

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 15 OF 2021

Sau. Vandana w/o Raju Rathod,
Aged about 40 years,
Occ.- Labour, Resident of Dharni,
Tq. Dharni, District Amravati.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Dharni Police
Station, Dharni, Tq. Dharni,
Distt. Amravati.
2. Sau. Mamta w/o Pradip Jawarkar,
Aged – 30 years,
Resident of Near Vitthal Temple,
Dharni, Tq. Dharni,
Distt. Amravati.

... **RESPONDENTS**

Shri D.S. Khushalani, Advocate for the Appellant.
Ms. T.H. Udeshi, A.P.P. for respondent no.1/State.
Respondent No.2/informant - served

CORAM : VINAY JOSHI, J.

DATED : 01/10/2021

ORAL JUDGMENT :

Heard. ADMIT.

2. Respondent No.2/Informant though served absent. By consent of learned Counsel appearing for the parties, the appeal is taken up for final hearing.

3. Perused the report and case papers. It is the prosecution case that the informant-lady alleged that at the time of occurrence, when she was proceeding on the road, the appellant accosted to her, slapped and abused in the name of caste. So also, other co-accused abuses and threatened her.

4. Learned Counsel for the appellant would submit that the provisions of Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocity Act') would not apply since there is no material to infer that the incident had occurred within public view. This Court in case of *Pradnya Pradeep Kenkar vs. State of Maharashtra 2005(3) Mh.L.J.368* has held that, in order to constitute the offence punishable under Sections 3(1)(r) and 3(1)(s) of the Atrocity Act, both ingredients i.e.

the place accessible to public and in presence of independent witness is necessary. The First Information Report nowhere refers about presence of any member of public at the place of incident.

5. Learned A.P.P. would submit that the Police have recorded statement of one 'S' on 12.08.2020, who has witnessed the occurrence. It is apparent that, near-about after one month, said statement came to be recorded. Having regard to these facts, *prima facie*, case is not made out to constitute the offence punishable under the Atrocity Act.

6. The rest of the allegations are of giving slap, scratching and abuses. In view of these allegations, there is no necessity of custodial interrogation. Moreover, the appellant has pointed out that on the same day, four hours prior to the lodging of existing First Information Report, the appellant has already filed N.C. report against the informant. Therefore, possibility of lodging existing First Information Report as a counter blast cannot be ruled out. Learned Counsel for the appellant submits that investigation is complete and charge-sheet has been filed on 09.03.2021. Having regard to that, the appellant is entitled for pre-arrest protection. In view of that, following order :

(a) The Criminal Appeal stands allowed.

- (b) Impugned order dated 17.09.2020 in Criminal Bail Application No.477 of 2020 by the Additional Sessions Judge, Achalpur, District Amravati is hereby quashed and set aside.
- (c) Ad-interim order dated 06.01.2021 is hereby made absolute upon same terms and conditions with a modification that the appellant shall attend the concerned Police Station as and when called.

JUDGE

Trupti