

Digitally
signed by
Shambhavi
N. Shivgan
Shambhavi
N. Shivgan
Date:
2021.03.06
14:02:20
+0530

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO.361 OF 1998

1) Nagnath Rama Arjun, age 37,
2) Maruti Yeshwant Mohite,
age 51 years,
3) Dayaram Bhagwan Koli,
age 47,
All R/o Gulwanchi Tal: North
Solapur, Dist. Solapur

... Appellants
(Org.Accd.Nos.1 to3)

Vs

The State of Maharashtra

... Respondent
(Orig. Complt.)

...

Mr. Mahadeo A.Chaudhary for the Appellants.

Smt. Sharmila Kaushik, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 1st March, 2021.

ORAL JUDGMENT :

Appellants have preferred this appeal against
the conviction and order of sentence dated 29th
January, 1998, passed in the Special Case No.2 of

1995, by the Sessions Judge, Solapur; particulars of which are as under:

(i) Appellants/Accused Nos.1 and 2 have been convicted of the offences punishable under Sections 3(1)(x) and 3(1)(xiv) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (**'SC & ST Act'** for short) and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/- each with default stipulation.

(ii) Appellant/Accused Nos.1 and 2 have been convicted of the offence punishable under Section 3(a) and (b) of the Protection of Civil Rights Act, 1955, but no separate sentence has been awarded as they have been convicted and sentenced under the SC & ST Act.

(iii) Appellant-accused no.3 has been convicted of the offence punishable under Section 504 of the Indian Penal Code, 1860 (**'IPC'** for short) and sentenced to suffer rigorous imprisonment for six months and fine of Rs.500/- with default stipulation.

2 Prosecution case in brief is that, complainant and his family members, being members of scheduled caste, were denied entry in village temple by the accused, who belonged to upper caste except accused no.3, who belongs to scheduled caste community. Complainant thus, alleged that on 31st May, 1995 when he had been to village temple to perform, a pre-wedding ritual, the accused insulted and intimidated them, with intent to humiliate as member of scheduled caste. On a report, crime under the provisions of the SC & ST Act and under Sections 523 and 506 of the IPC were registered. Investigation was carried out by the Assistant Police Inspector attached to Solapur Taluka Police Station. Whereafter he filed charge-sheet. To prove the charge, prosecution had examined six witnesses. The Trial Court upon appreciating the evidence, convicted the accused as stated above against, which this appeal is preferred.

3 Mr. Chaudhary, learned counsel for the appellants, would contend that in view of the clear mandate of Rule 7 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (**'Rules'** for short), only specified Deputy Superintendent of Police could investigate the offence under the Act and, therefore, investigation done by any officer below that rank and not specified as per Rule 7, was not authorised officer to investigate such offence. Mr. Chaudhary, therefore, contends, this inherent defect makes and renders the conviction unsustainable. Mr. Chaudhary, learned counsel for the appellants, would also contend, contradictions and omissions crept in the testimonies, has rendered the case of prosecution uncertain. He would submit that evidence of Navnath (P.W.1), Shivaji (P.W.2) and Indrajit (PW 5) contradict and counter, the complaint at Exhibit 19 filed by Kalidas Jalindar Thorat. Submission is that,

written complaint filed by Kalidas Jalindar Thorat on 31st May, 1995 does not suggest or show that accused intentionally insulted with intent to humiliate complainant and his family being a member of scheduled caste. Mr. Chaudhary would also contend that false case has been filed since complainant had lost Gram Panchayat elections against the accused. On these grounds, he seeks acquittal of the appellants.

4 Mrs. Kaushik, the learned Additional Public Prosecutor, on the other hand, fairly admits that the investigation under the Act being, not carried out by the officer specified in the rank of Deputy Superintendent of Police, the impugned conviction under the SC & ST Act may not sustain, but since offences under Section 523 and 506 of the IPC were being registered and investigation being carried out by an officer empowered under the Code of Criminal Procedure, 1973, conviction under Section 506 of the

IPC cannot be disturbed. In support of this submission, she has relied upon the judgment of the Apex Court in the case of **State of Madhya Pradesh v. Babbu Rathore & Anr.**¹.

5 I have considered the submissions of the respective counsel carefully as also perused prosecution evidence and cited judgments.

6 For appreciating the rival submissions, let me reproduce Section 9 of the Act and Rule 7 of the Rules, which read as under:

"9. Conferment Powers

1. Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it consider it necessary or expedient so to do -

a. for the prevention of and for coping with any offence under this Act, or

b. for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a

1 (2020) 2 Supreme Court Cases 577

police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

2. All officer of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

3. The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)."

" 7. Investigating Officer.-

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

7 On conjoint reading of the provisions in Section 9 of the SC & ST Act, Rule 7 of the Rules and Section 4 of the Code of Criminal Procedure, 1973, it leads to conclusion that investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offences enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in accordance with the provisions of the Code, cannot be quashed for non- investigation of the offence under Section 3 of the Act by a competent police officer. In the case of **State of MP v. Chunnilal @ Chunni Singh**², the Apex Court has held “*In such a situation, the proceedings shall proceed in an appropriate Court for the offences punishable under IPC notwithstanding investigation and the charge-sheet*”

2 (2009) 12 Supreme Court Cases 649

being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that act."

. In the recent judgment, the Hon'ble Apex Court in the case of **Babbu Rathore (Supra)** has held thus, in paragraph 10 thus,

"11. Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(v) of the Act, 1989 and the charges under IPC have been framed after investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC where the investigation has been made by a competent police officer under the provisions of the Code. In such a situation, the chargesheet deserves to proceed in an appropriate competent Court of jurisdiction for the offence punishable under the IPC, notwithstanding the fact that the chargesheet could not have proceeded confined to the offence under Section 3 of the Act, 1989."

8 As such, in view of the law laid down by the Apex Court in aforesaid two judgments, conviction of the appellant-accused no.3 under Section 506 and under Section 3(a) and (b) of the Protection of Civil

Rights Act, 1955 cannot be quashed merely because these offences were not investigated by the officer of the rank, specified in Rule 7 of the Rules.

9 Consequently, conviction under Sections 3(1)(x) and 3(1)(xiv) of the SC & ST Act, 1989 is quashed and set aside.

10 In so far as, offence relating to enforcing religious disabilities under Protection of Civil Rights Act, 1955 is concerned, there is no evidence to hold that appellants prevented complainant and his family from entering the village temple on the ground of untouchability. In fact evidence suggests, in the marriage of Shivaji (P.W.2), contract was awarded to relative of accused no.1.

11 In so far as the conviction of accused no.3, for an offence under Section 506 of the IPC is

concerned, it may be stated that neither the complainant (P.W.1) nor Shivaji (P.W.2) nor Indrajit (P.W.5) testified that the accused intimidated or terrified the complainant and his family, and threatened to injure them or their property or reputation so as to prevent them from entering the village temple. Thus, in absence of cogent and convincing evidence, conviction under Section 506 of the IPC and conviction under Section 3 of the Protection of Civil Rights Act, 1955 is quashed and set aside.

12 Besides, the complaint at Exhibit 19 filed by Kalidas Thorat soon after the alleged incident, also does not further the prosecution case that the appellant no.3 caused criminal intimidation to the complainant and his family while they were entering the village temple. The evidence suggests, complainant had lost Gram Panchayat elections against accused nos.1, 2 and wife of accused no.3 just before the

alleged incident. Admittedly, the place of occurrence of the incident, has not been proved by the prosecution beyond reasonable doubt, in-as-much as evidence suggests there was another temple in the field of Shivaji where he could have performed rituals as part of his marriage ceremony and apparently there was no reason for him to all the way to go to village temple, which was away from his home.

13 In consideration of the evidence on record, conviction recorded against the accused no.3 under Section 506 of the IPC is quashed and set aside.

14 Appeal is allowed. Bail bonds executed by the appellants are cancelled. Sureties are discharged. Fine amount, if any, paid by the appellants be refunded to them.

15 Appeal is disposed of in aforesaid terms.

(SANDEEP K. SHINDE, J.)