

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.441 OF 2020

1. Sau.Harshada w/o Mahendra Jadhav
Age: 33 Yrs., occu. Household.
2. Mahendra @ Balu s/o Ramesh Jadhav
Age: 33 Yrs. Occ. Nil,

Both r/o Navjeevan Colony,
N-11, HUDCO, Aurangabad,
Tq. And Dist. Aurangabad.

= APPELLANTS
(orig.Accused)

VERSUS

- 1) The State of Maharashtra
through Police Inspector,
Police Station, CIDCO,
Aurangabad.
- 2) Datta Bhimrao Maghade,
Age: 37 Yrs., occu. Driver,
R/o Opp.House of Daulat Kharat,
Siddharth Nagar, N-12,HUDCO,
Aurangabad, Tq. And dist.
Aurangabad.

= RESPONDENTS

Mr.Pradeep B.Salunke,Advocate for Appellant/s
Mr.AM Phule,APP for Respondent No.1-State;
Mr.NT Tribhuvan, Adv. For Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 26th October, 2020.

ORAL JUDGMENT:-

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

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2. Admit. Learned APP and learned Advocate waive notice for respective respondents. By consent, taken up for final disposal.

3. Present appeal has been filed under Section 14-A(2) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act) to challenge the rejection of Criminal Appeal No.468/2020 on 7.7.2020 by learned Additional Sessions Judge/Special Judge, Aurangabad, whereby the application, filed under Section 438 of Cr.P.C. by the present appellants, came to be rejected. The appellants are apprehending their arrest in connection with Crime No.I-81/2020 registered with Cidco Police Station, District Aurangabad for the offences punishable under Sections 324, 323, 504, 506, read with 34 of IPC and Section 3(1)r and 3(1) (s) of the Atrocities Act. Respondent No.2 is original informant.

4. It has been vehemently submitted on behalf of the appellants that Respondent No.2 has filed the said FIR with malafide intention. Appellant No.1, who is wife of appellant No.2, had

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filed various complaints against Respondent No.2. So also, she had filed two FIRs against him. Appellant No.2 is friend of Respondent No.2 and as per the impression of appellant No.1, Respondent No.2 is responsible to make her husband, i.e. appellant No.2, addict to liquor. The said addiction to the vices of appellant No.2 has caused financial loss to appellant No.1. Respondent No.2 has an ill-eye against appellant No.1 and, therefore, she has lodged the complaint application with police on 17.12.2019. Offence, vide CR No. 716 of 2019 under Section 354-D, 354A(1)(i) of IPC came to be registered against Respondent No.2 on 18.12.2019. Thereafter, again a complaint application was filed by appellant No.1 on 30.12.2019 with the police. At that time, the appellants were assaulted by Respondent No.2, his wife, sister and nephew. Offence, vide CR No. 10/2020 was registered against them on 6.1.2020 for the offences punishable under Sections 354, 324, 504, 506 read with 34 of IPC. Once again, complaint application has been filed by appellant No.1 on 13.1.2020 against Respondent No.2. In response to the same, PSI CIDCO Police Station,

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Auragnabad informed her that a Chapter Case has been filed against Respondent No.2. With this background, in order to give counterblast and prevent appellant No.1 from lodging reports, a false story has been concocted by Respondent No.2 and FIR has been lodged. Custodial interrogation of the appellants is absolutely not required. The learned Special Judge erred in rejecting the application for pre-arrest bail filed by them on the ground that it is barred under Section 18 of the Atrocities Act. The learned Special Judge failed to consider the background and the malafides behind the FIR.

5. Per contra, learned APP as well as learned Advocate for Respondent No.2 strongly objected the appeal and submitted that the application, filed by the appellants for prearrest bail, was not at all maintainable in view of the fact that prima facie offence has been made out and bar under Section 18 of the Atrocities Act. It was submitted that perusal of the FIR would show that the appellants uttered, - "हे महाराच्या धेडाच्या मायघाल्या तुला व तुझ्या कुटूंबाला बरबाद करून टाकू" which is imputations

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against caste. Both the appellants were very much knowing caste of the appellants. In fact, it was appellant No.1, who was unnecessarily dragging Respondent No.2 in litigation and was making wild allegations, lodging reports against him with the police. Learned APP further submits that the statements of the witnesses have been recorded. The FIR discloses presence of one Aarefkhan, who knew the informant since beginning. He has stated that when they were talking with each other, a lady and a man came and started abusing Respondent No.2. His statement under Section 164 of Cr.P.C. has also been recorded, which is corroborating. The statement of the informant has also been taken under Section 164 of Cr.P.C. Further, statement of one Dyaneswar Shirsath is also taken, who was an auto rickshaw driver, which is supporting the informant and one Ganesh Kailash Salve. Therefore, the evidence collected would prima facie show commission of offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act and, therefore, the Special Judge has rightly rejected the application.

6. At the outset, perusal of the complaint applications and FIRs lodged by appellant No.1 would definitely show that she is blaming Respondent No.2 for driving her husband to vices. She has also alleged that, Respondent No.2 is behaving with ill-eye against her and in the past Respondent No.2 had tried to undress her on the road. She has taken prompt action by lodging the complaint applications with the police. When this background is narrated and there is no much time gap between the incidents then there is a room to believe, even at this stage, that the FIR lodged by Respondent No.2 appears to be tainted.

7. In the FIR, Respondent No.2 says that, appellant No.2 had purchased an auto rickshaw by taking loan from finance company. He had not repaid the loan instalments and, therefore, the informant says that the auto rickshaw, belonging to appellant No.2, was parked by one Ashtapal Gavai, who is stated to be friend of appellant No.2, in front of the house of the informant and then, Respondent No.2 states that he was the guarantor for appellant No.2 for the said loan transaction.

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He has intentionally not given the date on which said Gavai had parked the auto rickshaw of appellant No.2 in front of the house of the informant. This appears to be high-handed act on the part of said Gavai as well as respondent No.2. Though Respondent No.2 has not specifically stated that he had asked said Gavai to do the said act; yet he is has not stated as to what could have been the reason and under which provision of law, said Gavai was entitled to take any such action. The finance company is not stated to have acted against appellant No.2. This high-handed act supports the allegations, even at this prima facie stage, those have been made by appellant Noi.1 against Respondent No.2. The informant has not stated that appellant No.1 had lodged the FIRs against him, but only says that quarrels had taken place 2-3 times earlier.

8. Now, as regards the alleged incidence occurred on 9.30 pm of 11.2.2020 is concerned, the informant says that he was talking with Aarefkhan on a road when the appellants went, abused him in the name of caste, assaulted with some weapon and

gave threats. He states that he had approached to the police station immediately. Thereafter he was referred to medical examination. But then still his FIR has been taken at 15.05 hrs on 12.2.2020. there appears to be delay also. It also appears that he might have received only simple injuries. Even at this stage, when the evidence has been collected, and if required to be considered then, there is much difference in the statement of the informant and the witnesses under Sections 161 and 164 of Cr.P.C. Therefore, taking into consideration all these aspects and taking into consideration the ratio laid down in the case of Prathvi Raj Chauhan Vs. Union Of India -(Writ Petition No.1015/2018 decided on 10 February, 2020), when the FIR is lodged with some malafide intention, it will have to be held that prima facie offence has not been made out. The appeal deserves to be allowed as the learned Special Judge has failed to consider all these aspects. The learned Special Judge has literally refused to take note of the FIRs lodged by appellant No.1 against Respondent No.2. He has only concentrated on the contents of the FIR, when, in fact the background

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is also required to be seen as there is reference of that background in the FIR itself. Hence, following order, -

ORDER

i. The Criminal Appeal is hereby allowed;

ii. The judgment and order dated 7th July, 2020 passed by learned District Judge-4 and Additional Sessions Judge, Aurangabad in Criminal Bail Application No.468/2020, is hereby set aside. The said application stands allowed.

iii. In the event of arrest of both the appellants in connection with CR No.I-81/2020 dated 12.2.2020 registered with Cidco Police Station, District Aurangabad for the offences punishable under Sections 324, 323, 504, 506, read with 34 of IPC and Section 3(1)(r) and 3(1)(s) of the Atrocities Act, each one of them be released on their executing PR and SB of Rs.15,000/- each.

iv. The appellants shall not tamper with evidence of the prosecution in any manner. They shall not indulge in any criminal activity.

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

(SMT. VIBHA KANKANWADI,J.)

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