

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

CRIMINAL APPEAL NO.416 OF 2021

1. Urmila Sanjay Powale Age. 43 years, Occ. Household, R/o. Paru Parasnath Camp, Caves Road, Jogeshwari (East), Mumbai.	.. Appellants [original accused]
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2. Sanjay Upandra Powale
Age. 52 years, Occ. Service,
R/o. As above.

Versus

1. The State of Maharashtra Through Police Inspector, Police Station, Mantha, Dist. Jalna.	.. Respondents
2, Kavita Vithalrao Pradhan, Age. 31 years, Occ. Advocate, R/o. Sugandha Nagar, Mantha, Dist. Jalna.	

Mr. Sachin S. Deshmukh, Advocate for the appellants.

Mr. R.B. Bagul, APP for the respondent/State.

Mr. R.O. Awasarmol, Advocate for respondent No.2.

CORAM : SURENDRA P. TAVADE, J.

DATED : 27.09.2021

PC :-

01. Being aggrieved and dissatisfied with the order passed by the Sessions Judge in Criminal M.A. (Bail) No.856 of 2021, present appeal is preferred. It is stated that the appellants have been prosecuted for the

charges under section 504, 506, 34 of the Indian Penal Code and under sections 3(1)(r), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The appellants had preferred application for pre-arrest bail, which came to be rejected. Hence, said order is impugned in this appeal.

02. One Kavita Pradhan lodged FIR against the appellants on 24.07.2021, wherein it was alleged that the appellant had given instructions to respondent No.2 to file civil proceeding. Similarly, appellant No.1 had paid fee to respondent No.2. Thereafter, appellant No.1 changed her lawyer and demanded refund of fee from respondent No.2. Respondent No.2 agreed to refund the fee. On 23.07.2021 the appellants demanded money from respondent No.2. Over this respondent No.2 asked the appellants to wait for sometime. But appellants abused respondent No.2 on her caste and also threatened that they would lodge complaint to Bar Council and cancel her sanad.

03. On the basis of above allegations, learned Counsel for appellants submits that respondent No.2 has not given complete history of the incident. He submits that appellant No.1 had instructed respondent No.2 to file proceeding on her behalf, which she did not file.

Therefore, appellant No.1 changed her lawyer and demanded amount of fee from respondent No.2. Initially, she agreed to return the amount. Thereafter, on insistence, she issued cheque, which was dishonoured. As per the appellants, the respondent No.2 in order to avoid payment, filed false complaint. He also submits that respondent No.2 is in habit of filing complaint against his clients and others to avoid financial liability. It is contended that the Trial Court has not considered the allegations made in the FIR coupled with conduct of respondent No.2. Therefore, he submits that appellants be released on bail.

04. On the other hand, learned APP submits that the incident had taken place in the Court premises. It is a public place. The incident was witnessed by many persons. The abuses were hurled in public view also. Therefore, prima facie, offence is made out against the appellants. The Trial Court has rightly considered the facts of the case properly and rejected the application. There is no need to interfere with the order of the Trial Court.

05. Heard learned Counsel for the appellant, learned APP for respondent/State and learned Counsel for respondent No.2.

06. Admittedly, appellant No.1 had engaged respondent No.2 for instituting civil proceeding. She had paid fees to respondent No.2. Thereafter, appellant No.1 changed her lawyer. Respondent No.2 had agreed to repay fee taken by her. It also appears that she had issued cheque of Rs.15,000/- in favour of appellant No.1, which was dishonoured on 12.07.2021. It also appears that appellant No.1 had lodged NC complaint against respondent No.2 on 07.07.2021. Thereafter, alleged incident had taken place in the Court premises. It appears that appellant No.1 had demanded amount, but it appears that respondent No.2 did not return fees to appellant No.1.

07. The learned Counsel for the appellants has also produced on record copy of complaint dated 19.03.2021, filed by respondent No.2 against one Sarikabai, wherein it is alleged that said Sarikabai had threatening respondent No.2. On going through the complaint, it appears that dispute between respondent No.2 and Sarikabai pertains to a Court case.

08. Learned counsel for the appellants also produced on record copy of complaint given by Sarika against respondent No.2, wherein said Sarikabai had made serious allegations against respondent No.2. Learned Counsel for

the appellants has also produced on record copy of FIR lodged by respondent No.2 against Bharat Kadam under section 354, 354-A, 504, 506 of the Indian Penal Code. On the basis of said FIR, charge was framed against said Kadam, wherein it appears that respondent No.2 has not supported her own case and she was declared hostile and the prosecution has taken her cross-examination. On considering the evidence, the Trial Court has acquitted the accused therein.

09. On the basis of above litigation, learned Counsel for the appellants submits that respondent No.2 is in habit of filing complaints. He also submits that the appellant No.1 demanded her amount from respondent No.2. The cheque issued by respondent No.2 was dishonoured on 12.07.2021. Therefore, on the date of hearing, she demanded money from respondent No.2. It appears that appellants and respondent No.2 are having financial dispute. The said facts are not mentioned in the FIR. It appears that in order to make out case under the Atrocities Act, respondent No.2 had alleged that appellant No.1 abused her that "त्यात तु खालच्या जातीची महाराची असल्यामूळे तुला तिकडे गावाकडे तुझा नवरा घेवून जात नाही. तु एवढी निच जातीची असशिल आणि असणार". Appellant No.1 had engaged services of respondent No.2 for filing civil litigation, which was not filed. She refused to pay the amount.

Therefore, there is dispute between the appellant and respondent No.2. It appears that said dispute has been given colour of casteist allegations. On going through the contents of FIR and the documents produced on record regarding litigations filed by respondent No.2 against Sarikabai and Bharat Kadam, prima facie it appears that respondent No.2 has taken dis-advantage of her caste and filed complaint against the appellant. It appears that to avoid repayment of fees to appellants, the FIR came to be filed. Therefore, I am inclined to grant pre-arrest protection to the appellants. Similarly, there are no allegations against appellant No.2 that he hurled abuses to respondent No.2. So, I pass following order :-

O R D E R

(i) The application is allowed.

(ii) In the event of arrest of the appellants in connection with Crime No.229 of 2021 registered at Mantha Police Station, Dist. Jalna, for the offences punishable under section 504, 506, 34 of the Indian Penal Code and under section 3(1)(r), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants are directed to

(7)

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be released on bail on executing PR & SB in the sum of Rs.15,000/- [Rupees Fifteen Thousand] each, with one or more sureties in the like amount.

(iii) The appellants are directed to attend the concerned police station everyday between 11.00 a.m. to 01.00 p.m. from 29.09.2021 to 17.10.2021. The appellants are directed not to tamper with the prosecution witnesses, in any manner, whatsoever.

[SURENDRA P. TAVADE,J.]