

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.388 OF 2020

1. Sangita Popat Bhosale
Age: 36 Yrs. Occ. Agril.
2. Satish Popat Bhosale
Age: 37 Yrs., occu. Agril.
3. Vimal Popat Bhosale,
age: 67 Yrs., occu. Household

All above R/o Nimgaon Khalu,
Tq. Shrigonda Dist. Ahmednagar = **APPELLANTS**
(Orig.Applicants)

VERSUS

1. The State of Maharashtra
Through Police Station
Officer, Shrigonda Police
Station, Tq. Shrigonda,
District Ahmednagar.
2. Sangita Govind Shinde
Age: 47 Yrs., occu. Household
R/o Nimgaon Khalu,
Tq. Shrigonda, District
Ahmednagar.

= **RESPONDENTS**
(Resp.No.2 is orig.
informant)

Mr.NV Gavare, Advocate for Appellants;

Mrs.Vaishali Patil-Jadhav, APP for Respondent-
State.;

Mr.NM Chanchalani, Adv. For Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 10th September, 2020.

ORAL JUDGMENT:-

1. Heard learned Advocates and learned APP appearing for respective parties.

2. Admit. Learned Advocate and learned APP waive service for respective respondents. Taken up for final disposal.

3. Present appeal has been filed, under Section 14A of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act), to challenge order dated 19.6.2020 passed by Additional Sessions Judge, Shrigonda/Special Judge, Shrigonda under the Atrocities Act, below Exhibit-1 in Cri(Bail) M.A.No.338/2020. The present appellants are apprehending their arrest in connection with CR No. I-519/2020 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 341, 504, 506 read with 34 of IPC and under Sections 3(1)(r)(s) of the Atrocities Act. Therefore, they approached the Special Judge for pre-arrest bail, however, it has

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been rejected. Hence, the present appeal.

4. It has been submitted on behalf of the appellants that appellant No.3 was arrested by police and was presented before the Court and, therefore, the present appeal will not be surviving so far as appellant No.3 is concerned. The appeal is, therefore, restricted to appellant Nos.1 & 2 only.

5. A perusal of the entire facts would disclose that the incident, in question, had taken place on 2.6.2020 and in respect of the occurrence, appellant No.1 had lodged a report against one Pappu Govind Shinde, who is son of Respondent No.2, vide CR No.514/2020 with the same Police Station for the offences punishable under Sections 354-A, 323, 504, 506 read with 34 of IPC. However, in order to give a counter-blase or as a defence, present FIR bearing CR No.519/2020 has been belatedly lodged by Respondent No.2 on 4.6.2020. There is absolutely no explanation assigned by Respondent No.2 for the said delay.

. Further, another fact, that is required

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to be taken into consideration is, the FIR does not disclose, prima facie offence under the Atrocities Act by appellant Nos.1 & 2. At the most, the offences that could be attracted against them would be under Sections 323, 504 and 506 of IPC. Therefore, their pre-arrest bail application was not barred under Section 18A of the Atrocities Act; yet the learned Special Judge has observed that, since all of them had come together and Section 354 of IPC has been invoked, prima facie offence under the Atrocities Act is also made out against the appellant Nos.1 & 2. This is a wrong notion. It is further submitted that, physical custody of the appellants is also not required when the circumstances show that a concocted FIR has been lodged against them.

6. Per contra, learned APP as well as learned Advocate appearing for Respondent No.2 supported the reasons assigned by the learned Special Judge. Learned APP submitted that the statements of witnesses would show that present appellants have also taken an active part in the alleged occurrence.

7. As aforesaid, as the appeal is now restricted to appellant Nos.1 & 2 only, we will require to consider as to whether or not the offence under the Atrocities Act is made out against them and in that context, whether their application for pre-arrest bail was barred under Section 18A of the Atrocities Act or not.

8. It will not be out of place to mention here that the learned Special Judge in his reasoning itself has stated that the FIR would show that only applicant No.1 had uttered the words in the name of caste to the informant. Further, he then went on to say that all the applicants had come pre-planned in front of the house of the informant and thereafter, applicant No.1 had uttered the abuses, in question, in the name of caste. In fact, applicant No.1 before the Special Court was present appellant No.1 and if we see the FIR, it reflects the same. But the alleged abuses by appellant No.2 do not specifically use any such word/abuse referring the caste of the informant. Now, as regards appellant No.1 is concerned, it is stated that she had abused in the name of caste.

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But we cannot forget that she had, in fact, lodged the FIR on 2.6.2020, i.e. immediately after the incident against son of the informant and said son of the informant is one of the witnesses. There is absolutely no discussion regarding the FIR lodged by appellant No.1 and delay in lodging the present FIR by present Respondent No.2. The facts have not been considered by the learned Special Judge from the angle that, as a counterblast to the FIR lodged by appellant No.1, present FIR has been lodged. No doubt, in the present FIR itself the informant had stated that the appellants had given threats that false case would be lodged against them and this fact is also reflected in the statements of the witnesses; yet for that FIR, which is lodged prior in time, it cannot be brushed aside even at this stage that it is a false. Definitely, the fact is required to be noted that the FIR lodged by appellant No.1 is prior in time and the FIR lodged by present Respondent No.2 is belated, i.e. after two days and there is absolutely no explanation given for the delay. Rather scope has been left for the FIR lodged by present Respondent No.2 to infer that it is based on a concocted story or with

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exaggeration. Only by considering the contents of the FIR, we cannot come to a conclusion that the application for pre-arrest bail is not maintainable in view of bar under Section 18A of the Atrocities Act. However, we will have to consider the background in which the FIR has been lodged, i.e. whether it is tainted or not. The facts before this Court in the instant appeal definitely, prima facie, say that the FIR is tainted and as a counterblast to the FIR lodged by appellant No.1.

9. Another fact that is required to be noted is that, the FIR lodged by appellant No.1, she has made allegations that even the informant, i.e. Respondent No.2 herein had also assaulted appellant Nos.1 & 3 by fists and kick blows and abused her; yet it appears that the Police have lodged the report against Pappu Govind Shinde only.

10. The FIR lodged by Respondent No.2 also gives a reference that on 1.5.2020, the informant had lodged the report for the offences punishable under Sections 504 and 506 of IPC against the appellants, when the present appellants had closed

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the road going towards the house of Respondent No.2 with the help of JCB, thorns and pillars. Thus, it can be seen that the dispute was in existence even prior to alleged date of the incident, i.e. 2.6.2020. That, FIR lodged on 1.5.2020 was not under the Atrocities Act. Thus, for the foregoing reasons, it can be concluded that the learned Special Judge has not considered the facts in proper perspective and only apparent contents of the FIR, had wrongly concluded that, prima facie offence, has been made out under the Atrocities Act and, therefore, the application for pre-arrest bail was barred under Section 18A of the Atrocities Act.

11. It appears from the record that appellant No.3 was arrested on 10.7.2020 and thereafter, she was released immediately on bail by the learned Special Judge. In view of this, the appeal so far as it relates to appellant No.3 does not survive.

12. For the reasons set out herein above, following order is passed, -

ORDER

i. The Criminal Appeal stands

partly allowed;

ii. The Appeal so far as it relates to appellant No.3 stands disposed of, as it does not survive.

iii. The order dated 19.6.2020 passed by Additional Sessions Judge, Shrigonda/Special Judge, Shrigonda under the Atrocities Act, below Exhibit-1 in Cri(Bail) M.A.No.338/2020, is hereby set aside. The said Criminal Bail Application stands allowed.

iv. In the event of arrest of appellant Nos. 1 & 2 in connection with CR No.I-519/2020 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 341, 504, 506 read with 34 of IPC and under Sections 3(1)(r)(s) of the Atrocities Act, each one of them be released on PR and SB of Rs. 15,000/-.

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v. The appellants shall not tamper with the evidence of prosecution and shall not indulge in any criminal activities. They shall cooperate with the investigation.

vi. It is clarified that the observations made by this Court herein are restricted for deciding the Appeal seeking bail only and the Trial Court shall not get influenced by the same while considering disposal of the case on merits.

(SMT. VIBHA KANKANWADI,J.)

BDV