

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 328 OF 2021
PAPPU ANKUSH JAYBHAYE AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CRIMINAL APPEAL NO. 329 OF 2021
RAVINDRA MALHARI BHAGAT
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Mr.N.V. Gaware, Advocate for the appellants.
Ms.R.P. Gaur, APP for the respondent/State.
Mr.Arvind G. Ambetkar, Advocate (appointed) for
respondent No.2.

CORAM :SURENDRA P. TAVADE, J.
RESERVED ON :31.08.2021
PRONOUNCED ON :07.09.2021

ORDER :-

01. Being aggrieved by and dissatisfied with the order passed by the Additional Sessions Judge, Shrigonda, Dist. Ahmednagar, in Criminal (Bail) M.A.No.283 and 284 of 2021, present appellants filed these appeals. Both the appeals are arising out of order passed by the Additional Sessions Judge, Shrigonda, in Crime No.0361 of 2021, registered with Karjat Police Station, hence, both the appeals are taken for decision together.

02. Facts giving rise to the present appeals can be summarized as under :-

03. The appellants are residents of village Durgaon, Tal. Karjat, Dist. Ahmednagar. The informant - Sapana Ajay Pawar and the witnesses are belonging to Pardhi community. On 10.06.2021 the informant Sapana Pawar lodged FIR against the appellants and others for the offences punishable under sections 143, 147, 148, 149, 452, 323, 324, 504, 506, 427 of the Indian Penal Code and Sections 3(1)(r)(s), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is alleged in the FIR that on 10.06.2021 at about 10=30 a.m. the informant and her sister Damini were sitting in the court-yard of their house, at that time the appellants came in front of their house and asked the informant and others as to why they carry business of illicit liquor. The appellants threatened and abused the informant and her sisters over

their caste. Similarly, they entered into house of the informant and assaulted her by means of stick on her hand, legs and on the back and caused her injuries. It is alleged that all the appellants vandalized articles kept in the house of the informant and damaged TV and other articles. Similarly, they also damaged Scooty of the informant. It is alleged that the appellants entered into the house of her sister Shaila Kale. She was abused and threatened. Similarly, she was assaulted by the appellant. The appellant also damaged house-hold articles kept in the house of Shaila Kale. It is also alleged that the appellant also entered into shop of Banubai Sonawane and damaged door of the house as well as grocery item kept in the wooden and iron cupboard. It is alleged that the appellants caused damage to the property of the informant and her sisters. Hence, the FIR came to be filed.

04. On the basis of the FIR, learned Counsel for the appellants submits that the alleged incident had occurred

in the house of the informant and her sisters. There were no other witnesses to hear the alleged abuses hurled by the appellants. He also submits that the incident did not occur in the public view. Therefore, the offence under section 3(1)(r)(s) is not made out against the appellants. To substantiate this point he relied on the decision of this Court in the case of Bansi Manohar Shinde and Ors. Vs. The State of Maharashtra & Anr., Criminal Appeal No.274 of 2021, wherein it was held that :-

"11] I have carefully considered the rival submissions and perused the papers of the investigation. As far as the offences punishable under sections 3(1)(r) and 3(1)(s) of the Atrocities Act are concerned, even according to the informant he was not personally present in the meeting as an attendee but could overhear the proceeding clandestinely while passing by. Pertinently he does not specifically allege that his presence round the corner was noticed by any of the appellants. Going by the wordings of these sections 3(1)(r) and 3(1)(s) it is highly imperative that the hurling of abuses should be with an intention to cause insult and annoyance to a person belonging to Scheduled Caste or Scheduled Tribe. If these appellants were oblivious to the fact of his being in the vicinity there prima facie won't be any question of insult, assuming that the abuses were hurled on caste lines. Suffice for the purpose to rely upon the observations and the conclusions in the case of Asmathunnisa and Mohanbhai (supra)."

05. He also relied upon Patan Jamal Vali Vs. State

of Andhra Pradesh, 2021 DGLS (SC) 252, wherein it is held that :-

"51. Being cognizant of the limitation of Section 3(2)(v) – as it stood earlier – in dealing with matters of intersectionality, we are however bound to apply the standard that has been laid down in the law. The expression "on the ground" was considered in a two-judge Bench judgment of this Court in Dinesh Alias Buddha V. State of Rajasthan, (2006) 3 SCC 771 where the Court speaking through Justice Arijit Pasayat held:

"15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste."

52 The Court held that in the absence of evidence to that effect, the offence under Section 3(2)(v) would not stand established. This principle was subsequently followed in a two judge Bench judgment of this Court in Ramdas and Others Vs. State of Maharashtra (2007) 2 SCC 170, where it was held that merely because a woman belongs to the SC & ST community, the provisions of the SC & ST Act would not be attracted in a case of sexual assault. This Court observed that there was no evidence to prove the commission of offence under Section 3(2)(v) of the SC & ST Act.

06. Reliance is also placed on the decision of this Court in the case of Shaikh Yaser Ahmed s/o. Shaikh Rafique Ahmed Vs. The State of Maharashtra & Anr., Criminal Appeal No.245 of 2020, wherein it is held that :-

"6] Suffice for the purpose to observe that the bar under Sections 18 and 18-A of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

would not be attracted as laid down in the case of Prathviraj Chauhan Vs. Union of India and Ors., (2020) 4 SCC 727, if it is prima facie established that the offence under the Act cannot be made out.

7] Bearing in mind this principle if one minutely scrutinizes the matter in hand, not only in the FIR but even in the statement of Malanbai vague and omnibus allegations have been levelled regarding hurling of abuses on caste lines. Pertinently it is not clear as to which of the three accused had actually hurled these abuses. On the contrary Anil who is son of Malanbai in his statement under Section 161 of the Cr.P.C. attributes these utterances to the main accused Tausif who is not before us. If this is the state of affairs, hurling of abuses on caste lines is an act which is not attributable to the appellants. Resultantly, the bar contained in Sections 18 and 18(A) of the Atrocities Act cannot be placed into service against them."

07. Learned Counsel also places reliance on the following judgments :-

- (1) Shashikant Ramhari Tambe & Ors. Vs. State of Maharashtra, 2008 ALL MR (Cri) 2132.
- (2) Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr., 2018 DGLS (SC) 196.
- (3) Union of India Vs. State of Maharashtra, Cri. Appeal No.416 of 2018.
- (4) Prathvi Raj Chauhan Vs. Union of India & Ors., Writ Petition (C) No.1015 of 2018.
- (5) Lahu Vithalrao Bhosale Vs. State of Maharashtra & Ors., 2019 DGLS (Bom.) 1379.
- (6) Ram @ Rambhau Baburao Lakade & Ors. Vs. State of Maharashtra, 2019 DGLS (Bom.)1379.
- (7) Nirmala w/o. Pandharinath Mogal Vs. State of Maharashtra, Cri. Appeal No.526 of 2019.
- (8) Vandana Ashok Zaware & Ors. Vs. State of Maharashtra & Ors., Cri. Appeal No.150 of 2020.
- (9) Hitesh Verma Vs. State of Uttarakhand & Anr., Cri. Appeal No.707 of 2020.

08. I have gone through the above cited cases

(supra). For application of above case-law one has to see the facts of the present case. It is specifically alleged against the appellants that they went to the house of the informant and her sisters. They abused the informant and her sisters over their caste. But it is not made specific as to who hurled the abuses towards informant and her sisters. There are allegations that the appellants in chorus abused the informant and witnesses over their caste. Therefore, it is doubtful whether the offence under section 3(1)(r)(s) is made out against the appellants. But as far as damage to the property of the informant is concerned, there is material on record by way of photographs and scene of offence panchanama. It appears that TV, Scooty and other articles stored in the house of the informant and her sisters and articles kept in the shop of Banubai were damaged. There are specific allegations against the appellants that they entered into the house of the informant, her sisters Shaila and Banubai and caused damage to the property of the informant and witnesses. It is also alleged that the

informant and the witnesses were assaulted by the appellants. To substantiate this assault, the prosecution has relied on the medical certificate of the informant and witness Shaila. It appears that they have sustained injuries. Similarly, the properties of the informant and the witnesses were damaged. The Investigating Officer has recorded statement of independent witness who substantiated contents of the FIR as well as damage caused to the property of the informant and the witnesses.

09. The appellants are facing charge under section 3 (2)(va), which runs as under :-

3(2)(va) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, 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 for such offences and shall also be liable to fine.

10. In the present case, the investigation papers, namely, panchanama and statements of witnesses establish that the property of the informant and the witnesses was

damaged by the appellants. Similarly, the informant and witness Shaila were assaulted by the appellants. It is specifically alleged by the informant that she belongs to Pardhi community. It is alleged by the appellants that the informant and her relatives were doing business of illicit liquor. It is also the case of the appellants that the members of Pardhi community were doing business of illicit liquor. Thus, the villagers had given complaint applications to various authorities to curb their activities. So, prima facie, it is established that the appellants knew that the informant belongs to Pardhi community. In view of these facts, it can be said that there is prima facie material against the appellants involving them in the offence punishable under sections 3(1)(s) and 3(2)(va) of the Atrocities Act. Once it is held that offence under the Atrocities Act is made out against the appellants, bar of section 18-A comes into play.

11. The Trial Court has rightly appreciated the

facts of the present case coupled with the submissions of the appellants and came to correct conclusion. There is no need to interfere with the findings of the Trial Court. Therefore, I am of the considered view that the appeals have no merit. Hence, I pass following order :-

O R D E R

(i) Criminal Appeal Nos.328 and 329 of 2021 are hereby dismissed.

[SURENDRA P. TAVADE,J.]