-2020, yet, the FIR has been lodged on 30-01-2020. The belated FIR leaves scope for concoction. Even if we consider the written complaint that was allegedly given by present respondent No.2 on 01-01-2020 to Assistant Commissioner of Police, Osmanpura Division, Aurangabad, yet, it can be seen that it was alleged in the said written complaint that the incident had taken place on 29-12-2019 and 30-12-2019 at about 11.00 a.m. Further, it was only against Shaikh Raees Shaikh Wahab i.e. the appellant in Appeal No.290 of 2020. In the body of that complaint application it is thereafter stated that the incident have taken place at about 11.00 to 11.30 a.m. on 01-01-2020, whereas the FIR says that it had taken place at about 8.00 p.m. on 01-01-2020. Respondent No.2 wanted to purchase the shop which Abdul Raees has purchased from one Dhanyakumar Mandlecha. Respondent No.2 used to give threats to the said appellant and therefore, he had filed a complaint application to police on 01-01-2020. Clear threat was given that the appellants would be involved in atrocity case. The FIR has been lodged with *mala fide* intention and therefore, there is no bar under Section 18 of the Atrocities Act for entertaining the application for anticipatory bail. The appellant in Appeal No.287 of 2020 was, in fact, not even present on the place of the alleged incident. In fact, he had left with his family on 20-12-2020 to the tour of South India and had returned to Aurangabad on 03-01-2020. The photocopies of the tickets and other documents

showing that he was present at different place in South India have been produced. In spite of all these documents, the learned Special Judge has not considered his application for pre-arrest bail. The criminal background of the informant is also not considered.

6. Per contra, learned APP and learned Advocate appearing for the informant strongly objected the applications and submitted that the learned Special Judge has rightly considered that the FIR shows *prima facie* offence under the Atrocities Act and therefore, application itself was not maintainable under Section 18 of the said Act.

7. At the outset, in view of the decision in ***Prathvi Raj Chauhan Vs. Union of India and others, [WP (C) No.1015 of 2018] delivered on 10-02-2020***, it is required to be seen as to whether the FIR makes out any *prima facie* offence under the Atrocities Act. It cannot be only on the basis of contents of the FIR. We are required to consider the background also that is the circumstances in which the FIR came to be lodged and also whether it has element of *mala fides*. At the outset, apparently, there appears to be delay in lodging the FIR, as the contents of the FIR show that the incident had taken place on 29-12-2019 and 01-01-2020. There is absolutely no explanation for the delay. The FIR also does not show that any complaint application was filed by the informant to police on 01-01-2020. Even if we consider the contents of that complaint application, then on the first

page it is stated that Shaikh Raees Shaikh Wahab has committed the offence under Atrocities Act at about 11.00 a.m. on 29-12-2019 and 30-12-2019. On the second page it is stated that the said incident had taken place at about 11.00 to 11.30 a.m. on 01-01-2020, whereas the FIR states that the said incident had taken place at about 8.00 p.m. on 01-01-2020. These apparent differences are definitely required to be considered. Another fact that is required to be consider is that photocopy of the FIR lodged by respondent No.2 i.e. Crime No.24 of 2020 shows that the FIR was registered on 29-01-2020 at 14.31 hours, but if we consider the column No.12, it starts with dated 30-01-2020. Therefore, there appears to be something wrong and it creates doubt as to exactly when the FIR was registered.

8. There appears to be cross terms between Abdul Raees Abdul Wahab Shaikh and the informant. As per Abdul Raees, it is due to his act and purchase of shop premises from Dhanyakumar Mandlecha. He has given complaint application to police on 08-01-2020. Another fact that will have to be considered is that the informant has a criminal background. The list of criminal antecedents has been given. As many as five offences with Mukundwadi Police Station, two offences with Pundliknagar police station, three offences with Jawahar Nagar Police Station and one offence each with M-Cidco, Kranti Chowk and Osmanpura Police Stations have been registered against him. There are two more FIR's, of which police stations, have not mentioned have been registered against him. The

offences registered against him are ranging from 307, 395, 354 etc., of Indian Penal Code, Arms Act and even under Section 142 of Maharashtra Police Act, which prescribes for “penalty for entering without permission area from which a person is directed to remove himself or over staying when permitted to return temporarily, (or for failure to report place or residence or dep[arture or arrival)”. No doubt, at this stage, the plea of alibi cannot be minutely considered, however, there appears to be evidence with the appellant in Appeal No.287 of 2020 to show that he was at a different place on the date and place of the incident mentioned in the FIR. As regards said appellant is concerned, there is absolutely no whisper about any imputations covering Atrocities Act. This aspect ought to have been seen by the learned Special Judge. It can be seen from the impugned judgment that many citations were referred on behalf of the appellant, however, all of them have been brushed aside on the ground that the facts are different. The learned Judge was supposed to consider the ratio laid down in those authorities. Facts are bound to be different. When law is explained, then it is the duty bound for the District Judiciary to consider the ratio which has been explained with the clarification of legal aspects. It can be certainly said from the judgment involved in Criminal Appeal No.287 of 2020 that the learned Judge has absolutely not applied his mind to the facts of the case and on that basis, he was supposed to see whether *prima facie* offence have been attracted against the particular accused or not. Mere presence of the accused, at a place where some utterances are alleged

to have been made, will not attribute common intention. Abuses cannot be given in chorus and therefore, when these basic factors are missing from the impugned judgment; such judgment cannot be allowed to be sustained. Both the judgment and orders are required to be set aside by allowing the appeals. Hence, the following order :-

ORDER

- 1) Both the appeals stand allowed.
- 2) The orders passed in Criminal Bail Application Nos.221 of 2020 and 256 of 2020 by learned District Judge-4 and Additional Sessions Judge (Special Judge SC and ST), Aurangabad on 25-02-2020, are hereby set aside. Both the said applications stand allowed.
- 3) In the event of arrest of Appellants viz., 1) Abdul Saeed Abdul Wahab Shaikh and 2) Abdul Raees Abdul Wahab Shaikh, in Crime No.24 of 2020 registered with Pundlik Nagar Police Station, Dist. Aurangabad for the offences punishable under Sections 504, 506 read with Section 34 of Indian Penal Code and under Section 3(1)(x) of the Atrocities Act, they be released on PR. and S.B. of Rs.15,000/- each.
- 4) The appellants shall not indulge in any criminal activity and they shall cooperate the police for investigation.

[SMT. VIBHA KANKANWADI, J.]