

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

CRIMINAL APPEAL NO.507 OF 2020

Rajesh @ Sandip Narayan Shinde

... Appellant

Versus

1. The State of Maharashtra
2. Sonaji Limbaji Ujgare

... Respondents

.....

Mr. A. V. Lavte h/f Mr. S. J. Salunke, Advocate for appellant.

Mr. S. W. Munde, APP for respondent No.1 – State.

Mr. Akshay Kulkarni, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th October, 2020

ORDER :

. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act') to challenge the order of rejection of pre-arrest bail application i.e. Criminal Miscellaneous Application No.300 of 2020 filed by the present appellant before the learned Additional Sessions Judge, Majalgaon which came to be rejected on 11-09-2020. The appellant is apprehending his arrest in connection with Crime No.191 of 2020 dated 25-08-2019 registered with Wadwani Police Station, Dist. Beed for the offences punishable under Sections

143, 147, 148, 149, 323, 427, 452, 504 and 506 of Indian Penal Code and Sections 3(1)(r) and 3(2)(va) of the Atrocities Act.

2. Heard learned Advocate Mr. A. V. Lavte holding for Mr. S. J. Salunke for appellant, learned APP Mr. S. W. Munde for respondent No.1 – State and learned Advocate Mr. Akshay Kulkarni (appointed) for respondent No.2.

3. It has been vehemently submitted on behalf of the appellant that perusal of the FIR would show that the place of offence where the utterances of abuses in the name of caste were inside the house that too by accused No.1, therefore, *prima facie* offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act are not attracted towards the present appellant, who is original accused No.7. Further, as regards the offence under Section 3(2)(va) of the Atrocities Act is concerned, the FIR shows that there was no quantified damage. The allegation is that the articles in the house of the accused persons were scattered and the *Mangalsutra* of the wife of the informant and his sister-in-law is missing somewhere. It cannot be attributed to the present appellant and, therefore, *prima facie* case is not made out under that Section also. The learned Special judge failed to consider these aspects and wrongly held that there is bar under Section 18 of the Atrocities Act. As regards the offences under Indian Penal Code are concerned, the physical custody of the appellant is not required. The learned Advocate for the appellant, therefore, prayed for allowing the appeal and release

of the appellant on anticipatory bail.

4. Per contra, learned APP as well as learned Advocate (appointed) for respondent No.2 vehemently submitted that the learned Special Judge has rightly concluded that Section 3(2)(va) is attracted against the appellant. Offence is serious, antisocial and immoral. Though it is alleged that the utterances of abuses in the name of caste were by accused No.1, but all the accused persons had come together, which attributes the common intention or common object of the accused persons. The present appellant had pushed mother and sister-in-law of the informant thereby causing them hurt. The FIR shows that the offence that has been committed is specified in the Schedule, against the person or property of the member of Scheduled Caste. Therefore, *prima facie* offence has been made and, therefore, there is bar under Section 18 of the Atrocities Act.

5. Perusal of the FIR lodged by respondent No.2 would show that the incident had occurred at about 7.00 p.m. on 24-08-2020. He states that the seven accused persons (including the appellant) came to his house. They were knowing that he is the member of the Scheduled Caste. All were holding wooden logs. Accused No.1 asked him as to why his (accused No.1's) son-in-law Sharad Jadhav assaulted. Thereafter, he uttered "ये महारड्या माजलास काय". Nephew of the informant told accused No.1 that nobody has assaulted him. Then, accused No.3 - Bablu Mhaske assaulted nephew of the informant i.e. Kailas resulting in injury to his left

thigh and cheek. When another nephew of the informant Aakash came to rescue, he was abused and assaulted by accused No.2 – Mahadu Mhaske and accused No.1 – Anurath Mhaske resulting in covert injury. When wife of respondent No.2 was requesting not to assault, at that time, accused No.5 – Sharad Jadhav assaulted her with fist and blows. Mother and sister-in-law of the informant tried to rescue them, at that time, the present appellant and accused No.6 – Mahesh Mhaske pushed mother and sister in law of the informant. All the accused had scattered the household articles of the informant and during the scuffle, the *Mangalsutra* of the wife of the informant and sister-in-law went missing. It is further stated that all the accused persons abused “महारड्यांनो परत जर जावई शरद जाधव यास मारले तर तुम्हाला जिवच मारुन टाकु” (if they assault son-in-law Sharad Jadhav, then they would be killed). Thus, it is to be noted that as regards the offence under Section 3(1)(r) and 3(1)(s) is concerned, the place of offence was not within public view as the incident had occurred inside the house. Further, the first imputation is stated to be by accused No.1 – Anurath Mhaske and the last it is stated that all the accused persons abused it in chorus, which cannot be a factual aspect when it comes to abuses. Now, as regards the offence under Section 3(2) (va) is concerned, it runs thus :-

“Section 3(2).....

(va) Commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a

Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”

6. Therefore, taking into consideration the ingredients, we can see that the offence ought to have been committed against the person or property which is specified in the schedule against the member of Scheduled Caste or Scheduled Tribe. Therefore, unless it is shown that it was only on the count that the said person belongs to a particular caste, then only that Section would be attracted. Here, it appears that there was some earlier incident, wherein son-in-law Sharad Jadhav was assaulted and to make inquiry regarding the same, these accused persons are stated to have gone there. It cannot be then stated that it was merely because the informant belongs to a particular caste and with that intention only, the accused persons had gone to the house of the informant and assaulted him or his family members. Knowledge about the caste of the informant to the accused may be a fact, but taking into consideration the story that has been given in the FIR, it relates to the earlier incident and, therefore, at this stage, it can be said that *prima facie* case is not made out to show that merely because the informant is member of Scheduled Caste or his family members are of that caste, any offence has been committed against them. The observation by the learned Special Judge regarding applicability of Section 3(2)(va) of the Atrocities Act, so also the

observation that there is bar under Section 18 of the the said Act, *prima facie* appears to be wrong. Further, in view of the decision of the Hon'ble Supreme Court, in case of ***Prathvi Raj Chauhan Vs. Union of India and others [WP (C) No.1015 of 2018] delivered on 10-02-2020***, the appeal deserves to be allowed. The other Sections under Indian Penal Code will not prompt the custodial interrogation of the appellant and, therefore, the interim protection granted earlier by this Court vide order dated 28-09-2020 deserves to be confirmed. Hence, the following order :-

ORDER

- I) Appeal stands allowed.
- II) The order passed by the learned Additional Sessions Judge, Majalgaon in Miscellaneous Criminal Application No.300 of 2020 dated 11-09-2020, is hereby set aside.
- III) The order passed by this Court on 28-09-2020 regarding interim protection stands confirmed. In other words, in the event of arrest of appellant – Rajesh @ Sandip Narayan Shinde in connection with Crime No.191 of 2020 dated 25-08-2020 registered with Wadwani Police Station, Dist. Beed for the offences punishable under Sections 143, 147, 148, 149, 452, 427, 323, 504 and 506 of Indian Penal Code and Sections 3(1)(r) and

3(2)(va) of the Atrocities Act, he be released on P.R. and S.B. of Rs.15,000/-, if not already released.

IV) The conditions imposed earlier to remain as it is.

V) Fees of appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services Authority Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

SCM