

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.214 OF 2022

1. Ravi @ Ravindra s/o Hirasing Rathod
 2. Swati w/o Ravi @ Ravindra Rathod
 3. Reshma w/o Kishor Rathod
- ... Appellants

Versus

1. The State of Maharashtra
 2. Rekha w/o Maroti Khadse
- ... Respondents

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

Mr. B. V. Virdhe, APP for the respondent No.1 – State.

Mr. A. M. Hazare, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13.06.2022

ORDER :-

1. **Admit.**

2. With the consent of both the parties, the matter is taken up for final hearing immediately.

3. The present appeal challenges the order passed in Miscellaneous Criminal Bail Application No.132 of 2022 by the learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Dist. Nanded on 02.03.2022 thereby the application filed by the present appellants under

Section 438 of the Code of Criminal Procedure came to be rejected. In the beginning itself, it has to be observed that the learned Special Judge ought to have given his correct designation while dealing with the bail applications under a particular enactment. Merely because all the Additional Sessions Judges in Maharashtra have been conferred with the powers under the Atrocities Act to deal with the cases, that does not mean that they should not write an appropriate designation when they are dealing with the provisions under the enactment. This practice has to be deprecated.

3. Heard learned Advocate Mr. P. S. Dighe for the appellants, learned APP Mr. B. V. Virdhe for respondent No.1 – State and learned Advocate holding for learned Advocate Mr. A. M. Hazare for respondent No.2.

4. Learned Advocate for the appellants after taking this Court through the FIR submits that whatever allegations in respect of abuses in the the name of caste are concerned they are alleged to have been uttered by co-accused Nirmalabai, who is not before this Court. As regards the appellants are concerned, they have not uttered any abuse in the name of caste. Further, it appears that the incident as per the FIR had taken place on 04.01.2022 at about 3.30 p.m., however, the FIR has been lodged on 20.01.2022. There is apparent delay in lodging the FIR

which speaks of itself and then by way of explanation to the delay, the informant – respondent No.2 states that in spite of dispute, she had the hope that it would be resolved amicably. This kind of explanation cannot be accepted at all. Further, taking into consideration the complaint applications those were made by Nirmalabai against respondent No.2 and the respondent No.2 against the appellants on 04.12.2021 with the PSO, Mahur Police Station would show that the incident had taken place on 04.12.2021 and not even on 04.01.2021 as stated in the FIR. If the incident had taken place on 04.12.2021, the FIR that has been lodged on 20.01.2022 would be with considerable delay. The acts attributed to the appellants in the complaint application dated 04.12.2021 are also different. All these things were not considered by the learned Special Judge and with some apparent reading wrongly concluded that the said application filed by the present appellants was barred under Section 18 and 18-A of the Scheduled Castes and Scheduled Tribes (Atrocities Act), 1989 (hereinafter referred to as the 'Atrocities Act').

5. The learned APP as well as learned Advocate for respondent No.2 strongly opposes the appeal and supported the reasons given by the Special Judge. It has been vehemently submitted that the application before the Special Judge under Section 438 of the Code of Criminal

Procedure was not maintainable at all in view of bar under Section 18 and 18-A of the Atrocities Act.

6. In view of the decision in ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***, it is required to be considered as to whether any *prima facie* case for the offence under the Atrocities Act has been made out against each of the accused or not, then only the maintainability of the application under Section 438 of the Code of Criminal Procedure by such accused – appellants can be dealt with. Here, in this case, from the plain reading of the FIR, it appears that the informant has stated that the alleged incident has taken place on 04.01.2022, however, lodged the report of 20.01.2022. Here, there is an evidence in the form of complaint application, which has been acknowledged by the police station, filed by the informant on 04.12.2021 giving exactly the same chronology of events in general which had allegedly taken place at about 3.30 p.m. on 04.12.2021. Of course as regards the acts attributed to the appellants are concerned, there are contradictions or differences, but taking into consideration the cross complaint applications, one by co-accused Nirmalabai and another by respondent No.2 of the same date i.e. 04.12.2021, it appears that the incident had in fact taken place on that day and not on 04.01.2022.

7. Co-accused Nirmalabai is not before this Court and, therefore, as aforesaid we are required to restrict ourselves to the role attributed to the appellants. Appellant No.1 – Ravi is the son of Nirmalabai. It is alleged that Nirmalabai along with Ravi were getting the branches of Babul tree. As per the informant that Babul tree is in her plot and, therefore, she objected for the cutting of the branches. Informant says that Nirmalabai abused her in the name of caste and as the dispute was going on, appellant Nos.2 and 3 arrived at the said place. They both are the daughters-in-law of Nirmalabai. After their arrival Nirmalabai told appellant No.1 Ravi “या मांगणीला मारा हिला खुप मस्ती आली आहे” and then it is stated that the appellant No.1 rushed by taking axe in his hand towards the person of the informant and then appellant Nos.2 and 3 started abusing and giving fists and slaps to the informant. Which abuses appellant Nos.2 and 3 have uttered is not stated in the FIR. If we consider the complaint application filed by the informant on 04.12.2021 before the police officer, it can be seen that there is no allegation that appellant No.1 had rushed towards the person of the informant by holding axe. At both the places, she has not stated that any injuries have been caused to her by means of the said axe. In that complaint application only presence of the appellants has been stated and then it is stated that after abusing, they had assaulted her by kicks and fists blows

causing her covert injury. Now, the objection has been taken on behalf of the respondent No.2 that knowing the caste of the respondent No.2 she has been assaulted and, therefore, it attracts Section 3(2)(va) of the Atrocities Act. Here, even at this stage, it can be stated that whether that assault was only on the count that she belongs to a particular caste or it was due to the dispute with the neighbour that is required to be proved at the time of trial. Merely because a person is a member of a particular caste as per the Atrocities Act and he has been assaulted, the provisions of Section 3(2)(va) will not be attracted. The requirement of the Act is that the said assault or commission of crime against the member is with the intention that it should be against the member of either Scheduled Caste or Scheduled Tribe. In this process, we will have to eliminate the dispute between the neighbours. But here, the case is different, the dispute is because of neighbourhood also and that too on the point of cutting of the branches of tree, which is barren. Therefore, taking into consideration all the above said aspects and the facts of which minute consideration is necessary, it can be said that *prima facie* the offence under the Atrocities Act are not made out against the appellants – original accused Nos.2 to 4. As regards the offences under Indian Penal Code are concerned, all of them are bailable. In view of this fact, which have not been considered by the learned Special Judge,

the appeal deserves to be allowed. Hence the following order :-

ORDER

- I) The appeal stands allowed.

- II) The order passed in Miscellaneous Criminal Bail Application No.132 of 2022 by learned Special Judge/Additional Sessions Judge-2, Nanded on 02.03.2022 is hereby set aside.

- III) The order passed by this Court granting ad-interim relief to the appellants on 21.03.2022 stands confirmed. In other word, in the event of arrest of appellants in connection with Crime No.5 of 2022 registered with Mahur Police Station, Dist. Nanded for the offences punishable under Sections 323, 504 and 505 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act, they be released on their 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 appear before the investigating officer as and when required.

- V) The appellants shall not tamper with the prosecution evidence.

- VI) They shall not indulge in any criminal activity.

VII) 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.]

scm