

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

CRIMINAL APPEAL NO. 368 OF 2021

[1] Parasra S/o Shesherao Bhosale **APPELLANTS**
(Appeal against appellant
No.1 is disposed of vide order
dated 04.08.2021)

[2] Ankush S/o Parasrao Bhosale
Age 36 years, Occ. Agriculture,

[3] Pralhad S/o Parasram Bhosale
Age 40 years, Occ. Agriculture

All are R/o. Bharaswada, Taluka
& District Parbhani

V E R S U S

[1] The State of Maharashtra, **RESPONDENTS**
Through Daithana Police
Station, Tq & Dist. Parbhani

[2] Balaji @ Kondiba S/o Ramrao
Wankhede @ Thakar,
Age 58 years, Occ. Private
Job and Agriculture,
R/o. Bharaswada, Tq. & Dist.
Parbhani

Mr. D.M. Shinde, Advocate for the appellants
Mr. R.B. Bagul, APP for respondent No.1-State
Mr. abhishek G. Kulkarni, Advocate for
respondent No.2

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CORAM : SURENDRA P. TAVADE, J.

DATE : 30th SEPTEMBER, 2021

ORAL ORDER :

The appellants have filed this appeal to challenge the order passed by Addl. Sessions Judge, Parbhani, in Cri. M.A. (Bail) No. 488 of 2021, dated 22.07.2021. The appellants are prosecuted for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 (1) read with Section 7 (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called as "Atrocity Act").

2. The original appellant No.1 was arrested, therefore, the appeal to the extent of appellant No.1 is disposed of on 04.08.2021.

3. It is contended that Balaji @ Kondiba Wankhede @ Thakar lodged F.I.R. against the appellants for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 and under Sections 3 (1) (r) and 3 (1)(s) of the Atrocities Act, on the basis

of FIR Crime No.0150 came to be registered at Police Station Daithana, District Parbhani.

It is alleged in the F.I.R. that on 01.07.2021, at about 09.00 p.m., the informant was sitting in one hotel near Bharaswada Bus-stand. Many people were gathered there. There was discussion regarding non-availability of tap water in the village. It was alleged that one Sachin Bhosale had broken the plastic water tap and therefore the water was wasted and, so, there was no water in the village. Subsequently, water supply was restored. In the same discussion, original accused No.1 passed some remarks regarding stoppage of water and the working of Gram Panchayat of village Bharaswada. On 02.07.2021 at about 08.00 a.m., the informant had been to take Vitthal-Rakhumai Darshan. After taking Darshan, when he was returning home, at that time, he saw appellant Nos. 2 and 3 on motorcycle. Appellant No.3 asked the informant whether he will accompany them to Bharaswada approach road. The informant gave his consent to him

and he came to Bharaswada approach road on motorcycle of appellant Nos.2 and 3. They reached Bharaswada approach road at about 08.30 a.m. All appellants asked the informant as to why he was taking side of Sarpanch. The Sarpanch and Deputy Sarpanch are not maintaining the Gram Panchayat properly and they should take resignation of the Sarpanch. The appellant No.1 told the informant that "as you are 'Adiwasi', you will not improve at all". Thereafter, appellant No.2 assaulted informant on his right leg. Appellant No.3 called the informant as 'Adiwashya' and pulled him on the ground and assaulted him with fist and kick blows. He also abused that he will not be allowed him to stay in the village. Thereafter, Sachin Bhosale and Vikas Shelke intervened in the quarrel and rescued the informant. Thereafter, the informant came to the Police Station and lodged report.

4. On the basis of contents of the F.I.R., learned counsel for the appellants submits that there are no allegations against appellant No.2 that he

hurled castiest abuses to the informant. He also submitted that the incident has taken place out of political rivalry. He also submitted that the informant had falsely implicated the appellants in the offences. He further submitted that the trial Court has not considered the contents in the F.I.R. with proper perspective. Therefore, the impugned order passed by the Sessions Court may be set aside and the appellants be released on bail.

5. Learned counsel for respondent No.2 submits that there are specific allegations against appellant Nos.2 and 3. He further submits that the incident had taken place on a public way and in public view. The trial Court rightly considered the factual aspects of the F.I.R. and rejected the prayer of the appellants. There is no need to interfere with the order of the trial Court. Learned counsel for respondent No.2 submits that the F.I.R. if read minutely, it appears that in the F.I.R. there are allegations against respondent No.3 that he abused the informant Balaji

Wankhede. There is no omnibus statement made by him. Respondent No.2 assaulted informant by stick on right leg and back, so, by assaulting the member of Scheduled Casts and Scheduled Tribes, he committed an offence punishable under Section 3(2)(va) of the Atrocity Act, therefore, offence is made out against the appellants.

6. Heard learned counsel for the appellants and respondents. Perused the F.I.R. It is contended that the appellants had given lift to the informant on their motorcycle from Vitthal-Rukhmai temple up to Bharaswada approach road, where the alleged incident had taken place. The informant has also described the place of incident which allegedly taken place. On 01.07.2021, there was some altercations between the appellants and respondents over supply of water, as well as, about working of Gram Panchayat. It appears that on 02.07.2021 the complainant accompanied the appellants on their motorcycle. There are specific allegations against appellant No.1 that he abused the

informant and assaulted him. As far as appellant No.2 is concerned, there are no allegations against him that he abused the informant over his caste. There are allegations against the appellant No.3 that he abused the informant by using the word 'Adiwashya' and then assaulted him. So, one has to see that the appellant No.3 abused informant on his caste. Except use of word 'Adiwashya', there was no other allegation against appellant No.3. In view of above facts, learned counsel for the appellants relied on the ratio laid down in the case of **Krishna Parmeshwar Gaikwad V. State of Maharashtra and others**, reported in **2019 DGLS (Bom.) 172**, wherein it has been observed that;

“the basic ingredients of section 3(1)(r)(s) are that there must “intentional insults” or “intimidation” with “intent” to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within “public view”. It is abundantly clear that mensrea is the decisive factor in the offence under Act of 1989. There must be “intentional insults” or “intimidation” with “intent” to humiliate member of Scheduled Caste and Scheduled

Tribes in any place within "public view". In the case of Shantabai Vs. State of Maharashtra reported in 1982 Cr.L.J. 872, it has been held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person."

7. In the present case, it is alleged by the informant that appellant No.3 abused him as "Adiwasha". If word "Adiwasi" is taken out from the complaint for moment then other utterances perceived from the FIR though indicate "threat" or "intimidation" but does not pointer to the inference that there was any intent or mensrea to humiliate the complainant on his caste within public view. The allegations in the FIR of threat or intimidation would be at the most fall under the Indian Penal Code. Therefore, the ratio laid down upon by the appellants is squarely applicable to facts of the present case.

8. Learned A.P.P. for respondent-State submits that the informant was assaulted by appellant No.2 and

3 and then taken to the hospital where it is found that he sustained injury and, therefore, offence under Section 3 (2)(va) of Atrocity Act is made applicable to the present case. As far as the allegations of the assault is concerned, specific allegations are made that appellant Nos.2 and 3 have assaulted the informant, thus he was taken to the hospital. His medical certificate shows that he sustained injury on his head. So, it can be said that the informant was assaulted and he sustained injuries. It is on record that the appellants knew the caste of the informant. There is specific allegation against the appellants that they called informant as "Adiwasi". So, it can be said that the appellants were knowing the caste of the informant. There is allegation of assault on appellants also. It appears that appellant Nos.2 and 3 are not the members of Scheduled Castes and Scheduled Tribes. I have also observed that there are allegations against appellant Nos.2 and 3 that they assaulted the victim by kick and fist blows to cause injury. It is on record that the appellants used word

“Adiwasi”. They knew that the informant is Adiwashi. Therefore, the offence under Section 3 (2)(v)(va) of Atrocities Act is *prima facie* made out against the appellants, then there is a bar for invoking Section 438 of the Code of Criminal Procedure.

In view of above discussion, I proceed to pass the following order :-

O R D E R

- a. The appeal is dismissed.
- b. Order passed by Addl. Sessions Judge, Parbhani, below Exh.01 in Criminal M.A. (Bail) No. 488 of 2021 on 22.07.2021 is hereby confirmed.
- c. Fees of Rs.2,000/- (Rupees Two Thousand) be paid by the High Court Legal aid Sub-Committee, Aurangabad to the appointed counsel Mr. Abhishek G. Kulkarni on behalf of respondent No.2.

(SURENDRA P. TAVADE, J.)