

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

CRIMINAL APPLICATION [APL] NO.294 OF 2020

Applicant : Nitin s/o Bhikanrao Deshmukh,
Aged about 44 years, Occ. Agriculturist,
R/o Gram Sasti, P.S. Channi, Tq. Patur, Dist. Akola.

-- **Versus** --

Non-Applicants : 1] State of Maharashtra, through P.S.O. Patur,
Tq. Patur, Dist. Akola.

2] Pravin s/o Vishwasrao Chavhan,
Aged about 33 years, Occ. Tq. Health Officer,
Address : Rural Hospital Premises, Telhara,
Tq. Telhara, Dist. Akola.

Mr. Anil Mardikar, Senior Counsel assisted by
Mr. A.R. Deshpande, Counsel for the Applicant.
Mr. N.R. Rode, A.P.P. for Non-Applicant 1.
Mr. U.J. Deshpande, Counsel for Non-Applicant 2.

CORAM : **ROHIT B. DEO, J.**
DATE : **18th NOVEMBER, 2021.**

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
consent of the learned Counsel for the parties.

02] The applicant is assailing the order dated 28/03/2019 rendered
by the learned Additional Sessions Judge, Akola in Sessions Trial 212/2016,

whereby the charge under Sections 353, 332, 186, 294 & 506 of the Indian Penal Code (IPC) and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act), is framed.

03] Learned Senior Counsel Mr. Anil Mardikar for the applicant, has several submissions to canvass, *inter alia* the submission that even if the material placed on the record along with the final report is considered at face value, the offences punishable under Section 353 of the IPC and Section 3(1)(x) of the Atrocities Act, are not made out.

04] However, it may not be proper to consider the submission on merits since it is not disputed, either by the State or then by the complainant, that the accused was not heard prior to framing of charge.

05] I note that there is a specific averment in the application that charge was framed without granting opportunity of hearing. While the State and the complainant have filed affidavits in response, the submission that the charge is framed without hearing, is not rebutted. De-hors the said aspect, perusal of the order-sheet reveals that there is no reference to the presence of the Counsel.

06] It would be difficult to record a finding that the applicant was heard. The fact that the applicant was present on the relevant date of

hearing or that the charge was read over to him or that the plea was recorded on the same date, is not decisive.

07] The order impugned is quashed.

08] The matter is remitted to the learned Additional Sessions Judge, Akola for fresh decision on framing of charge after hearing the accused.

09] The application is disposed of.

10] Rule is made absolute in the aforestated terms.

11] At this stage, learned Senior Counsel Mr. Mardikar for the applicant states that non-bailable warrant was issued by the learned trial Judge, which is also under challenge. Since, the learned Senior Counsel Mr. Mardikar has submitted, on instructions, that the applicant shall attend the next date of hearing scrupulously, the non-bailable warrant is also quashed.

(ROHIT B. DEO, J.)