

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

930 CRIMINAL APPEAL NO. 369 OF 2021

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| 1. Haribhau S/o. Dadarao Sakhare,
Age-49 years, Occu-Agriculture,
R/o. Sakharewadi, Manwat,
Tq. Manwat, Dist. Parbhani | ...APPELLANTS
[Ori. Accused] |
| 2. Ajay @ Hanuman S/o. Haribhau Sakhare,
Age-26 years, Occu-Agriculture,
R/o. As above | |

VERSUS

- | | |
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| 1. The State of Maharashtra,
Through Police Station Officer,
Manwat Police Station,
Manwat, Tq. Manwat,
Dist. Parbhani | ...RESPONDENTS |
| 2. Saumitra Arun Gawali,
Age-45 years, Occu-Household,
R/o. Nehru Nagar, Old Padegaon Road,
Parbhani, Tq. & Dist. Parbhani | |

Mr. Swapnil S. Rathi, Advocate for the appellants
Mr. S. N. Morampalle, APP for the respondent/State
Mrs. Anuradha Mantri, Advocate for the respondent No.2

CORAM : SURENDRA P. TAVADE, J.

DATE : 24-09-2021

P. C.

. The appellants have filed the appeal against the order

dated 22-07-2021, passed by the learned Additional Sessions Judge, Parbhani in below Exh.1 Criminal M.A. (Bail) No. 496 of 2021, whereby prayer of pre-arrest bail of the appellants came to be rejected. It is contended that one Soumitra Arun Gawali on 10-07-2021 lodged the FIR with Manwat Police Station against the appellants for the offences punishable under Section 504, 506 of the Indian Penal Code (hereinafter referred to as 'the IPC') and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the 'the Atrocities Act'). On the basis of said FIR crime bearing No. 0212/2021 came to registered against the appellants. It is alleged in the FIR that son of informant Ansiram was working in the road side hotel (Dhaba) of appellant No. 1. On 07-07-2021 at about 08.00 pm Ansiram demanded wages from the appellant No.1 in presence of Vinod Kadam. It is alleged that the appellant No.1 abused Ansiram over his caste and refused to pay wages. It is alleged that Ansiram informed the said incident to the informant. The informant advised Ansiram not to lodge the complaint immediately. On 08-07-2021 at about 03.00 pm the informant and his daughter Neeta went to Dhaba of the appellant No.1. The informant was trying to convince the appellant No.1 but, the appellant No.1 abused the informant over his caste. The appellant No.1 quarreled with the informant. Vinod Kadam tried to intervene in the matter. Thereafter, the informant left the Dhaba and came to the police station and lodged the report.

2. Heard learned APP for the respondent/State and learned counsel for the respondent No.2.

3. Learned APP submits that incident had occurred in the public place. The appellant No.1 has abused the informant over his caste and humiliated him. Therefore, offences alleged against the appellants under the Atrocities Act are prima-facie made out. Therefore, trial court has rightly dismissed the application.

4. Learned counsel for the respondent No.2 has reiterated the submission of learned APP and submits that the offences are serious in nature. The informant was abused over his caste. Therefore, appeal be dismissed.

5. On the basis of above allegations, the learned counsel for the appellants submits that the incident had taken place at public place but not within the public view. He submits that even the incident narrated in the FIR has taken as it is, it reveals that except the informant and his daughter and Vinod Kadam, nobody else were present at the time of alleged incident. He submits that statement of Vinod Kadam has not been recorded by the police. In fact, Vinod Kadam wrote a letter dated 19-07-2021 to Superintendent of Police, Parbhani and informed that no incident as alleged by the informant had taken place between 07-07-2021 and 08-07-2021. So, except the statement of informant and her daughter, no other material is collected by the Investigating Officer

to establish that the incident had taken place in the public view.

6. It appears that there was dispute between son of informant and the appellant No.1 regarding wages. The allegations made in the FIR does not show that there was any intent/mensrea to humiliate the informant and his daughter over their caste within public view.

7. On the basis of above allegations learned counsel for the appellants submits that the alleged incident had taken place in public view. Except the daughter of informant and informant, nobody has witnessed the incident. He also submits that the alleged incident has not been taken place in the public view. Therefore, there is no prima-facie case under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. Therefore, there is no bar of Section 18-A of the Atrocities Act to consider the present appeal.

8. The trial court has simply considered the allegations made in the FIR. So, prima-faice offence under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are not made out against the appellants. The alleged incident had occurred on 07-07-2021 & 08-07-2021. Entire investigation is completed. Custodial interrogation of the appellants is not required. Therefore, on this count also the appeal is required to be allowed. Hence, I pass the following order:

ORDER

- i. The appeal is allowed.
- ii. The order dated 22-07-2021, passed by the learned Additional Sessions Judge, Parbhani below Exh.1 in Criminal M.A. (Bail) No. 496 of 2021 is hereby set aside.
- iii. In the event of arrest in connection with the Crime No. 0212/2021 dated 10-07-2021 registered with Manwat Police Station, Dist. Parbhani for the offences punishable under Sections 504, 506 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants namely; (1) Haribhau Dadarao Sakhare and (2) Ajay @ Hanuman S/o. Haribhau Sakhare shall be released on pre-arrest bail on executing each PR and SB bond in the sum of Rs. 15,000/- [Rupees Fifteen Thousand] each with one or more sureties in the like amount, on following conditions.:
 - (a) The appellants are directed to attend the Manwat Police Station, Dist. Parbhani on every day from 29-09-2021 to 13-10-2021 between

(6)

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10.00 am to 12.00 noon.

(b) The appellants are directed not to tamper with the prosecution witness in any manner.

iv. The criminal appeal stands disposed of.

[SURENDRA P. TAVADE, J.]

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