

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

CRIMINAL APPEAL NO.455 OF 2020

1. Shakuntala w/o Pandharinath Pawar
Age: 50 Yrs., occu. Agril.
R/o Borsar (Bk.), Tq.Kannad,
District Aurangabad.
 2. Archana w/o Tulshiram Pawar,
Age: 32 Yrs., occu. and r/o
as above
- = **APPELLANTS**
(Orig.Accused)

VERSUS

1. The State of Maharashtra
Through Police Station
Deogaon (R) Tq. Kannad,
District Aurangabad.
 2. Rahul Haribhau Pawar,
Age: 32 Yrs.
R/o Borsar (Bk.), Tq.Kannad,
- = **RESPONDENT/S**
-

Mr.PF Patni, Advocate for Appellants;
Mr.SW Mundhe, APP for Respondent No.1-State;
Mr.SG Bobde, Adv.(appointed) for Resp.No.2;

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 2nd September, 2020.

ORAL JUDGMENT:-

1. Heard learned Advocate for respective parties.
2. Admit. Learned Advocate and APP waive service for respective respondents. By consent, taken up for final disposal.

3. It will not be out of place to mention here that though Respondent No.2 had not appeared on 31st August, 2020, which was, in fact, the returnable date for appearance of Respondent No.2, this court had appointed Advocate Mr. S.G.Bobde, to represent cause of Respondent No.2. However, today, learned Advocate Mr. Awsarmol submitted that he has instructions to appear for Respondent No.2. He may file his Vakalatnama within a week before this court and under such circumstance, he was also heard for Respondent No.2.

4. Present appellants have filed the present appeal under section 14A(2) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (herein after referred to as the Atrocities Act), challenging the rejection of their Criminal Bail Application No.1007/2020 on 5th August, 2020 by the Special Judge, under the SC & ST (POA) Act, Aurangabad.

5. It has been vehemently submitted on behalf of the appellants that perusal of the FIR would show that, the alleged abuses in the name of

caste are said to have been by four persons and specific role, as regards the abuses are concerned to each of the accused, is not attracted. Another fact that has not been considered by the Special Judge is that the place of incident is stated to be an agricultural land, i.e. Gut No. 141, which will have to be taken as a private place and, therefore, whatever incident is stated to have occurred was not within the public place. Further, the contents of the FIR would also show that only the informant and his family members were present and nobody else from the public was present and, therefore, the said place cannot be considered as private place "within public view". Therefore, though further allegation was that the present appellants had assaulted; yet the said offence cannot be more than under Section 323 of IPC which is bailable. Ingredients of Section 3(1)(s) or even Section 3(2)(va) of the Atrocities Act, cannot be said to be attracted and, therefore, the learned Special Judge has erred in dismissing the application by holding that it is barred under Section 18 of the Atrocities Act. The learned Special Judge further failed to consider that Gut No.141 is in possession

of the appellants and it was given in possession in Execution proceedings. Possession receipt dated 24.12.2011 would show that the Circle Officer had given possession of Gut No. 141 as per the Court's Decree to the extent of 3 hectares and 4 Ares. The panchanama to that effect was also executed. Thus, when the said property is in possession of the appellants, the informant and his family members had no right to trespass into the land. If their trespass would have been resisted by the appellants, then that was in their private defence to protect the property.

6. Taking into consideration earlier such acts, present appellant No.1 had given a written complaint on 18.6.2020 to Superintendent of Police and gave the entire incidence including the threats given by the informant that he would involve the appellants and their family members in a false case under the Atrocities Act. Therefore, the FIR is filed with malafide intention.

7. The learned Advocate for the appellants has relied on the following authorities, -

1. AIR ONLINE 2020 BOM. 159 – Vijaymala Tanaji Dolare Vs. State of Maharashtra;
2. AIR ONLINE 2019 BOM 1252 KESHAV Reddy Vs. State of Maharashtra.
3. AIR ONLINE 2019 BOM 2215 – Ravi Baburao Thakre Vs. State of Maharashtra.
4. 2008 (3) Mh.L.J. 385 – Sarita Shyam Dake Vs. Sr.Police Inspector, Mumbai and Ors.
5. 2005 (3) Mh.L.J. 368 – Pradnya Pradeep Kenkare and Anr. Vs. State of Maharashtra.
6. 2009 (3) Mh.L.J. 225 – Udaysing Ramsing Pawar Vs. State of Maharashtra and Ors.

8. Learned APP Mr. Mundhe, learned Advocate Shri SG Bobde (appointed for Respondent No.2) and learned Advocate Shri Awsarmol, representing cause of Respondent No.2, all have strongly opposed the appeal and they supported the reasons assigned by the Special Judge. They have submitted that no doubt, there is a civil dispute between informant's family and appellants' family; yet highhanded act on the part of the appellants can be seen that they have assaulted family members of the informant and had also uttered, - "महारड्यांनो जास्त माजले का", which will definitely amount to insult in the name of caste, thereby attracting the provisions of Section 3(1)

(r)(s) of the Atrocities Act. Further, the appellants have knowledge about the caste of the informant and his family members. Any offence against them would attract Section 3(2)(va) of the Atrocities Act and, therefore, their application for pre-arrest bail is barred under Section 18 of the Atrocities Act. The appellants and the family members are residing in the same village where the informant and his family members reside and, therefore, possibility of similar offence or pressuring the witnesses, cannot be ruled out and, therefore, the Special Judge has rightly rejected the bail application of the appellant. All the said Advocate prayed for dismissal of the appeal.

9. At the outset, and again and again, this Court is required to observe that the Courts, dealing with the applications for bail involving the offences under the Atrocities Act, are not properly considering the contents of FIR, so also the clear position of law declared by the Hon'ble Apex Court and this Court. Perusal of the impugned order by the Special Judge, Aurangabad would show that several citations were referred on behalf of

the appellants, but all of them have been brushed aside only by saying that those judgments/citations are not helpful to the applicants. There is absolutely no discussion as to how those citations are not helpful to the applicants. In fact, when the law is declared and clarified then definitely it is binding on the Special Judge. There is total non-application of mind on the part of the learned Special Judge while considering the bail application.

10. As per the contents of the FIR, the incident had taken place at about 10.00 AM in Gut No.141 on 10.7.2020. It is the contention of the informant that he or his family is owner of Gut No. 141. Here he has not given area of the Gut number as to which belongs to him or his family. The documents which have been produced by the appellants, i.e. Possession Receipt and the Panchanama, cannot be brushed aside and it shows that as per the Decree of the Court, land Gut No. 141 was measured and 3 hectares 4 Ares thereof was given in possession of Pandharinath Ramrao Pawar, who is stated to be husband of appellant No.1. The

panchanama is in respect of the same land and executed at the same time. Now, at this stage, from the FIR, we are unable to get as to how much area from Gut No.141, is stated to be in possession of the informant and his family members. Though informant's surname is also 'Pawar' and surname of accused is also 'Pawar', it appears that they belong to different castes and, therefore, as regards the Court decree is concerned, it appears that the informant or his any family member could not have been a party in the Court's proceedings and, therefore, any portion from the said Gut number, could not have gone to the informant. However, all this is a guess work, taking into consideration the fact that the FIR is silent regarding the area. What can be gathered from the Panchanama that total area of Gut No. 141 was 14 hectares and 10 Ares and out of that, 3 hectares and 4 Ares land, was given to husband of appellant No.1. Now, it would be at the time of trial to consider as to in which area from Gut No.141, could be related to the informant and in which area of that Gut No.141, the alleged incident had taken place. Taking into consideration all these

aspects, this Court restrains itself from going into the aspect as to whether the alleged abuses were given "within public view" or otherwise.

11. The FIR shows that four persons had come around 2.30 pm and started saying that the said land belongs to them and the dispute was between two families. It is stated in the FIR that, -

"-----परंतु त्यांनी आमचे काहीएक ऐकले नाही आमच्याशी वाद घालु लागले
व आम्हाला म्हणाले की, महारड्यांनो जास्त माजले का असे म्हणून शिवीगाळ करु
लागले----- "

From these utterances, it is giving picture that all the four persons had abused in chorus, cannot be a fact. It is not stated that the abuse was by one person and others had then repeated it. This court would like to rely on the decision in the case of Shashikant Ramhari Tambe and Ors. Vs. State of Maharashtra - 2008 ALL MR(Cri.) 2132., which clearly states that, abuses cannot be in chorus and, therefore, as regards the appellants are concerned, it cannot be so attributed. Further contents of the FIR would show that the assault by the appellants would, at the most, attract offence under Section 323 of IPC, which itself is bailable.

12. One more aspect that ought to have been considered by the learned Special Judge that, when on the basis of certain document/s, the appellants were claiming that the disputed area from Gut No. 141 belongs to them, then, they had a right to protect their property. Further fact has not been considered by the Special Judge that, much earlier to the present FIR, a complaint application was filed by appellant No.1 on 18.6.2020 to the District Superintendent of Police, wherein it has been clearly mentioned that, in fact, she had given a written complaint to the Police Station on 12.6.2020; yet the Police Sub-Inspector, instead of taking cognizance of the said written complaint; had threatened the appellants and involved them in Atrocity Case. With all these background, it can be seen that, neither the FIR, prima facie, attracts the offence under the Atrocities Act against the present appellants, nor the same appears to be a bonafide. No doubt, these are the primary observations by this Court, of which, the trial Court need not to get influenced when it comes to the decision after the evidence is over. However, taking into consideration the law declared

in the case of Prithvi Raj Chauhan vs Union Of India-(Writ Petition No.1015/2018) decided on 10 February, 2020,, definitely, there was no bar to consider the application under Section 18 of the Atrocities Act and this aspect has not been considered by the learned Special Judge. Therefore, interference by this court is necessary.

13. For the aforesaid reasons, following order is passed, -

ORDER

i. The Criminal Appeal is hereby allowed;

ii. The judgment and order dated 5th August, 2020 passed by learned Special Judge under The SC & ST (PAO) Act, Aurangabad in Criminal Bail Application No.1007/2020, is hereby set aside. The said application stands allowed.

iii. In the event of arrest of both the appellants in connection with CR No.154/2020 dated 10.7.2020, registered with Devgaon Police Station, for the offences punishable under Sections 324, 323, 504, 506 read with 34 of IPC and Section 3(2)(va) and Section 3(1)(s) of SC and ST (Prevention of Atrocities) Act,

each one of them be released on 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.

v. It is clarified that the observations made by this Court 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.

vi. The fees of the appointed Advocate is quantified at Rs.5,000/-, which is to be paid by High Court Legal Aid Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI,J.)

BDV