

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPEAL NO. 815 OF 2019

(Akshay s/o Brijesh Paliwal ..vs.. State of Maharashtra, through PSO, Sawangi (Meghe) and another)

WITH

CRIMINAL APPEAL NO. 855 OF 2019

(Akash s/o Laxminarayan Madan ..vs.. State of Maharashtra, through PSO, Sawangi (Meghe) and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mahesh Rai, Counsel for the appellants,
Shri N.B. Jawade, Addl.P.P. for respondent 1/State,
Shri Shyam Jaiswal, Counsel for respondent 2 in Cri.A. 815/2019.

CORAM : ROHIT B. DEO, J.

DATED : 21-02-2020

These appeals are preferred under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act being aggrieved by the rejection of the applications preferred under Section 438 of the Code of Criminal Procedure.

2. The appellants apprehended arrest in Crime 459/2019 registered at Police Station Sawangi (Meghe), Wardha on 21-8-2019 for offence punishable under Sections 341, 324, 143, 144, 147, 148, 149, 427 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. Perusal of the rejection order reveals that the applications are rejected in view of the bar under Section

18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The observation is that the appellants hurled casteist abuses and, therefore, the bar is attracted.

4. Perusal of the first information report reveals that the appellant in Criminal Appeal 815/2019 Akshay Paliwal is named in the report dated 21-8-2019. The gist of the report is that Shubham Batra, Akshay Paliwal, Manoj Gupta and five to seven others abused and assaulted the informant. However, in so far as casteist abuses are concerned, the said act is not attributed to Akshay Paliwal. The report states that out of the persons present, two or three persons abused the father of the informant in the name of caste. The informant and the victim obviously knew Akshay Paliwal and named him in the report. In this view of the matter, the fact that the act of hurling casteist abuses is not attributed to Akshay Paliwal, would, in my considered view, lead to the inference that no offence punishable under Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act is even *prima facie* made out against Akshay Paliwal.

5. The report concludes by stating that after enquiries, the names of some of the persons present could be known to the informant. Subham Batra, Akshay Paliwal and Manoj Gupta were already named in the

opening paragraph. Additionally, Akash Kutemate, Akash Madan, Chetan Madan, Avinash Bande, son of Ganesh Pajare, Akash Teltumbde, Avi Gafat, Shubham Bunde, Tushar Ghongde, Lala Barahate and three to four unidentified are referred to in the concluding paragraph.

6. However, again it is not stated that it was Akash Madan who hurled the casteist abuses.

7. At this stage, I am satisfied that the first information report does not disclose offence punishable under Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

8. The appeals are allowed.

9. In the event of arrest in Crime 459/2019 registered with Police Station Sawangi (Meghe) for offences punishable under Sections 341, 324, 143, 144, 147, 148, 149, 427 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the appellants shall be released on bail on executing personal bonds of Rs.16,000/- each with one solvent surety of like amount.

JUDGE