

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.523/2020

Pawan s/o Jayendra Darde,
aged about 26 years, Occ. Private Job,
r/o At Jambhali, Tq. Dhanora, Dist.
Gadchiroli.

....APPLICANT

...VERSUS...

1. The State of Maharashtra through
Police Station Officer, P.S. Gadchiroli,
Tq. Dsit. Gadchiroli.
2. Kishor s/o Kawaluji Kulsange,
aged about 44 years, Occ. Service,
r/o Behind Viyani Viddyalay,
Navegaon Complex at Gadchiroli,
Dist. Gadchiroli.

...NON APPLICANTS

Mr. J. K. Matala, Advocate for applicant.
Mr. S. M. Ghodeswar, A.P.P. for non applicant no.1-State.

CORAM:- V. M. DESHPANDE &
ANIL S. KILOR, JJ.
DATE: 18.12.2020

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. Heard Mr.Matala, learned counsel for applicant and Mr. Ghodeswar, learned A.P.P. for non applicant no.1-State. Though, non applicant no.2 is served with the notice of final disposal, nobody is appearing for non applicant no.2.

2. Applicant is one of accused in Crime No.283/2019 registered with Police Station, Gadchiroli for an offence punishable under Section 353, 354, 294, 509, 323, 332, 504 read with Section 34 of the Indian Penal Code and Sections 3 (1)(m), 3(1)(r)(s), 3(2), 5-A, 3(1) (w) (i) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Investigation is over and charge-sheet is filed.

3. By the present application, applicant is praying that the charge-sheet be set aside.

4. Mr. Matale, learned counsel for applicant submits that the applicant himself belongs to the caste, which is a Scheduled Caste. Therefore, it is his submission that there cannot be any offence against him under penal provisions of the Atrocities Act.

5. The learned A.P.P. has filed reply on behalf of the State. In paragraph 5 of the reply, on oath, it is stated that the caste certificates of the complainant as well as accused persons were collected and during investigation, it was found that the applicant also belongs to the Scheduled Caste. If that be so, the

applicant cannot be prosecuted for the offence in respect of the penal provisions of the Atrocities Act.

6. It is the case of the prosecution that the applicant has also outraged the modesty of a woman. Learned A.P.P further submits that during the course of investigation statement of witness Tikaram. Reading of the said statement would show that specific overt act has been attributed against the present applicant that he snatched the saree of Tikaram's wife. Even her statement is also recorded and it is the part and parcel of charge-sheet. The statement of witnesses clearly attributes overt act against applicant in respect of outraging her modesty.

7. In that view of the matter, the applicant has made out a case for quashing of the charge-sheet against him filed for the offence under the Atrocities Act and not under the Indian Penal Code. Hence, we pass the following order.

ORDER

- (i) The application is partly allowed.
- (ii) Charge-sheet against applicant *qua* for the offence punishable under Sections Sections 3 (1)(m), 3(1)(r)(s), 3(2), 5-A, 3(1) (w) (i) (ii) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act is hereby quashed and set aside.

(iii) It is hereby made clear that trial against applicant in respect of other offences covered under the Indian Penal Code shall continue.

Rule is made absolute in the above terms.

JUDGE

JUDGE

kahale