

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

CRIMINAL APPLICATION (APL) NO. 933 OF 2019

Divyam Harishankar Samarit,
Aged about 26 years,
Occupation – Student,
Resident of Near Bus Stop,
Tumsar, District Bhandara,
M. 7593861327.

... APPLICANT

----VERSUS----

1. Juieli Pradip Masram,
Age- 23 yrs., Occ. Student,
R/o. 1001, Beltarodi Road,
Ramteke Nagar, Royal Towers,
Nagpur.

2. State of Maharashtra,
Through Police Station Officer,
Police Station, Ajani, Nagpur.

.. NON-APPLICANTS

Shri C. B. Barve, Advocate for Applicant.

Shri T. A. Mirza, Additional Public Prosecutor for Non-applicant No.1/State.

Shri A. S. Chakotkar, Advocate (Appointed) for Non-applicant No.2.

CORAM: M. S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.

DATE: 27.10.2021.

ORAL JUDGMENT : (PER M. S. SONAK, J.)

1. Heard Mr. C. B. Barve, learned Counsel for the applicant, Mr. A. S. Chakotkar, learned counsel appointed for respondent No.1 under the Legal Aid Scheme, and Mr. T. A. Mirza learned Additional Public Prosecutor for the State.

2. **Rule.** The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

3. Mr. C. B. Barve, the learned Counsel for the applicant at the outset submits that the challenge in this application is restricted to the application of Section 3(1)(g) or for that matter any other provision of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the said Act').

4. Mr. Barve, the learned Counsel for the applicant submits that from the reading of the complaint/First Information Report, it is more than apparent that no allegations to attract the provisions of the said Act are to be found therein. He submits that merely because the complainant has alleged that she is a member of a Scheduled Tribes, that by itself, is not sufficient to attract the provisions of the said Act. He points out that the complainant has herself stated that she was in the relationship with the petitioner for a considerable period and it is only after the breakup that some telephone calls were exchanged. He, therefore, submits that the invocation and applicability of the provisions of the said Act deserve to be quashed.

5. Mr. A. S. Chakotkar, learned Counsel for respondent No.2 submits that the complainant, in this case, is admittedly belonging to the Scheduled Tribes category. He submits that the Section referred to in the First Information Report may not be appropriate but, this is the case where the allegations speak about abusing the member of a Scheduled Tribe by caste name in any place within the public view or in any case, the allegations speak about intentionally insulted or intimidated with intent to humiliate the member of the Scheduled Tribes.

6. We have considered the rival contentions and also perused the material on record, which include primarily the allegations made in the complaint and transcribed in the First Information Report.

7. According to us, the complainant, apart from stating as a matter of fact that she belongs to the Scheduled Tribes category has not really alleged that she was intentionally insulted or intimidated with intent to humiliate her as a member of the Scheduled Tribe category or that she was abused in her caste name in any place within the public view. The application of Section 3(1)(g) of the said Act is, therefore, untenable because that provision speaks about wrongful dispossession of a member of a Scheduled Tribe from his land or premises which is not even

remotely the allegation in the complaint or the First Information Report. There is no allegation that even the offense under Section 354-D of the Indian Penal Code was committed by the petitioner knowing that the complainant belongs to the Scheduled Tribe category. Besides, the Complainant has admitted being in a relationship for a considerable period with the Applicant. Thus, even if all the allegations in the complaint/First Information Report are taken as correct, we find that no offense is under the provisions of the said Act has been alleged or made out against the petitioner.

8. Therefore, on the aforesaid basis, we quash the applicability of Section 3(1)(g) of the said Act or for that matter, the applicability of the provisions of the said Act as recorded in the First Information Report. The First Information Report insofar as the other offenses alleged to have been committed by the petitioner under the provisions of the Indian Penal Code is however not interfered with.

9. The Rule is partly absolute in this application to the aforesaid extent. There shall be no order for costs.

10. The interim order granted earlier is hereby vacated.

11. In this case, Mr. A. S. Chakotkar, learned Counsel was appointed under the Legal Aid Scheme to appear on behalf of the Non-applicant No.1 herein. Accordingly, we quantify his fees at Rs.2000/- and this shall be in addition to our gratitude for having appeared for this matter and done his best.

PUSHPA V. GANEDIWALA, J.

M. S. SONAK, J.

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