

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.480 OF 2022

Shabbir Nurmahammad Pathan and Anr.

.. Appellants

Versus

State of Maharashtra and Anr.

.. Respondents

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Mr.Sanjay H. Gangal a/w. Mr.Gaurav H. Gangal, Advocate for the Appellants.

Mr.Arfan Sait, APP for the Respondent No.1-State.

Mr.Ghansham S. Jadhav, Advocate for Respondent No.2.

HC S.R. Kulkarni, Wadgaon Nimbalkar Police Station, Pune, present.

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CORAM : PRAKASH D. NAIK J.

DATED : JULY 06, 2022.

P.C. :

The appellants are apprehending arrest in connection with C.R.No.142 of 2022, registered with Wadgaon Nimbalkar Police Station, Pune, for the offences punishable under Sections 354A, 504, 506 of IPC and Sections 3(1)(r), 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC ST Atrocities Act", for short).

2 The First Information Report was registered on 26th March, 2022. The complaint refers to incidents dated 23rd January,

2022 and 26th February, 2022. It is alleged that the complainant and others were abused by the accused on the basis of caste. They were also threatened.

3 Learned advocate for the appellants submitted that the FIR has been registered belatedly after a period of two months after second incident. The entire complaint does not refer to the touch of the complainant or any other witnesses, and, therefore, Section 3(1)w(i) of SC ST Atrocities Act would not be attracted. The alleged incident had not occurred within a public view, therefore, no independent witnesses allegedly at the time of occurrence of the incident. Appellant no.2 is 73 years old person. The appellants are father and son.

4 Learned APP submits that the FIR clearly makes out offence. There is bar under Section 18 of the Act to exercise powers under Section 438 of Cr.P.C. There are witnesses to the incident. The statement of the eye witness is recorded.

5 Learned counsel for respondent no.2 submits that there is no delay in registering the FIR. The complainant had immediately approached the police for lodging the complaint, however, the

complaint was not registered. Written complaint was filed on 23rd March, 2022. In the reply filed before the Sessions Court, the complainant has stated that the complainant has immediately approached the police after the incident. Specific allegations are made against the appellants in FIR. Offence is clearly made out.

6 FIR relates to two incidents. This Court in Criminal Appeal No.861 of 2017, decided on 26th November, 2018, has dealt with the issue relating to what is public view in accordance with the provisions of the Act and it is observed that there is necessity of presence of independent persons at the place of occurrence. Similar view was taken in another decision in the case of *Hitesh Varma Vs. State of Uttarakhand*¹.

7 It appears that the statement of alleged eye witnesses is recorded during the course of investigation. She happens to be the sister of the complainant. There is nothing to indicate that the incident had occurred in the presence of independent witnesses. Considering the aforesaid circumstances, Appeal can be allowed.

8 Hence, I pass the following order:

1 (2020) 10 SCC 710

:: ORDER ::

- (i) Criminal Appeal No.480 of 2022, is allowed;
- (ii) The order dated 12th April, 2022, passed by learned Additional Sessions Court, Baramati, Pune, is set aside;
- (iii) In the event of arrest of the appellants in connection with C.R.No.142 of 2022, registered with Wadgaon Nimbalkar Police Station, Pune, the appellants be released on bail on executing P.R. Bond in the sum of Rs.20,000/-, each, with one or more sureties in the like amount;
- (iv) The appellants shall report the investigating officer on 18th, 19th and 20th July, 2022, between 11:00 a.m. to 01:00 p.m., and, thereafter, as and when called for;
- (v) Criminal Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)