

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

CRIMINAL APPEAL NO. 715 OF 2019

1. Shri Munsif Aziz Khan,
Aged about 43 years,
Occupation : Agriculturist,
R/o Gandhinagar, Malegaon, Tq.
Malegaon, District – Washim.
2. Shri Kunal Suresh Tayade,
Aged about 34 years,
Occupation : Agriculturist,
R/o Near Ganesh Temple,
Malegaon, Tq. Malegaon,
District – Washim.

... **APPELLANTS**

VERSUS

1. State of Maharashtra, through
P.S.O. Jaulka (Rly.)
Tq. Malegaon, District Washim
2. Sau. Indubai w/o Yogiraj @ Baban Gudade
aged about : 47 years,
Occupation : Agriculturist, R/o Pipla,
Tahasil : Malegaon, District Washim.

... **RESPONDENTS**

Shri P.M. Pande, Advocate for the Appellants.
Shri M.J. Khan, A.P.P. for the respondent no. 1-State.
Shri M.V. Rai, Advocate for Respondent no.2.

CORAM : VINAY JOSHI, J.
DATED : 05/07/2021

ORAL JUDGMENT :

ADMIT. Heard finally by consent of learned Counsel appearing for the respective parties.

2. Appellants are seeking pre-arrest protection by way of this appeal, since the learned Special Court has refused to grant them interim protection. Appellants apprehend to be arrested in Crime No.218 of 2019 registered with Jaulka (Rly.) Police Station, Taluka Malegaon, District Washim for the offence punishable under 504, 506, 447 read with Section 34 of the Indian Penal Code and Section 3(1)(r) (s), 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act').

3. Learned Counsel for the appellants would submit that the essential ingredients to constitute an offence under the Atrocities Act would not attract. Moreover, it is primarily canvassed that it is a case of false implication arising out of a land transaction.

4. The State resisted bail by filing affidavit-in-reply.

5. Shri M.V. Rai, learned Counsel for Respondent no.2 resisted bail by contending that appellants are forcibly trying to dispossess the informant. He would submit that there is sufficient material on record to connect appellants with alleged offence.

6. The informant lady i.e. respondent no.2 lodged a report on 19.09.2019 regarding alleged occurrence. She stated that while she along with her husband were cultivating the land, both appellants entered and abused her in the name of caste. Pertinent to note that though the alleged incident took place on 16.08.2019, after long gap of one month, i.e. on 19.09.2019, the report has been lodged. Learned Counsel for appellants has pointed towards two sale-deeds under which the informant's husband has already sold his land in favour of both appellants preceding to the alleged occurrence. More particularly, the copy of complaint dated 16.09.2019 is pressed into service to show that prior to the lodgment of the report, the informant's husband had threatened to appellants to involve them in false atrocity case. In such a background, within three days from such complaint to the Police, the existing First Information Report has been lodged. Besides that, having regard to the nature of accusation, nothing has to be seized. The

submission that there is possibility of false implication, requires consideration.

7. This Court has granted pre-arrest protection long back vide its order dated 23.10.2019. Moreover, there is no complaint that appellants have misused the liberty. Taking over all view of the matter, appellants have made out a case for grant of pre-arrest protection. In view of the above, following order is passed :

(i) The Criminal Appeal is allowed. The impugned order dated 18.10.2019 passed by the learned Additional Sessions Judge, Washim in Misc. Criminal Application No. 416 of 2019 is hereby quashed and set aside.

(ii) Interim protection granted by this Court vide order dated 23.10.2019, is hereby made absolute on same terms and conditions.

JUDGE

Trupti