

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 505 OF 2019

APPELLANT: Sadanand Baliram Rathod,
Aged about 35 years,
Occupation: Agriculturist,
R/o Waltur Tambade, Tq. Pusad,
Dist. Yavatmal.

...V E R S U S...

RESPONDENTS 1. The State of Maharashtra,
 through Police Station, Pusad (Rural),
 Tq. Pusad, Dist. Yavatmal.

(Ori.Complainant) 2. Manjusha Ashok Bhise,
 Aged 21 Years, Occu: Plot Agent,
 R/o Waltur Tambade, Tq. Pusad,
 District Yavatmal.

Shri V.R.Thote, Counsel for Appellant.
Shri M.J.Khan, APP for the Respondent No.1.
Shri S.S.Das, Counsel for Respondent No.2. (Appointed).

CORAM : ANIL S. KILOR, J.
DATE : 30th March,2022

ORAL JUDGMENT :

1. Heard Shri V.R.Thote, learned counsel for the Appellant,

Shri M.J.Khan, learned APP for the Respondent No.1 and Shri S.S.

Das, learned counsel for Respondent No.2 (Appointed).

2. In this appeal, a challenge is raised to the order below Exhibit No.1, dated 27/06/2019 passed by the learned Additional Sessions Judge, Pusad, in Misc. Criminal Application No.145/2019, rejecting the application for grant of anticipatory bail in Crime No. 233/2019, dated 09/06/2019 for the offences punishable under Sections 323 and 504 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act')

3. It is the case of the prosecution that on 09/06/2019 at about 8.00 a.m. the complainant's father informed her that applicant has thrown sprinkler pipe in their field. Thereupon, the complainant and her mother visited the house of the accused to ask as to why, he had thrown the pipe in their field, the appellant thereupon, slapped and abused her on caste. Accordingly, the above referred crime was registered.

4. The learned counsel appearing for the appellant submits that the words uttered by the appellant relating to caste of the complainant cannot be termed as abused on caste. He, therefore, submits that the offence punishable under Section 3(1)(s) of the

Atrocities Act would not apply in this case. He further submits that, even after the land of the complainant was acquired, the father of the complainant is cultivating the land by making encroachment, which was causing obstruction in the way to dam, and therefore, the alleged incident took place. However, it is not the case of the prosecution that only because the complainant belongs to particular caste the alleged offence was committed by the appellant. He therefore submits that Section 3(1)(r), would also not apply, and as such, the bar under Section 18 of the Atrocities Act would not come in his way.

5. He submits that, as far as Sections 323 and 504 are concerned, the appellant was granted ad-interim anticipatory bail vide order dated 22/07/2019, and there is no complaint about misuse of liberty by the appellant. Furthermore, he submits that the custody of the appellant is not necessary.

6. Learned APP opposes the application on the ground that the allegations made in the FIR are sufficient to attract the provisions of the Atrocities Act. And as such, according to the learned APP the bar under Section 18 of the Atrocities Act would

come in the way of the appellant.

7. Shri Samir S. Das, learned counsel for the respondent No.2 reiterates the submission of the learned APP and prays for rejection of the present appeal.

8. I have perused the case dairy and also contents of the FIR.

9. After going through the statements of independent witnesses, it is revealed that, *prima facie*, no incriminating material is available to support the case of the prosecution, as far as the Atrocities Act is concerned. Even if the allegation about abuse on caste is taken on its face value, as alleged in the FIR, in view of the judgment in the case of *Vasantrao S/o Madhavrao Vhadgir & Ors. Vs. The State of Maharashtra & Anr*¹, uttering words relating to caste do not always conceded as abused on caste under such words are uttered with an intention to humiliate and insult the person belonging to the Scheduled Caste and Scheduled Tribes.

10. Thus, *prima facie* Section 3(1)(s) would not apply in this case.

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11. As far as, 3(1)(r) is concerned, *prima facie*, there is nothing to show that the alleged offence was committed by the appellant only for the reason that the complainant belongs to Scheduled Caste.

12. In the circumstances, as there is no *prima facie* incriminating material available against the appellant to attract provisions of the Atrocities Act bar under Section 18 of the Atrocities Act would not come in the way of the appellant.

13. As far as Sections 323 and 504 are concerned, in that matter the custodial interrogation is not sought. In that view of the matter, I am of the considered view that the present appeal needs to be allowed. Accordingly, I pass the following order:

- i) The Appeal is **allowed**.
- ii) The order below Exhibit No.1 dated 27/06/2019 passed by the learned Additional Sessions Judge, Pusad, in Misc. Criminal Application No.145 of 2019, is hereby quashed and set aside.
- iii) The order dated 22/07/2019 granting *ad*

interim bail to the appellant is confirmed with modification that the appellants shall attend the concerned Police Station as and when his presence is required.

iv) Fees of the learned counsel for the respondent No.2 is quantified as per Rules.

The appeal is accordingly **disposed** of.

[ANIL S. KILOR, J.]

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