

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.340 OF 2020

Devidas s/o Madhukar Shinde,
Age 35 years, Occupation Agriculture
and Piggery,
R/o Village Baisane Tq. Sakri
Dist. Dhule.

...Appellant.

VERSUS

- 1) The State of Maharashtra.
- 2) Suresh Bhivsen Sonawane,
Age 42 years, Occupation Agriculture,
R/o Village Baisane Tq. Sakri
Dist. Dhule.

...Respondents.

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Advocate for Appellant : Mr. V. P. Raje.
APP for Respondent No.1-State : Mr. R. B. Bagul.
Advocate for Respondent No.2 : Mr. N. N. Desale.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 20-08-2020.

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is admitted.
3. By consent, the appeal is taken up for final disposal.
4. Present appeal has been filed under Section 14-A of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 438 of the Code of Criminal Procedure.

5. The applicant is apprehending his arrest in connection with Crime No.02 of 2020, registered with Nizampur Police Station Dist. Dhule for the offences under Section 324, 323, 504, 506 of the Indian Penal Code and Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. He is also challenging the order passed by the learned Special Judge in Criminal Bail Application No.195 of 2020 by Special Judge, Dhule on 23-03-2020 whereby his application under Section 438 of the Code of Criminal Procedure came to be rejected.

6. Heard learned Advocate Mr. V. P. Raje for the appellant, learned Additional Public Prosecutor Mr. R. B. Bagul for respondent No.1-State and learned Advocate Mr. N. N. Desale for respondent No.2- original informant.

7. It has been vehemently submitted on behalf of the appellant that, the First Information Report that has been lodged against the present appellant is nothing but the cross case to the complaint

lodged by the present appellant. Appellant is carrying out the business of piggery. According to him about eight to ten pigs owned by him were found dead on 08-01-2020. Poisonous medicine Thaimet was kept on the bandh of the agricultural land of the informant. Those pigs had consumed that Thaimet and, therefore, the present appellant had gone to the house of informant to ask as to why he had put Thaimet. In fact, appellant was assaulted by the informant and his brother and nephew. He was assaulted by sword and sickle. He had sustained bleeding injury from his head. Initially he was admitted to Civil Hospital, Dhule and then shifted to Siddheshwar Hospital Deopur, Dhule. The informant has concocted a story. The medical certificate of the informant would show that, his injuries were simple in nature and he has been discharged from the hospital immediately. No weapon was used for causing any injury, therefore there is no question of recovery. The informant is having habit of taking a revenge by taking benefit of his caste and, therefore, the appellant has been involved in a false case. The learned Special Judge rejected the application without considering the facts in particular, and by apparent contents of the First Information Report concluded that, the appellant has abused the informant in the name of his caste.

8. Per contra, the learned Additional Public Prosecutor as well as learned Advocate for the respondent No.2- informant strongly opposed the application and submitted that, perusal of the First Information Report would show that, the present appellant had abused, "साले भिलटे, तुम्ही माझ्या डुकरांना मारले आहे, मी तुम्हाला सोडणार नाही." Further even after assaulting the informant by means of axe, appellant started abusing, "भिलटे यांना मी कधीच सोडणार नाही." Therefore, taking into consideration these abuses those were uttered by the appellant, in view of Section 18 A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the provision of Section 438 of the Code will not apply. The contents of the First Information Report are making out *prima facie* case of offence under Section 3 (1) (r) (s) of the Atrocities Act. As the application itself is not maintainable, the appeal cannot be allowed. So also the axe is required to be seized in this matter.

9. At the outset, the prosecution story is required to be considered which has been stated in the First Information Report. The First Information Report has been lodged on 11-01-2020 regarding the incident dated 08-01-2020. Informant says that, after

he had dinner, he went to sleep. He got up due to the sound of bullet vehicle in front of his house and then he was called. He went out of the house and found the appellant on his bullet vehicle. Informant's brother Vitthal was sitting on Oata (raised platform). In his presence, the appellant had called informant and his another brother Somnath. Appellant took informant and his brother Somnath beyond the village limit, stopped the vehicle there, and he started abusing informant and his brother by saying, "साले भिलटे तुम्ही माझ्या डुकरांना मारले आहे मी तुम्हाला सोडणार नाही." Thereafter, he took out axe from the bullet vehicle and before the informant could realize, it is the case of the informant that, he was assaulted by the appellant on his head by the axe. He sustained bleeding injury to his head. His brother came ahead to rescue him, at that time the appellant had given blow of axe on the head of Somnath also, which caused him bleeding injury. The appellant, thereafter, started abusing again as "भिलटे यांना मी कधीच सोडणार नाही." The informant says that, he and his brother thereafter escaped from that place and came to house. Since both of them had sustained bleeding injury, their elder brother took them to Nizampur Police Station and, thereafter, was shifted to Government Hospital, Nizampur and then to Civil Hospital,

Nandurbar. It has been stated that six stitches have been applied to his injury and equally to the injury to Sominath.

10. In *Prithviraj Chavan v. Union of India*, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020, the Hon'ble Supreme Court has held thus,

“10. Concerning the applicability of provisions of Section 328 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18 A(1) shall not apply. We have clarified this aspect while deciding the review petitions.”

That means, we are required to consider as to whether *prima facie* offence has been made out attracting the offence under Atrocities Act. The contents of the First Information Report in this case would show that, there is no mention of the caste of the informant. No doubt it can be gathered during the course of investigation, however there is no specific whisper in the First Information Report that the appellant had the knowledge about the caste of the informant. Even if for the sake of argument we take that since both of them are from the same village, they were knowing each other very well along with their caste, yet the further contents of the First Information Report

shows that, the incident had taken place somewhere in the nighttime. The exact time has not been mentioned in the First Information Report, however in the proforma it is stated that, it is around 9.30 p.m. But then it is specific statement by the informant that, he and his brother were taken by the appellant on his bullet beyond the boundary of their village, and then by stopping the said vehicle at that place, the further incident has taken place. The First Information Report is silent about the place where they were taken and in which direction. Further it is silent on the point as to whether there was any locality around the spot and whether any person was present at that place or not. In order to attract the offence under Section 3 (1) (r) (s) of the Atrocities Act, the alleged abuses or insulting words should be heard by somebody and, therefore, at this *prima facie* stage there appears to be lacuna in respect of this ingredient and, therefore, it cannot be said that *prima facie* offence punishable under Section 3 (1) (r) (s) has been made out. It is to be noted that, there is delay in lodging the First Information Report and it appears that initially it was registered only for the offences under Indian Penal Code. Though the contents are the same, the police had not taken cognizance for the offence under Atrocities Act.

11. As regards use of the axe is concerned it is to be noted that, the Investigating Officer has produced copy of the medical certificate of the informant and his brother which says that, when they were examined at Civil Hospital, Nandurbar on 09-01-2020, it had already stitched wound over left parital head, one had four stitches and another by eight stitches, yet the nature of the injury is stated to be simple. Therefore, taking into consideration this aspect, only for the purpose of simple injury, the physical custody of the appellant need not be required. The purpose of recovery can be mitigated by imposing condition of attendance. The learned Special Judge has not meticulously considered the contents of the first Information Report in order to come to a conclusion that *prima facie* offence has been made out and, therefore, the appeal deserves to be allowed by setting aside the impugned order. Hence, following order.

ORDER

- 1) Appeal is hereby allowed.
- 2) The order passed by the learned Special Judge, Dhule in Criminal Bail Application No.195 of 2020, dated 23-03-2020, is hereby set aside. The said application stands allowed.
- 3) In the event of arrest of the applicant, in

connection with Crime No.02 of 2020, dated 11-01-2020, registered with Nijampur Police Station Dist. Dhule, for the offences punishable under Section 323, 324, 504, 506 of Indian Penal Code and Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on P.R. and S.B. of Rs.15,000/- (Fifteen Thousand).

4) The appellant shall co-operate with the investigation and shall not indulge in any criminal activity.

5) He should remain present before Investigating Officer on every Monday, Wednesday and Friday between 10.00 a.m. to 2.00 p.m., till filing of charge-sheet.

6) Bail before Trial Court.

7) It is clarified that, the above observations by this Court are the *prima facie* expressions and not to be considered at the time of final hearing before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE