

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.237 OF 2023

**MACCHINDRA SHANKAR KANGANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. K. N. Shermale, Advocate for the appellants
Mr. S. N. Morampalle, APP for the respondent/State
Mr. Amolkumar h/f Mr. S. M. Kamble, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 28th JUNE, 2023

P.C. :-

1. Heard.
2. Appellants apprehend arrest in connection with Crime No. 443/2022 registered with Ghargaon police station, Dist. Ahmednagar for the offences punishable under Section 323, 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act')
3. Learned counsel for the appellants at the outset states that except for the offence punishable under the Act, other offences alleged against appellants are bailable. He drew attention of the Court to the first information report to submit that except for applicant Mayur there is no

allegation against other appellants of abusing the informant over his caste. As far as said appellant is concerned, it is contended on the basis of first information report it can be seen that the informant along with his wife went to the house of present appellant and there is reason to believe that the incident in question has occurred inside the house. Thus according to him when admittedly no independent person was present at the time of occurrence of the incident, the offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Act do not get attracted.

4. Learned APP and learned counsel for the informant opposed the appeal by contending that there are specific allegations in the first information report against mother of applicant No.3 -Mayur for abusing wife of the informant over the caste and in the incident occurred on the next day informant was abused by Mayur in the same manner. It is submitted that there is nothing on record to show that in fact the incident in question has occurred inside a house of the informant.

5. There is no dispute about the fact that provisions of Act may not get attracted against appellants except appellant No.3 as there is no allegation against them that they abused the informant over the caste. As far as appellant No.3 is concerned though it is stated in the first information report that he abused the informant over his caste,

however, the *prima facie* perusal of the the first information report indicates that the informant and his wife went to the house of appellant No.3. It is sought to be argued by informant and prosecution that the offence could have occurred outside house and not inside house as claimed by appellants. It is settled position of law that if two interpretations are possible in respect of one fact, then one in the favour of accused needs to be accepted. In such circumstance on the basis of first information report as well as statements recorded during investigation at this stage inference needs to be drawn that the incident in question has occurred inside the house of the accused. Admittedly no independent person was present at the said spot. Presence of the wife of informant is of no consequence in view of judgment of the Hon'ble Apex Court in case of ***Hitesh Verma Versus State of Uttarakhand and Another*** reported in **(2020) 10 SCC 710**. Having regard to aforesaid facts, bar under Section 18 of Act, would not attract to present appeal. Other offences punishable against appellants are bailable. Hence liberty of appellants deserve to be protected. Hence order.

ORDER

- (i) In the event of arrest of appellants in connection with Crime No. 443/2022, registered with Ghargaon Police Station, Dist. Ahmednagar for the offence punishable under Sections 323, 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on furnishing PR Bond of Rs.15,000/-

(Rupees Fifteen Thousand only) each with one solvent surety in the like amount.

(ii) They shall not contact the witnesses directly or indirectly.

(iii) They shall not interfere with the evidence in any manner whatsoever.

(iv) They are further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI, J.)

ssp