

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

CRIMINAL APPEAL NO. 95 OF 2021
AND
CRIMINAL APPEAL NO. 145 OF 2021

CRIMINAL APPEAL NO. 95 OF 2021

Sau. Jyoti w/o Gajanan Katole,
Aged about 34 years,
Occ.- Agriculturist, R/o – At post Atali,
Tq. Khamgaon, District Buldhana.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Khamgaon Rural Police Station,
Khamgaon, District Buldhana.
2. Sau. Kasturbai w/o Mahadeo
Ambhore, aged about : 54 years,
Occ.- Agriculturist,
R/o – At Post Atali, Tq.
Khamgaon, District Buldhana.

... **RESPONDENTS**

CRIMINAL APPEAL NO. 145 OF 2021

Gajanan s/o Waman Katole
Aged about 42 years,
Occ.- Agriculturist, R/o – At post Atali,
Tq. Khamgaon, District Buldhana.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Khamgaon Rural Police Station,
Khamgaon, District Buldhana.
2. Sau. Kasturbai w/o Mahadeo
Ambhore, aged about : 54 years,
Occ.- Agriculturist,
R/o – At Post Atali, Tq.
Khamgaon, District Buldhana.

... **RESPONDENTS**

Shri K.H. Anandani, Advocate for the Appellants.
Shri T.H. Udeshi, A.P.P. for respondent no.1/State.
Respondent No. 2 is served.

CORAM : **VINAY JOSHI, J.**

DATED : **29/09/2021**

JUDGMENT :

Heard. **ADMIT.**

2. By consent of learned Counsel appearing for the parties, the appeal is taken up for final disposal.

3. Both appeals are arising out of Crime No.3 of 2021 registered with Khamgaon Rural Police Station, District Buldhana for the offence punishable under Sections 354, 354-A, 323, 294, 506 read with 34 of

the Indian Penal Code. Later on, provisions under Sections 3(1)(w)(i) (ii) and (3)(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act') were invoked. The appellant – Jyoti w/o Gajanan Katole is seeking for pre-arrest protection whilst the appellant – Gajanan s/o Waman Katole is seeking for regular bail.

4. It is the case of informant-lady that on 02.01.2021, around 6.30 pm, appellants along with their daughter came to her field, abused, assaulted and gave threats. So far as, Appellant – Jyoti Katole is concerned, it is alleged that, she abused the informant in filthy language, beaten by fist blows and gave life threats. The allegation against the appellant -Gajanan Katole is of outraging the modesty of the informant.

5. In case of Gajanan Katole, he was already arrested and faced custodial interrogation. Admittedly, investigation is complete and charge-sheet has been filed. This Court has released the Appellant-Gajanan Katole on interim bail. There is no complaint about misuse of liberty, hence, further detention of appellant-Gajanan Katole is no more required.

6. As regards to the appellant Jyoti Katole is concerned, she has allegedly assaulted the informant by fist blows and kicks. The learned Counsel for the Appellant would submit that the contents of First Information Report, are totally false. It is nothing but a counter blast to the earlier report lodged by the appellant, which was registered vide Crime No.2 of 2021 with the same Police Station.

7. Perusal of earlier First Information Report discloses that the appellant – Jyoti Katole (informant therein) alleged that the the informant's son has outraged her modesty, then informant's husband and relatives have quarreled with her. Pertinent to note that in succession, within three hours, this report levelling similar allegation of outraging modesty, has been lodged. In view of that, *prima facie*, there appears to be substance in the contention that as a counter blast to the earlier First Information Report, existing report has been filed.

8. So far as, the provisions of the SC and ST Act are concerned, the appellants have challenged its applicability. The allegation about touching to the body of the informant with sexual intent and making sexual gestures or words, *prima facie*, would not apply against appellant – Jyoti Katole, since those allegations pertain to her husband-

Gajanan Katole. As regards to the applicability of Section 3(2)(v)(a) of the SC and ST Act is concerned, it is submitted that, the appellant – Jyoti Katole has no knowledge about the caste of the informant. He would submit that, the contents of First Information Report nowhere discloses that the appellant was aware about the caste of the informant. Notably, the Police have invoked the provisions of the SC and ST Act at later stage. On the canvass of appellant - Jyoti's earlier First Information Report, the question of applicability of the provisions of the SC and ST Act, is in dispute.

9. This Court has protected the appellant – Jyoti Katole vide interim order dated 22.02.2021. Till date, there is no complaint about misuse of liberty. Having regard to the nature of accusation, nothing has to be seized at the instance of the appellant. Already investigation is complete and charge-sheet is filed against the co-accused. Hence, the Appellant's liberty can be protected. In view of that, following order :

(a) Criminal Appeal No.95 of 2021 stands allowed.

(b) Impugned order dated 20.01.2021 passed in A.B.A. No.7 of 2021 by the Special Judge, Khamgaon, District Buldhana is hereby quashed and set aside.

- (c) Ad-interim order dated 22.02.2021 is hereby made absolute upon same terms and conditions.
- (d) Criminal Appeal No.145 of 2021 stands allowed.
- (e) Impugned order dated 06.02.2021 in Regular Bail Application No.32 of 2021 by the Special Judge, Khamgaon, District Buldhana is hereby quashed and set aside.
- (f) Ad-interim order dated 18.03.2021 and modified on 31.03.2021, is hereby made absolute upon same terms and conditions.

JUDGE

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