

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.197 OF 2022

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| 1. | Vishnu Ramesh Kshirsagar | |
| 2. | Ramesh Laxman Kshirsagar | ... Appellants |

Versus

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| 1. | The State of Maharashtra | |
| 2. | Lankabai Namdeo Manohar | ... Respondents |

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Mr. S. P. Bramhe, Advocate for appellants.

Mr. R. B. Bagul, APP for respondent No.1 – State.

Mr. A. R. Salve, Advocate for respondent No.2 (Appointed through Legal Aid)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29.06.2022

ORDER :-

Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) challenging the rejection of the Bail Petition No.391 of 2022 by learned Special Judge under the Atrocities Act, Aurangabad dated 07.03.2022, whereby the application filed by the appellants for getting bail under Section 438 of the Code of Criminal Procedure in view of their apprehension of arrest in Crime No.80 of 2022 registered with Bidkin Police Station, Dist. Aurangabad

for the offences punishable under Sections 504, 506 read with Section 34 of Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, came to be rejected.

2. Heard learned Advocate Mr. S. P. Bramhe for the appellants, learned APP Mr. R. B. Bagul for respondent No.1 – State and learned Advocate Mr. A. R. Salve for respondent No.2.

3. Perusal of the FIR lodged by present respondent No.2 would show that it has been lodged on 28.02.2022 at about 21.06 hours in respect of an incident that had allegedly taken place on 16.02.2022 and 17.02.2022. Therefore, there is apparent delay in lodging the FIR. Another fact that is required to be noted is that as per the FIR, when the informant was inside the house at about 6.30 p.m. on 16.02.2022, the appellant No.1 came in front of her house and unloaded his tractor in front of her house and started abusing in the name of caste. He had abused the informant and her daughter-in-law. It is then stated that after abusing them, appellant No.1 went in his field which was near the house of the informant and again started abusing loudly in the name of caste to the informant and her daughter-in-law. Informant and her daughter did not react and went inside the house. The FIR is silent as to who was present at the spot or who had heard those abuses. Certainly,

it does not say the presence of appellant No.2.

4. The FIR further states that on the next day i.e. 17.02.2022, appellant No.2 went to the informant's house and told informant and her daughter-in-law in threatening language that they should understand and he would see how they reside in the village and then he abused in the name of caste to the informant and her daughter-in-law and after abusing them, he went away. Thus, it is to be noted that the second incident i.e. incident dated 17.02.2022 at about 10.00 a.m. had occurred inside the house of the informant and, therefore, it was not "within the public view".

5. The informant states that due to fear, they had not gone to lodge any report. Whether that explanation can be said to be reasonable would be considered at the time of trial but the fact that remains is that there is delay in lodging the FIR. It is also to be noted that informant has not at all given as to why the appellants would suddenly start abusing her as well as her daughter-in-law in the name of caste. Nobody will abuse another person unless there was a background. The appellants have produced on record applications, which they had given along with villagers from 10.02.2022, stating that the informant and her sons were creating obstruction in their road by committing

encroachment. They had filed the said complaint with the police stating that when they went to pacify the informant and her sons, they had given threat that they will lodge report under the Atrocities Act. Thus, it appears that because of the complaint filed by the appellants against the informant and/or her sons, she has lodged the said report. That means, the FIR has been filed with *mala fide* intention.

6. The learned Advocate appearing for the appellants has relied on ***Hitesh Verms Vs. State of Uttarakhand and another, [2020 AIR (SC) 5584]***, wherein it has been held that :-

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the

indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.”

7. Definitely, the said ratio is applicable here. Further, the police papers regarding the investigation that has been done uptill now would show that except the daughter-in-law of the informant, there was no eye witness or the person who heard the alleged abuses. The other two persons, whose statements have been recorded, are the sons of the informant, who were admittedly not present when the incident had taken place. Thus, there is no *prima facie* evidence against the appellants, which would attract offence under the Atrocities Act. The learned Special Judge under the Atrocities Act, Aurangabad failed to consider the facts of the case in proper perspective and wrongly held that the application before him was barred under Section 18 of the Atrocities Act. In view of the abovesaid reasons, the appeal deserves to be allowed. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The order passed in Bail Petition No.391 of 2022 by the learned Special Judge under the Atrocities Act, Aurangabad on 07.03.2022 is hereby set aside. The said bail petition stands allowed.
- III) The order passed by this Court granting ad-interim relief to the appellants on 11.03.2022 stands confirmed and made absolute. In other words, in the event of arrest of appellants in connection with Crime No.80 of 2022, registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under 506 and 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Atrocities Act, they be released on executing P.R. Bond in the sum of Rs.15,000/- each with one surety each in the like amount, if not already released.
- IV) The appellants shall not tamper with the prosecution evidence.
- V) They shall not indulge in any criminal activity.
- VI) It is clarified that the observations made in the above order are restricted to the decision of this appeal only and the trial Court shall not get influenced by the same and can come to its own conclusion after taking into consideration the evidence.

[SMT. VIBHA KANKANWADI, J.]