

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

CRIMINAL APPEAL NO.399 OF 2020

Munja @ Munjabhau s/o Bhagwan Thite
Age: 46 Yrs., occu. Agril.
R/o Jintur, Tq. Jintur,
District Parbhani

**= APPELLANT
(orig. accused)**

VERSUS

1) The State of Maharashtra
Through Jintur Police Station
District Parbhani.

2) Ajay s/o Vijay Ghansawant
Age: 32 Yrs., occu. Pvt.service
R/o Primary Health Center,
Yeldari, Tq. Jintur,
District Parbhani.

**= RESPONDENT/S
(Resp.No.2 is orig.
Complainant)**

Mr.SG Chapalgaonkar, Advocate h/for Mr. AD Ade,
Advocate for Appellant;

Mr.SP Tiwari, APP for Respondent No.1-State;

Ms.Shital E.Waghmare, Adv. for Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 28th August, 2020.

JUDGMENT:-

1. Present appeal has been filed by Appellant (original accused) under Section 14(A) (2) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as The Atrocities Act), challenging the

judgment and order dated 9th July, 2020 passed by learned Special Judge and Additional Sessions Judge-3, Parbhani in Criminal M.A.(Bail) No. 549/2020, whereby the said Bail Application was rejected. The appellant is apprehending his arrest in connection with CR No.0272/2020 registered with Jintur Police Station, District Parbhani for the offences punishable under Sections 353, 504, 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

2. Heard learned Advocate Shri SG Chapalgaonkar holding for Advocate Shri AB Ade for appellant; learned APP Shri SP Tiwari for Respondent No.1-State. Though Respondent No.2-informant was duly served; yet he remained absent and, therefore, this Court had appointed Advocate Ms. Shital Waghmare to represent cause of Respondent No.2.

3. Admit. Learned Advocates and learned APP waive service for respective parties. Taken up for final disposal.

4. It has been vehemently submitted on behalf of the appellant that, the appellant is being harassed by police and he has been shown to have involved in many cases. In fact, the appellant had filed a complaint against the police officers, being SCC No.274/2019 in respect of the incident dated 6.6.2018. The appellant was assaulted by police and, therefore, he had filed the said complaint. Now, when the process has been issued against the police officers, they have involved the present appellant in various cases. In fact, the present appellant is handicapped person, having 75% disability and the affected part of the body is left lower leg. The Disability Certificate has been produced on record. In fact, the present appellant and his wife were illegally arrested on 21.4.2020 and the present appellant was taken for medical examination at Primary Health Center, Yeldari. The hospital had not given any report to the present appellant and, therefore, he had gone there to ask for medical certificate. However, on the say of the police, the hospital staff has lodged a false complaint. The informant (present Respondent No.2) has stated that he was abused by

the appellant in the name of his caste and according to him, it was heard by his colleagues, viz. Jaideep Naik; Dr. Swati Akose; Peons Ms. Chinchane, Noorkhan Pathan and Driver Shaikh Mateen. However, the statements of Jaideep Naik and Dr. Swati Akose would show that they have not heard the appellant giving abuses in the name of caste to the informant. So also, Dr. Kailas Pawar has also not heard the abuses. Therefore, when the main witnesses have stated that there was no such utterances of words in the name of caste by the appellant, prima facie case has been made out by present appellant to show that the offences, under the Atrocities Act are not attracted and, therefore, there is no bar under Section 18 of the Atrocities Act for the present appeal. The learned Special Judge has not considered all these aspects. The learned Advocate, therefore, prayed for allowing the appeal by setting aside the order passed by the learned Special Judge.

5. Per contra, learned APP as well as learned Advocate representing the cause of Respondent No.2, vehemently submitted that the

contents of the FIR would clearly show that the appellant-accused usually visited the Primary Health Center, Yeldari and he was knowing the name and caste of the informant. He is admitting that he had gone to the Primary Health Center on the day of the incident. He ought not to have, in fact, gone to the Primary Health Center for collecting medical certificate, as when he was examined through Police, then definitely, medical certificate would have been given to the Police. The Primary Health Center is a public place and, therefore, even if one or two persons had not heard the utterances in the name of the caste, as they might have come to the spot later on; yet presence of other public cannot be ruled out and investigation in that respect is still pending. Those employees from the hospital have definitely stated about the behavior of the appellant and his insistence for the medical certificate for which he has given abuses. He has spoiled the blood samples of the patients, when in fact, amid pandemic situation, Respondent No.2 was requesting all of them to maintain social/physical distancing. The learned Special Judge has correctly held that prima

facie offences under the Atrocities Act have been made out and, therefore, there is definitely a bar under Section 18 of the said Act for the present appeal.

6. It is to be noted from the documents, those have been placed on record, so also the police papers and other documents, which have been produced by the present appellant that, the appellant was arrested on 21.4.2020 and he was taken to the Primary Health Center, Yeldari for medical check-up. According to the appellant, he was assaulted by the police and, therefore, he had made the complaint about the ill-treatment, at the hands of the police, to the Magistrate. Important point to be noted is that, present FIR has been lodged on 23.6.2020 and prior to that, on 17.6.2020, wife of the present appellant had given a complaint to District Superintendent of Police, Parbhani as to how she has been illegally arrested. It was also stated that the appellant was assaulted by the police. It is to be further noted that when the appellant was arrested on 21.4.2020, he would have been produced before the learned Magistrate

before 24 hours. If he would have been assaulted by the police, the appellant could have definitely conveyed the said fact to the Magistrate. Specific question was asked to the learned Advocate, representing the appellant about the same, whereupon, he has stated that the complaint of ill-treatment was made to the Magistrate. If that is so, then definitely the Magistrate would have, as a part of procedure, directed medical examination of the appellant to be done and medical report could have been obtained by the Magistrate directly. It appears that the medical examination, immediately after arrest of the appellant, was undertaken as a routine task and procedure by the police and certainly the police would have received a certificate of medical examination of the appellant. By no stretch of imagination, it can be said that the medical certificate of examination of the appellant could have been given to the appellant by the Primary Health Center. There was absolutely no reason for the appellant to go to the Primary Health Center on that day. When the Government and other institutions are constantly making an appeal to the public at large, especially

to those, who are likely to be more affected by the Corona virus during this pandemic, in order to take precautions and be at home, still, it appears that the appellant herein went to the Primary Health Center to collect the medical certificate, which he was not supposed to do so.

7. The police papers would show that the other staff members of the Primary Health Center have stated about the utterances in the name of caste by the present appellant and those doctors, who were in their cabin. It is stated that, after they heard the noise, they came to the spot and asked the appellant as to why he is abusing and then the present appellant has abused those doctors also. The doctors at the Primary Health Center were collecting the blood samples and the present appellant, as it is alleged that, had damaged and spoiled those blood samples. In spite of the fact, that was told to the appellant by the concerned doctor that the medical certificate has been handed over to the police; yet the appellant was not listening it and was abusing. Such behavior has been alleged against the appellant. There is prima

facie offence made out, attracting the Atrocities Act and, therefore, in view of the decision in the case of Prithvi Raj Chauhan vs Union Of India (Writ Petition No. 1015/2018 decided on 10 February, 2020), the present appeal for pre-arrest bail is barred under Section 18A(ii) of the Atrocities Act. The learned Special Judge has taken a correct view. There is no necessity to interfere with it. There is no merit in the present appeal and it deserves to be dismissed and it is accordingly dismissed.

8. As the Court had appointed Advocate Ms. Shital Waghmare to represent cause of Respondent No.2, her fees is quantified at Rs.5,000/- (Rupees five thousand), to be paid to her through High Court Legal Aid Services Sub Committee, Aurangabad.

(SMT. VIBHA KANKANWADI,J.)

BDV