

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

CRIMINAL APPEAL NO. 533/2019
with
CRIMINAL APPEAL NO. 537/2019
with
CRIMINAL APPEAL NO. 541/2019

CRIMINAL APPEAL NO. 533/2019

1. Dattatray Vithoba Gaikwad (Named in FIR
as Datta Vithoba Gaikwad, aged 32 years,
Occ. Agriculturist, R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
2. Omprakash Nivrutti Gaikwad (Named in FIR
as Umesh Nivrutti Gaikwad, Aged 20 years,
Occ. Student, R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
3. Shivshankar Nivruti Gaikwad (Named in FIR
as Shankar Nivrutti Gaikwad), aged 23 years,
Occ. Agriculturist, R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.

.... **APPELLANTS**

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Janefal, Tal, Mehakar,
Dist. Buldhana.
2. Ravi S/o Vilas Jadhav,
Aged Major, R/o. Hiwra (Khurd),
Tal. Mehkar, Dist. Buldhana.

.... **RESPONDENTS**

with

CRIMINAL APPEAL NO. 537/2019

1. Vikas Arjun Wakle (Named in FIR as Vilas Arjun Wakle), Aged 28 years, Occ. Agriculturist/Driver, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.
2. Gopal Murlidhar Shinde, aged 28 years, Occ. Agriculturist, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.
3. Uddhav Tukaram Gaikwad, aged 43 years, Occ. Agriculturist, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.
4. Vishnu Nivrutti Gaikwad, aged 26 years, Occ. Agriculturist, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.
5. Umesh Uddhav Gaikwad, Aged 21 years, Occ. Student, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.
6. Vishnu Rajendra Khadke, aged 23 years, Occ. Agriculturist, R/o. Hiwra Khurd, Tal. Mehkar, Dist. Buldhana.

.... **APPELLANTS**

// VERSUS //

1. State of Maharashtra, through Police Station Officer, Police Station, Janefal, Tal, Mehakar, Dist. Buldhana.

2. Ravi S/o Vilas Jadhav,
Aged Major, R/o. Hiwra (Khurd),
Tal. Mehkar, Janefal, Dist. Buldhana.

.... RESPONDENTS

with

CRIMINAL APPEAL NO. 541/2019

1. Vaibha Santosh Shinde,
aged 21 years, Occ. Agriculturist,
R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
2. Devanand Arun Shinde,
Aged 30 years, Occ. Agriculturist,
R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
3. Eknath Devidas Gaikwad,
aged 40 years, Occ. Agriculturist,
R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
4. Arjun Trymbak Wakle,
aged 68 year, Occ. Agriculturist,
R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.
5. Dynaneshwar Parmeshwar Pathade,
aged 20 years, Occ. Education,
R/o. Hiwra Khurd,
Tal. Mehkar, Dist. Buldhana.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Janefal, Tal, Mehakar,

Dist. Buldhana.

2. Ravi S/o Vilas Jadhav,
Aged Major, R/o. Hiwra (Khurd),
Tal. Mehkar, Janefal, Dist. Buldhana.

....RESPONDENTS

Shri Amit D. Bhate, Advocate for appellants.

Shri S. A. Ashirgade, Additional Public Prosecutor for respondent No.1/State.

CORAM : VINAY JOSHI, J.

DATED : 15.09.2021

JUDGMENT

Heard.

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

3. All these appeals are arising out of rejection of pre-arrest bail in connection with Crime No. 120/2019 registered with the Police Station Janefal, Taluka Mehakar, District Buldhana for the offence punishable under Sections 324, 294, 504, 506, 143, 144, 146, 147, 148, 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC and ST Act") and Section 135

of the Bombay Police Act. At the instance of report dated 06.06.2019 lodged by the informant Ravi Jadhav, crime was registered. It is prosecution case that on 05.06.2019 around 03.00 p.m., while the informant was proceeding on public road, applicant Vikas accosted and slapped at his face. The informant stated that on the same day in the late evening around 09.00 p.m. while he was at his house, his maternal uncle and aunt informed that Vikas Wakale, Ram Wakle, Udhav Gaikwad and Laxmibai Kharat came to their house, abused in filthy language as well as abused in the name of caste. So also, they beat them by means of fist blows and kicks. The informant stated that within short time, all applicants with some others came to his house and started to beat. Particularly, applicant Vikas dealt a blow by iron rod at his head whilst applicant Gopal dealt axe blow. At that time, applicant Vishnu Gaikwad also dealt stick blow to Laxmi. The informant stated that since he belongs to backward community, the applicants assaulted him and therefore, the report.

4. The State resisted bail by filing separate reply-affidavits. It is contended that *prim facie* ingredients to constitute offence punishable under the provisions of SC and ST Act are made out. There are specific allegations of assault against most of the applicants.

Considering the seriousness of the offence, application is prayed to be rejected.

5. Having regard to the *prima facie* submission, this Court has granted interim protection to all applicants vide order dated 01.08.2019, meaning thereby for last two years interim protection is prevailing. Due to mandate of Section 15-A(3) of the SC and ST Act, every endeavour was made to serve notice of this appeal to the informant, however he avoided the service. Noting said fact, specific directions were given to re-serve the notice by substitute mode which was complied. Despite service, informant remained absent.

6. Reading of First Information Report (FIR) postulates that there are three instances. As regards to first instance took place around 03.00 p.m. in the afternoon, the allegation was only against applicant Vikas of slapping. The second instance is about hearsay information of abuses in the name of caste. According to the informant, his maternal uncle and aunt informed that assailants came to their house, abused in the name of caste and beat them. The prosecution is unable to point out statement of any person who has witnessed the incident. The allegation about abusing in the name of caste are of general nature levelled against several persons. Learned

counsel for the applicants by placing reliance on the decision of this Court in case of ***Vijaymala and ors. Vs. The State of Maharashtra and ors. 2020 ALL MR (Cri) 1835***, would submit that if the allegation of giving abuse in chorus are made then *prima facie*, it makes out a case of giving benefit. Moreover, it is argued that the essential ingredients to constitute the offence under the provisions of SC and ST Act are missing. According to the applicants, there is no material to infer that alleged occurrence took place within the “public view”. In this regard reliance has been placed on the decision of Delhi High Court in case of ***Mukesh Kumar Saini and ors. Vs. State (Delhi Administration), (2002) ALL MR (Cri) (JS) 41***. In the said case, it has been observed that merely calling a person by caste would not attract the provisions of the SC and ST Act. There must be specific accusation alleged against the each of the accused. In case at hand, omnibus statement that too on hearsay information was made about the general utterance in the name of caste. Moreover, there is no material to indicate that the occurrence of humiliation or abuses took place in presence of independent witness and was within the “public view”.

7. *Prima facie* there is no material to indicate that the assailants were knowing that informant and his party were members of

the Scheduled Castes or of Scheduled Tribes. In absence of essential ingredients, the bar under Section 18-A of the SC and ST Act would not attract. As regards to the third instance is concerned, it is alleged that several persons came to the house of informant and beat by fist blows, iron rod and axe. Perused the injury report and related documents. Learned counsel for the applicants would submit that the informant himself has appeared in the Trial Court and filed a pursis stating that out of anger, he has lodged report. Moreover, it can be seen from the impugned order that informant had appeared in the Trial Court and gave no objection for grant of bail. Besides that, it is brought to the notice that at the time of occurrence, informant party has assaulted the applicants for which offence punishable under Section 307 of the Indian Penal Code etc. was registered on the very day. Apparently, counter cases are registered against both sides. The prosecution is unable to make out a case about necessity to have custodial interrogation. There is no complaint that during last two years, the applicants have misused the liberty.

8. Having regard to all above facts a case for grant of pre-arrest protection has been made out. In view of that, following order:-

(I) All appeals stand allowed and disposed of. Common impugned orders dated 11.07.2019 passed by the Additional Sessions Judge, Mehkar in Anticipatory Bail Application (Misc.) Nos. 109/2019, 110/2019 and 108/2019 respectively is hereby quashed and set aside.

(II) Common ad-interim order dated 01.08.2019 passed by this Court is hereby made absolute upon same terms and conditions.

JUDGE

Gohane.