

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

CRIMINAL APPLICATION (APL) NO. 543/2021

1. Shankar s/o Motiram Turankar,
aged 58 years, Occ. Assistant Teacher.
2. Pratik s/o Shankar Turankar,
aged about 25 years, Occ. Student.

Both r/o Gadchandur, Tq. Korpana,
Dist. Chandrapur.

.....APPLICANTS

...V E R S U S...

1. The State of Maharashtra through
Police Station Officer, P. S. Gadchandur,
Tq. Korpana, Dist. Chandrapur.
2. Sanjay Gosai Kursange,
aged about 53 years, r/o Ward No.6,
Gadchandur, Tq. Korpana,
Dist. Chandrapur.

...NON APPLICANTS

Ms Kirti Satpute, Advocate for applicants.
Mr. S. S. Doifode, A.P.P. for non applicant no.1-State.
Mr. V. Kulsunge, Advocate for non applicant no.2.

CORAM:- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATE:- OCTOBER 1, 2021

ORAL JUDGMENT (Per: Amit B. Borkar, J.)

1. Rule. Rule is made returnable forthwith. Heard finally
consent of learned Advocates for the parties.
2. This application under Section 482 of the Code of
Criminal Procedure is filed challenging registration of First

Information Report No.70/2021 for the offence punishable under Sections 294, 506 read with Section 34 of the Indian Penal Code. During the course of hearing, it is revealed that offence punishable under Sections 3 (1) (r) (s) and 3 (2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are added on 26.03.2021.

3. FIR came to be registered against the applicants with an accusation that on 25.02.2021, the applicants allegedly abused non applicant no.2 and threatened to kill him. It is alleged that the incident took place at a construction site and the contractor and three persons named in the FIR were present. During the course of hearing, it is stated that initially the offence was not registered under the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. But it is only after non applicant no.2 made a complaint to the higher authority, the provisions of the said Act were added in the FIR.

The applicants have therefore challenged registration of the FIR by filing the present application.

4. This Court on 10.06.2021 issued notice to the non applicants. Non applicant no.1 has filed reply on 22.06.2021

thereby stating that the investigating agency has recorded statement of witnesses who have witnessed the incident and supported case of non applicant no.2.

5. Non applicant no.2 has filed an affidavit dated 16.09.2021, stating that alleged incident took place on 25.02.2021, between 05:45 to 06:00 p.m. and the non applicant no.2 was abused in the name of caste in presence of other persons. Therefore, ingredients of offence are fulfilled.

6. We have carefully scrutinized the copy of FIR along with reply filed by the non applicants. Mr. Doifode, learned A.P.P. also produced case diary on record to show progress of investigation carried out by the investigating agency. The case diary discloses the statements of witnesses present at the time of incident. From the FIR and case diary, it appears that the FIR does not contain any abuses in the name of caste. It is only after non applicant no.2 approached the higher authority, offence under the provisions of SC & ST (Prevention of Atrocities) Act was added in the FIR. On overall consideration of the case diary, which contains the statements of witnesses along with the FIR, we are satisfied that the essence of ingredients of offence under Sections

3 (1) (r) (s) and 3 (2) (va) of the Act are not fulfilled.

Insofar as the remaining offence i.e. under Sections 294 and 506 of the IPC are concerned, the essential requirement of causing obscene act at the public place or residential place or uttering of any obscene sound near public place, is not at all fulfilled. We are, therefore, satisfied that the continuation of the proceedings against the applicants would amount to the abuse of process of Court. We, therefore, pass the following order.

ORDER

- (i) The application is allowed.
- (ii) First Information Report No.70/2021 dated 25.02.2021 registered with Police Station, Gadchandur, for an offence punishable under Sections 294, 506 read with Section 34 of the Indian Penal Code and Sections 3 (1) (r) (s) and 3 (2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

kahale