

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

CRIMINAL APPEAL NO. 170/2021

1. Somnath S/o Mansaram Bobade,
Aged about 35 yrs., Occ. Agriculturist,
2. Arjun @ Avinash @ Mansaram Bobade,
Aged about 31 yrs, Occ. Agriculturist,
3. Navnath S/o Mansaram Bobade,
Aged 27 yrs., Occ. Agriculturist,
4. Pramod S/o Mansaram Bobade,
aged 25 yrs, Occ. Agriculturist,
5. Mangala w/o Mansara Bobade,
Aged about 55 yrs., Occ. Household,
6. Archana S/o Somnath Bobade,
Aged 30 yrs, Occ. Household,

All R/o Karla, Tah. Patur,
Dist. Akola.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Patur, Tah. Patur,
Dist. Akola
2. Ganesh S/o Uttam Kolhe,
Aged 47 yrs, Occ. Agriculturist,
R/o. Karla, Tah. Patur,
Dist. Akola.

.... RESPONDENTS

Shri A. M. Tirukh, Advocate for appellants.
Shri Anand M. Deshpande, APP for respondent No.1/State.
Shri S. B. Gandhi, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.

DATED : 06.10.2021

JUDGMENT

Heard.

2. Admit. By consent of learned counsel present for the parties, appeal is taken up for final disposal.

3. The challenge in this appeal is to the impugned order dated 24.03.2021 passed by learned Additional Sessions Judge, Akola in Criminal Misc. Application No. 210/2021, under which the Special Court has refused to grant pre-arrest protection to the appellant Nos. 1 to 6 in connection with Crime No. 51/2021 for offence punishable under Sections 354, 323, 324, 294 read with Section 34 of the Indian Penal Code, Sections 3(1)(b), 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (short 'SC and ST Act').

4. It is informant's case that he is running grocery shop in the village. The appellants are neighbouring residents. There was a dispute in between them on account of encroachment of land for which civil litigation is going on. On 18.12.2020 around 08.30 a.m., the informant along with his wife were at their grocery shop. At that time,

appellant No. 1. Somnath and appellant No. 2 Arjun arrived at grocery shop and argued for no reason. Appellant Nos.1 and 2 abused informant in the name of caste and threw some waste material in the shop and on the person of informant. The appellant No. 1 also outraged modesty of informant's wife. Rest of the appellants also arrived and manhandled both of them.

5. Soon after the occurrence, informant went to the concerned Police Station to lodge report. However, the Police have registered N.C. report for offence punishable under Sections 323, 504 and 506 of the Indian Penal Code. Being dissatisfied, on 22.12.2020, the informant filed an application to the Superintendent of Police stating the incident. However, as cognizance was not taken, the informant has filed an application under Section 156(3) of the Code of Criminal Procedure with the Special Court. On that basis, the Police registered existing Crime No. 51/2021 for aforesaid offences.

6. The appellants have prayed for pre-arrest protection by claiming innocence and false implication. Learned counsel for the appellants vehemently submits that the appellants have not committed any crime, however they have been falsely implicated as a counterblast to the earlier report lodged by the appellants. According to the learned

counsel for the applicants, the allegations made in the First Information Report (FIR) are not sufficient to constitute offence under the provisions of SC and ST Act. It is submitted that the present report is lodged with an ulterior motive to harass and pressurize the appellants.

7. The appellants have produced a copy of FIR in Crime No.612/2020 lodged by the appellant No. 2 Arjun @ Avinash alleging that informant and his family members have assaulted them on the day of occurrence. He would submit that no such incident as alleged by informant took place. In this regard, he relied on the N.C. report lodged by informant on the day of occurrence. It is stated that in the said N. C. Report, there are no allegations about abuses in the name of caste which according to him latter on inserted. The appellants have produced injury certificate of appellant No. 1 to show that on the day of incident, appellant No. 1 was assaulted by means of sickle.

8. True, the initial reaction of informant about the incident is mere allegation of beating as reflected in N. C. report. The Police have registered crime on the basis of application filed by the informant at latter stage. Learned counsel for the appellant would submit that in order to constitute an offence punishable under Sections 3(1)(r) and 3(1)(s) of the SC and ST Act, the occurrence must be within the

“public view”. By placing reliance on the decision of this Court in case of **Pradnya Pradeep Kenkare & anr. Vs. the State of Maharashtra, 2005 ALL MR (Cri) 1948**, it is submitted that the contents of FIR nowhere makes out that the occurrence took place either in “public view” or in presence of member of public. In above referred case of Pradnay Pradeep Kenkare, this Court took view that the incident of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would absolutely necessary to constitute an offence under the provisions of SC and ST Act.

9. Reading of contents of the report, reveals that the incident took place at the grocery shop of the informant. There is no reference in FIR about the presence of any member of public at the relevant time. Though learned APP submitted that during the course of investigation, a statement was recorded of one “I” on 21.02.2021 stating that he has witnessed the incident, however, the fact remained that FIR does not bear reference about presence of independent witness. It is a matter of trial to establish said fact by adducing evidence. Prima facie, contents of FIR does not make out the essential ingredients to constitute offence punishable under the provisions of the SC and ST Act.

10. Learned counsel for the appellants would submit that offence punishable under Section 3(1)(b) of the SC and ST Act has also not been made out since there are no allegations about dumping, obnoxious substance at the premise owned by the informant. In other words, he would submit that mere throw of waste material does not amount to dumping. The said submission certainly requires consideration, however, it is a matter of trial.

11. As regards to the applicability of Section 3(1)(w)(i) of the SC and ST Act is concerned, it is argued that there is no material to indicate that one of the appellant has intentionally touched the body of informant's wife knowingly that she belongs to the Backward Class. Besides that, he would submit that in order to constitute offence under the provisions of SC and ST Act, the FIR must disclose that accused were aware about the caste of informant and there must be adequate *mens rea*. To substantiate said contention, he relied on the decisions of this Court in cases of **Kedarsingh Dharma Patil & anr. Vs. the State of Maharashtra & anr.**, 2019 ALL MR (Cri) 2974 and **Vasantrao S/o Madhavrao Vhadgir & ors. Vs. the State of Maharashtra & anr.** 2020 ALL MR (Cri) 365.

12. Prima facie, it reveals that on the day of occurrence, one of the appellant has lodged report alleging that informant and his party made assault by means of dangerous weapon which was registered vide Crime No. 612/2020. Initially, N.C. report lodged by informant does not spell out the allegations attracting the provisions of SC and ST Act. The FIR does not disclose that the occurrence took place within the “public view”. Prima facie, essential ingredients to invoke the provisions of SC and ST Act does match with the allegations levelled in FIR. So far as rest of the allegations are concerned, it is not pointed that as to why the appellants’ custody is necessary. Already this Court has granted interim protection to the appellants vide order dated 12.04.2021. There is no complaint that the appellants have misused the liberty. Having regard to all these facts, appellants’ liberty can be protected. Hence, following order:-

(I) Appeal stands allowed and disposed of.

(II) Impugned order dated 24.03.2021 passed by learned Additional Sessions Judge, Akola in Criminal Misc. Application No. 210/2021 is hereby quashed and set aside.

(III) Ad-interim order dated 12.04.2021 is hereby made absolute on the same terms and conditions.

(III) Appellants shall continue to attend concerned Police Station till filing of charge-sheet or for the period of 60 days whichever is earlier.

JUDGE

Gohane.