

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1752 OF 2019

Mohan Pandurang Gajare ... Appellant

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Ghanasham Jadhav for the Appellant.

Mr. A.A. Palkar, APP for the Respondent/State.

CORAM: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 06th JANUARY 2020
PRONOUNCED ON : 10th JANUARY 2020

P.C.

1. This is an appeal under Section 14 A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act”) by the accused Mohan Gajare who has been booked by the police station Pandharpur Rural of an offence punishable under Sections 143, 147, 149, 353, 332, 323, 504, 506, 188, 229-A of the Indian Penal Code and 3(1)(r)(s), 3(2)(va) of the Act.

2. A few facts germane for disposal of this Appeal can be summarized as follows:

3. Respondent No.2 is a head constable attached to the Pandharpur Police Station, who lodged a report vide C.R. No.

355 of 2019, wherein it is alleged that on 06.11.2019 at around 1.00 a.m., when he along with his other police personnel had been to the house of Appellant to execute a warrant issued by the JMFC, Malshiras, a person who was sleeping in front of the house, after noticing the police party started abusing. Despite informing accused Nos. 1, 3 and 4 that the police party had been to their house in discharge of their official duties, the accused created hurdle by raising shouts and therefore, the warrant could not be executed. It is alleged that the complainant belongs to “*Paradhi*” community of which the accused was aware. When one Gujar Raosaheb Gajare was arrested by the police, the rest of the accused obstructed the police from discharging their duties and freed the accused No.2 who escaped from the custody in the darkness.

4. I heard Mr. Ghanasham Jadhav, the learned Counsel for the Appellant and Mr. A.A. Palkar, the learned APP for the State.

5. At the outset, it is contended that the investigation is almost on the verge of completion and therefore, custodial interrogation of the Appellant is not required. It is contended that the act of the Appellant in resisting his arrest was obvious, since the police

party suddenly came to his house in the midnight. According to the learned Counsel, the Appellant had no reason to know the caste of Respondent No.2. He drew my attention to the fact that there is no specific material on record indicating as to who exactly uttered those words in the name of the caste and therefore, the provisions of the Act do not attract.

6. Per contra, the learned APP submits that police party was obstructed from discharge of their official duties. The learned APP, however, submits that there are no serious allegations against the Appellant, insofar as, the provisions under the SC-ST Act is concerned. The learned APP placed reliance on a judgment of this Court in case of ***Shantabai and Anr. V/s. State of Maharashtra***¹.

7. In the impugned Judgment-**Exhibit(d)**, the learned Additional Sessions Judge, Pandharpur while rejecting the application seeking anticipatory bail has observed that in view of bar under Section 18 of the said Act, the Court had no jurisdiction to entertain the application. A perusal of record does not reveal as to whether the Appellant belongs to community which cannot be termed to be Scheduled Caste or Scheduled Tribes. Secondly, the

¹ 1982 CRI. L.J. 872

incident alleged had occurred in the midnight and in the premises of the house of the Appellant and therefore, prima facie, it seems that the offence was not committed withing the public view. It cannot be lost sight of the fact that Respondent No.2 had been to execute a warrant in discharge of his official duty and therefore, there is no question of appellant extending threats to Respondent No.2 or to influence him, in any manner whatsoever. There is even no question of Respondent No.2 getting cowed down by the Appellant.

8. Interestingly, it is the contention of the Respondent No.2 that he had been to the house of the appellant to execute a warrant under Section 175 of the Cr.P.C.. Section 175 of Cr.P.C. contemplates power of summons to a person whose presence is required before the Court. What made the police party to visit the house of the Appellant at 1.00 a.m. in the midnight to serve the summons? Ordinarily, the summons could have been served during day time instead of midnight. The conduct of Respondent No.2 in visiting the house of the Appellant in the midnight creates some doubt.

9. In case of *Shantabai* (supra) in paragraph 7 of the

judgment, it is held by a Division Bench of this Court, thus:

“ 7. Section 7(1)(d) of the Act deals with insult or attempt to insult on the ground of untouchability a member of Scheduled Caste. The word ‘insult’ in the legal parlance means to treat with offensive disrespect or to offer indignity to a person. The significance to be attached to the words used would obviously depend on the facts and circumstances of each case, the occasion and the manner in which the words are used and person to whom they are addressed. Any act or speech meant to hurt the feelings or self-respect of another or to treat a person with insolence or contempt by words or action would obviously amount to an insult. When a person belonging to higher caste offers insult to a Harijan or to a person belonging to Scheduled Caste on the ground of his caste, then the said act is presumed to fall within the inhibition contained in the Section. In such cases the burden would shift on the accused to establish that the act alleged to be committed was not committed on the ground of untouchability but on some other ground. The quantum and nature of proof required to displace the presumption must vary according to the facts and circumstances of each case.”

10. It has also been observed that merely calling a person by his caste’s name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

11. Even though if it is presumed for sake of arguments that the Appellant used the word “*pardhi*” qua the caste of Respondent No.2, as already stated, there is nothing on record to show that the Appellant himself belongs to higher caste. Secondly, if Respondent No.2 had been to execute the warrant, which is in fact a summons, it is highly improbable that the Appellant would abuse the police man on his caste, especially when he was with the police team. The ratio can be accordingly, distinguished insofar as the facts of the present case are concerned.

12. Having considered the aforesaid facts and circumstances, the impugned order needs to be quashed by allowing the appeal.

ORDER

- i) The Appeal is allowed
- ii) In the event of his arrest, the Appellant be released on executing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge, Pandharpur.
- iii) The Appellant shall not, in any manner whatsoever,

influence the prosecution witnesses either directly or indirectly.

iv) The Appellant shall attend the concerned police station on every Friday between 3 p.m. to 6 p.m. till the filing of the chargesheet.

v) The Appeal stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN,J.)