



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1006 CRIMINAL WRIT PETITION NO.86 OF 2021

- 1) Pandurang Eknath Gawali.
- 2) Ashok Eknath Gawali.
- 3) Bapurao Abaji Sure.
- 4) Dnyanoba Baburao Kakade.
- 5) Mandabai Eknath Gawali.
- 6) Shital Pandurang Gawali.
- 7) Sarika Ashok Gawali.
- 8) Bhagwat Ankush Katkade.
- 9) Eknath Ganpatrao Gawali.

... Petitioners

Versus

- 1) The State of Maharashtra.
- 2) Dayabai W/o Ashruba Dhanve.

... Respondents

...
Advocate for Petitioners : Mr. Angad L. Kanade.
APP for Respondent/State: Ms. K. R. Jamdade.
Advocate for Respondent No.2 : Mr. C. V. Bodkhe. (Appointed).
...

CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

DATE : 30th November, 2023.

Per Court:

. Heard.

2 After hearing the learned counsel for petitioners at length,
he came around to restrict his prayer for quashment of the offences
punishable under the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act.

3 We have perused the FIR and the related police papers. The alleged incident took place on 3rd January, 2021, whereas the report thereof has been lodged five days thereafter. The informant and her family members are the victims of the alleged crime. The petitioners herein, members of the same family, allegedly assaulted the informant and her family members. The incident took place in open i.e. in the land Gat No.181 (Survey No.16). The record indicates the parties to have dispute over the very land. Our attention has been drawn to the decision given by the SDO in proceedings No.2019/ROR/58 indicating the appeal preferred by the informant's husband was dismissed.

4 It has been specifically averred in the FIR that petitioners Ashok, Pandurang, Bapurao and Dnyanoba allegedly abused the informant over her caste. Close reading of the FIR indicates that the informant wants to say that all the four abused her in one voice (in chorus). The same is indigestible. Moreover, admittedly, the incident took place in the land where no person from public was present to hear some of the petitioners to have abused the informant over her caste. In view of the judgment of the Honourable Apex Court in the case of *Hitesh Verma Vs. The State of Uttarakhand and another*,

(Criminal Appeal No.707 of 2020, arising out of SLP (Criminal No.3585 of 2020), offence punishable under 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, therefore, could not be said to have been made out. There is nothing to indicate the petitioners to have assaulted the informant and her family members only with a view to undermine them on their caste. Admittedly, a civil dispute over the agricultural land was pending between the parties. It is true that there are injury certificates. The averments in the FIR make out a case of the offence punishable under the provisions of the Indian Penal Code. The petitioners will have to face the prosecution therefor. Suffice it to say that the FIR and all the police papers do not make out any of the offence punishable under any of the Sections of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

5 We, therefore, allow this petition partly. The FIR and the consequential charge-sheet stand quashed to the extent of the offence punishable under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Special Court shall remit the case to the Court of learned Judicial Magistrate First Class competent to try the offences punishable under the Indian Penal Code. With this, the writ petition stands disposed of.

6 The fees of the appointed counsel is quantified as Rs.10,000/- (Rupees Ten Thousand only) and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

nga [SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]