

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

**CRIMINAL APPEAL NO. 378/2021.**

Lata Kishor Sarvayya,  
Age 45 years, Occupation Household,  
resident of Near Shiv Mandir, Vilas  
Nagar, Amravati, Tq. and District  
Amravati.

... **APPELLANT.**

**VERSUS**

1.State of Maharashtra,  
through its Police Station Officer,  
Police Station Gadge Nagar,  
Amravati, Tq. and District Amravati.

2.Lalita Prakash Bhagat,  
Age 45 years, Occupation – Household,  
resident of Near Statue of Dr.Babasaheb  
Ambedkar, Vikas Nagar, Amravati.  
Tq. and District Amravati.

... **RESPONDENTS.**

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Mr.S.B. Gadhia, Advocate for the Appellant.  
Mr. M.J. Khan, A.P.P. for Respondent No.1 State.  
Shri V.P. Mohod, Advocate (appointed) for Respondent No.2.  
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**CORAM : VINAY JOSHI, J.**

**DATE : OCTOBER 21, 2021.**

**ORAL JUDGMENT :**

Heard.

**Admit.** By consent of learned Counsel for the parties, the appeal is taken up for final hearing.

2. This is an appeal filed by the appellant under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 1989 (hereinafter referred to as “the Atrocities Act” for short), challenging the order dated 23.11.2020 of rejection of pre-arrest bail passed by the Additional Sessions Judge, Amravati in Criminal Bail Application No.1417/2020.

3. Apprehending to be arrested in Crime No.940/2020 registered with respondent no.1 – Gadge Nagar Police Station, Amravati for the offence punishable under Sections 506 of the Indian Penal Code, Sections 3[1][c], 3[1][r], 3[1][s] and 3[1][w] [ii] of the Atrocities Act, the appellant initially approached to the trial Court for grant of pre-arrest protection, however, she failed, hence, in this appeal she urged to set aside the impugned order and to grant pre-arrest protection in terms of Section 438 of the Code of

**3****Criminal Procedure.**

4. At the instance of a report dated 21.10.2020, lodged by the informant – lady, the aforesaid crime came to be registered. The grievance is in two parts. The informant has stated that though she is residing with her husband at Pusad, however, they own a house property at Amravati. The informant learnt that the appellant who is neighbouring resident had caused damage to her property, she rushed to Amravati on 04.10.2020. She asked the appellant and other co-accused the reason for causing damage, to which the co-accused abused her in the name of caste. So far as the second incident is concerned, the informant had stated that on 21.10.2020, once again she came to Amravati. On that day in the morning the appellant has thrown waste water on her person and abused her in filthy language. Moreover, the appellant lady also gave abuses in the name of her case, hence, the report.

5. The learned Counsel for the appellant by denying the occurrence contended that the essential ingredients to constitute an offence punishable under the Atrocities Act are not made out. It is submitted that the report is silent about the caste of the appellant,

which was essential to constitute the offence. He would submit that there is no reference in the report that the occurrence took place within the public view. Moreover, it is contended that the provisions of Section 3[1][w][ii] of the Atrocities Act would not attract since the appellant is a lady.

6. Perusal of entire report indicates that though the informant has stated that she belongs to Scheduled Caste, however, the report is totally silent on the aspect that the appellant does not belong to Scheduled Caste or Scheduled Tribe. The opening words of Section 3 of the Atrocities Act itself conveys that the offence would be against a person who is not a member of Scheduled Caste or Scheduled Tribe. Moreover, the report nowhere states about presence of any member of public at the place of occurrence. This Court in the reported case of **Pradnya Pradeep Kenkar .vrs. State of Maharashtra – 2005 [3] Mh.L.J.368**, took a view that in order to attract the provisions of Section 3[1][r] and [s] of the Atrocities Act, both the ingredients namely the occurrence must be at place accessible to public and in presence of public, has to be complied. Needless to say that the offence punishable under Section 3[1][w]

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[ii] of the Atrocities Act may not attract, since the words used by the appellant lady cannot be termed as of sexual nature against the informant.

7. Besides that it is alleged that the appellant has thrown waste water on the person of the informant, attracting the provisions of Section 3[1][c] of the Atrocities Act. In this regard, it is submitted that the dispute was at the instance of damaging common wall in between the two houses. There was no intention of appellant to insult or annoy the informant by throwing such water. Undeniably, the incident is an outcome of a dispute in between two neighbours, therefore, it is a matter of trial, whether the appellant has thrown waste water on the person of the informant i.e. a member of Scheduled Caste with an intent to insult or annoy her.

8. In view of above circumstances, there is substance in the contention that prima facie the ingredients to constitute an offence punishable under the Atrocities Act may not attract. So far as the provisions under the Indian Penal Code are concerned, it relates to criminal intimidation only. No specific ground is made out by the prosecution to have custodial interrogation. Having regard to the

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peculiar facts of this case, the appellant can be protected by directing her to join the course of investigation. In view of that, the impugned order calls for interference, hence, the following order.

**ORDER**

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order dated 23.11.2020 passed by the Additional Sessions Judge, Amravati in Criminal Bail Application No.1417/2020 is hereby quashed and set aside.
- (iii) In the event of arrest of the appellant/accused – Lata Kishor Sarvayya in connection with Crime No.940/2020 registered with respondent no.1 – Gadge Nagar Police Station, Amravati for the offence punishable under Sections 506 of the Indian Penal Code, Sections 3[1][c], 3[1][r], 3[1][s] and 3[1][w] [ii] of the the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 1989, she be released on bail on her furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iv) The appellant/accused to attend the concerned police station on every Sunday in between 11 a.m. to 2 p.m. till the filing of charge sheet or 60 days, which ever is earlier.
- (v) The appellant/accused shall not tamper with the prosecution evidence in any manner.
- (vi) Fees for the appointed counsel for respondent no.2 be paid as per Rules.

**JUDGE**

Rgd.