

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.355 OF 2022

1. Sunil Narayan Ghodke
2. Akshay Sunil Ghodke
3. Rohan Mahadev Bele ... Appellants

Versus

1. The State of Maharashtra
2. Sahdev Hanmant Kamble ... Respondents

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WITH
CRIMINAL APPEAL NO.408 OF 2022

1. Rahul Sunil Ghodke
2. Yogesh Mahadev Bele ... Appellants

Versus

1. The State of Maharashtra
2. Sahdev Hanmant Kamble ... Respondents

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Mr. S. S. Jadhav, Advocate for appellants in both the appeals.
Mr. R. B. Bagul, APP for respondent No.1 – State in both the appeals.
Mr. S. G. Kanwade, Advocate for respondent No.2 in both the appeals.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.06.2022

ORDER :-

. Both the appeals have been filed by the original accused persons under Section 14-A of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to challenge the orders of rejection of their anticipatory bail by learned Special Judge under the Atrocities Act, Osmanabad in Bail Application No.160 of 2022 on 25.04.2022 and in Bail Application No.176 of 2022 on 05.05.2022 respectively.

2. After the disinclination is shown to grant any relief to the appellants in Criminal Appeal No.408 of 2022, the learned Advocate for the appellants, upon instructions, sought withdrawal of the appeal. There is no hurdle to accept the said prayer.

3. As regards the appellants in Criminal Appeal No.355 of 2022 are concerned, they have been posed as accused Nos.2, 5 and 7 in the FIR vide Crime No.48 of 2022 lodged at the instance of respondent No.2 with Tamalwadi Police Station, Dist. Osmanabad on 25.03.2022 for the offences punishable under Sections 354-A, 354-B, 324, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code and under Sections 3(1)(s), 3(1)(r), 3(1)(x), 3(1)(w)(i), 3(2)(va) of the Atrocities Act.

4. Heard learned Advocate Mr. S. S. Jadhav for the appellants in both the appeals, learned APP Mr. R. B. Bagul for respondent No.1 – State in both the appeals and learned Advocate Mr. S. G. Kanwade for

respondent No.2 in both the appeals..

5. It has been vehemently submitted on behalf of the appellants that the FIR is nothing but the outcome of the family dispute between two families. In the past also, there were disputes between the two families. On 25.03.2022 itself in respect of incident that had taken place at about 7.00 a.m., the FIR vide Crime No.49 of 2022 has been registered with the same police station for the offence punishable under Sections 307, 452, 354-A, 354-B, 324, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code against the informant and nine other persons. Perusal of the FIR lodged by respondent No.2 would show that according to the informant, he and his brother had gone to fetch water on public water tap, which is situated in Dalit Wasti. It is then stated that co-accused No.1 Ashok Ghodke went there and started obstructing the informant and his brother by saying that since they are of a particular caste they should not fetch water from that place. Thereafter, accused No.1 pushed the utensils, spit in that and manhandled the informant and his brother and thereafter, he called his family members. It is then stated that accused Sunil Ghodke, Vishwajit Ghodke, Akshay Ghodke, Rahul Ghodke, Yogesh Bele, Rohan Bele all came and started abusing the informant in the name of his caste. The later part of the FIR speaks about the allegations against other accused and, therefore, as regards

present applicants – Sunil, Akshay and Rohan are concerned, it is stated that they had abused the informant in chorus. It could not have been the idea of each and every person to abuse the informant in chorus that too in the name of caste. Therefore, the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act have not been attracted against the appellants. The allegations for the offence under Section 3(2)(va) of the Atrocities Act are there, but that would be a bailable offence. As regards the offence under Sections 3(1)(x) and 3(1)(w)(i) of the Atrocities Act are concerned, it is against co-accused. The learned Special Judge under the Atrocities Act had not considered all these things and, therefore, the said order deserves to be set aside and the appeal deserves to be allowed.

6. Per contra, the learned APP and learned Advocate appearing for respondent No.2 strongly opposes the appeal and submitted that the learned Trial Judge had rightly considered that the application filed by the appellants was barred under Section 18 of the Atrocities Act and, therefore, rightly rejected the application. The learned Advocate for the respondent No.2 has also relied on the affidavit-in-reply filed by the informant - respondent No.2. It is stated in addition that due to the acts of the appellants and co-accused, the informant and his family members are facing boycott from the villagers and in order to show that,

photographs have been produced.

7. The contents of the FIR are narrated earlier and, therefore, they are not reproduced. The first and the foremost thing is that as per the FIR, when the informant and his brother had gone to fetch water at 6.00 a.m. on 25.03.2022, it is stated that only accused No.1 – Ashok Ghodke had gone there and had abused the informant in the name of caste and had allegedly done the act of giving kick to the utensil, spitting in the same and manhandling the informant and his brother. It is then stated that he had called the family members. That means the family members were not in picture and it can be definitely stated that the family members would not have heard what Ashok Ghodke had stated/abused. When it is alleged that in all six accused persons came and started abusing in the name of caste, it rather becomes unimaginable that when they had no knowledge as to what had happened prior to their arrival and then they would start abusing that too in chorus in the name of caste to the informant. As regards the further acts are concerned they are against co-accused who are not appellants before this Court. As regards the alleged boycott after the incident is concerned, in view of the affidavit-in-reply and the photographs, it is to be noted that the photographs only show that there is some portion dug on the piece of land and as per the respondent No.2, the appellants and the other

accused persons have excavated the road (when there is absolutely no sign of a road in the two photographs) and then it is stated that the informant and others cannot pass from the said land. When photographs from one angle are only given it cannot be said that no road is made available or the road which was earlier available has been closed down because of the same. So the photographs cannot be considered as a subsequent act on the part of the appellants. As aforesaid, the abuses cannot be in chorus. It cannot be said that a *prima facie* offence has been made out against the appellants under the Atrocities Act. The offence which has been registered against the informant is subsequently situated, but it would only indicate that there was some incident that had taken place on that day. The learned Special Judge failed to consider the facts in proper perspective though he has given a long order. The facts have not been considered by the learned Special Judge either before him or before the citations those were referred to him. The citations could not have been brushed aside by the learned Special Judge only by saying that the facts are different. People are unnecessarily required to approach the Higher Courts, when facts and law are not properly considered. The said order, therefore, deserves to be set aside as against the appellants in Criminal Appeal No.355 of 2022. Hence, the following order :-

ORDER

I) Criminal Appeal No.408 of 2022 stands disposed of as withdrawn.

II) Criminal Appeal No.355 of 2022 stands allowed.

III) The order passed in Criminal Bail Application No.160 of 2020 by the learned Special Judge under the Atrocities Act, Dist. Osmanabad on 25.04.2022 is hereby set aside. The said application stands allowed.

IV) The order passed by this Court granting ad-interim relief to the appellants in Criminal Appeal No.355 of 2022 on 05.05.2022 stands confirmed and made absolute. In other words, in the event of arrest of appellants in connection with Crime No.48 of 2022, registered with Tamalwadi Police Station, Dist. Osmanabad for the offences punishable under Sections 147, 148, 149, 354-A, 354-B, 323, 504 and 506 of Indian Penal Code, under Sections 3(1)(r), 3(1)(s), 3(1)(x), 3(1)(w)(i) and 3(2)(va) of the Atrocities Act, they be released on P.R. and S.B. of Rs.15,000/- each, if not already released.

V) The appellant shall remain present before the Investigating Officer as and when required.

VI) The appellants shall not tamper with the prosecution evidence.

VII) They shall not indulge in any criminal activity.

VIII) 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.]

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