

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 243 OF 2022**

Shweta Sudhakar Khade ... Applicant
vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Umesh R. Mankapure for applicant.

Smt. J. S. Lohokare, APP for respondent No.1-State.

Ms. Gauri S. Velankar, appointed Advocate for respondent No.2

CORAM : SARANG V. KOTWAL, J

DATE : 6th SEPTEMBER, 2022

P.C. :

1. In this Revision Application, the applicant has challenged the order dated 8th April, 2022 passed by the Additional Sessions Judge (Special Court), Sangli in Sessions Case No.132/2015 passed below Exhibit-13. The applicant had preferred an application for discharge under Section 227 of the Code of Criminal Procedure, 1973, which was rejected by the impugned order. The charge-sheet was filed against the applicant and her husband under Section 376 of the Indian Penal Code 1860, Sections 3(1)(r)(s), 3(2)(v)(q) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act') and under Section 7(1)(d) of the Protection of Civil Rights Act, pursuant to C.R. No.202/2014, registered with Vishrambag Police Station, Sangli.

2. The FIR was lodged by respondent No.2 on 1st October, 2014. She has deposed that she was working as a watchman with one Jaymala since past 8 years before lodging the FIR. She used to reside alone in a room adjoining to the bungalow of Jaymala. Both the accused and their family members used

to stay in that bungalow since about 4 years before the lodging of FIR. The first informant-respondent No.2 was working in their house and was doing household work. She belonged to scheduled caste. The accused knew about her caste. The FIR mentions two incidents; one which took place 6 months back and another which took place 15 days prior to filing of the FIR, when the accused No.1 had committed rape on the first informant. On 30th September, 2014, the landlady Jaymala came to Sangli from Mumbai. She called the informant but the informant did not go to her bungalow. Instead, she called her at a different place. There she informed Jaymala about the two incidents. She also told her that accused No.1 was an influential person and because of that, she was scared of him. The informant with the help of Jaymala went to the police station and gave the FIR against accused No.1. FIR mentions that the statement was read over to her by Jaymala.

3. The investigation started and the informant's supplementary statement was recorded on 2nd October, 2014. The applicant's role was described in this particular statement. In her supplementary statement dated 2nd October, 2014, the informant stated that the applicant was also residing in the same bungalow with accused No.1. The applicant used to abuse her with respect to her caste on many occasions. The informant had mentioned two incidents of May 2014 and 30th July, 2014. In May 2014, the applicant had abused the informant. When Jaymala had gone there, the informant told her about the abuse. At that time, the applicant came in front of the informant's room. She started quarreling with her and then abused the informant with reference to her caste. After that, on 30th July 2014, the applicant had abused the informant with reference to her caste. According to the first informant, Jaymala's son Nilesh was present there and he had heard the abuse given to the informant about her caste by the applicant.

4. Learned Counsel for the applicant submitted that the first informant was working for 8 years with Jaymala and was under her influence. The alleged incident of rape had taken place 6 months prior to lodging of FIR. FIR is motivated and delayed. The delay is not explained. As far as the allegation of commission of offences under the Atrocities Act are concerned, these 2 incidents had taken place in May, 2014 and on 30th July, 2014. There is no reference of these two incidents in the FIR. In the FIR, it is mentioned that Jaymala was present with the informant when her statement was recorded. This clearly shows that at the behest of the landlady Jaymala, who was not on good terms with the applicant, the FIR was lodged. The landlady herself had not given any complaint about the applicant's abuse any time before.

5. Learned counsel for the applicant further relied on the judgement of the Hon'ble Supreme Court in the case of *Hitesh Verma v/s. State of Uttarakhand and another* reported in **2020 ALL SCR (Cri) 876**. He contended that the place where the offence had taken place was not within public view. It was inside the bungalow. Though Jaymala's son claims to be the eye-witness to the incident, they were friends of the informant and as per the said judgment, that incident does not sufficiently comply with the requirements of provisions of the Atrocities Act and it does not attract those provisions. He submitted that making the applicant go through the entire process of trial would be abuse of process and therefore, she should be discharged. It is submitted that the trial court has not taken into consideration these aspects in their proper perspective.

6. Learned APP as well as learned Counsel for the respondent submitted that there is nothing wrong with the impugned order. The trial court has

considered all the issues raised by the learned counsel for the applicant properly. This is not a stage where the findings can be recorded that the delay was fatal for the prosecution. They submitted that since the independent eye-witnesses were present at the time of incidents, the offence under the Atrocities Act was clearly made out as it had taken place in public view.

7. I have considered these submissions. With the assistance of the learned Counsel for the parties, I have perused copy of the charge-sheet annexed to this application.

8. Apart from the FIR and supplementary statement of the informant, there are two other important statements. First is that of Jaymala. This statement is recorded on 2nd October, 2014. In her statement, she has stated that the informant had told her about the incident of rape. After that, this witness has described the incident which had taken place in May, 2014. She has stated that the applicant was quarreling with the first informant. Applicant accused informant of stealing fruits and during the quarrel, she abused the informant with reference to the informant's caste. This witness Jaymala had clearly stated that the applicant had referred to the informant in abusive language with reference to her caste. She has also stated that her son Nilesh had told her about the incident that had occurred on 30th July, 2014, when the applicant had abused the informant with reference to her caste in presence of Nilesh.

9. Second important statement is that of the eye-witness Nilesh, who was Jaymala's son. This statement is recorded on 3rd November, 2014. He has described the incident dated 30th July, 2014. It appears that inadvertently,

the date is mentioned as 30th July, 2013. But learned Counsel for the applicant very fairly stated that it is an error. As far as that incident is concerned, he has stated that on that day, at about 3:30 p.m., when he was watching T.V, he heard quarrel between the informant and the applicant, which was going on the lower side of his bungalow. He came out of his room and saw that the quarrel was going on between these two. He went to intervene. At that time, the applicant referred to the informant in abusive language with reference to her caste.

10. As far as the present application is concerned, these are the important statements in this case. Though there appears to be delay in lodging the FIR and recording the statements, this can be considered only at the time of trial, after the evidence is led and eye-witnesses are cross-examined. At the stage of consideration of discharge application, this aspect cannot be held to be against the prosecution for passing an order of discharge. The trial court has rightly rejected the application for discharge preferred by the applicant.

11. The second submission that the incident had not taken place in public view is also not correct because para Nos.14 and 15 in **Hitesh Verma's** judgment (*supra*) have explained what is meant by the phrase "*any place within public view*". In this particular case, for the two incidents in May, 2014 and July, 2014, there are two eye-witnesses i.e. Jaymala and Nilesh. Therefore, it definitely satisfies the requirement of the provision under the Atrocities Act that the incident should have taken place within public view. Shri Mankapure submitted that Jaymala and Nilesh could not be described as member of public because they fell in the category of relatives or friends of informant as mentioned in **Hitesh Verma's** case (*supra*). I am unable to agree with this submission as neither Jaymala nor Nilesh can be described as

relatives or friends of the informant. The informant was working with them before she started working with the applicant. The incident had taken place in the year 2014 i.e. before the amendment of the Atrocities Act in the year 2016. At that time, the relevant provision was Section 3(1)(x), which is exactly similar to the present Section 3(1)(r). Thus, this offence is clearly made out against the applicant from the material available in the charge-sheet. The defence of the applicant can also be established during the trial, after the evidence is led and witnesses are cross-examined. At this stage of framing of the charge, the trial court has rightly rejected the application for discharge preferred by the applicant. When proper reasons are given, there is no necessity to take a different view from the view taken by the trial court in the impugned order.

12. Considering this discussion, the Revision Application is dismissed.

(SARANG V. KOTWAL, J)

Priya Kambli