

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 362 OF 2023

Sambhaji s/o Waghambar Musande

Appellant

Versus

The State of Maharashtra & others

Respondents

Mr. S. S. Birajdar, Advocate for the appellant.

Mr. V. S. Badakh, APP for the State.

Mr. A. E. Madne, Advocate (appointed) for respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 27th JULY, 2023.

PER COURT :

1. Appellant apprehends arrest in connection with Crime No. 0062/2023 registered with Lohar Police Station, Dist. Osmanabad, for the offences punishable under Sections 504, 506 of Indian Penal Code and Section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Informant reported incident occurred on 1st March, 2023, at around 7.30 pm. According to her, accused came in front of her house and called her husband. He threatened her husband by saying that as to why a complaint is lodged against the persons

mentioned in the report. It is alleged that at that time, accused threatened, abused and insulted them over their caste.

3. Learned counsel for the appellant states that there is delay in lodging First Information Report as the incident has allegedly occurred on 1st March, 2023 and report is lodged on 4th March, 2023. According to him, the possibility of false implication cannot be ruled out. He further states that the First Information Report even if accepted as it is, it does not constitute any offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. To support his submission, he placed reliance on judgment of this Court in the Criminal Appeal No. 789/2018.

4. Learned APP and learned counsel for the informant opposed the application by contending that the appellant herein has number of offences registered against him and on that count, informant was scared in informing the incident to the police. It is further contended that the allegations made in the First Information Report are sufficient to attract the provisions of the Act.

5. In response to the contention with regard to previous history, learned counsel for the appellant submits that the appellant has already been acquitted for the said offence and to support said submission, he placed reliance on the copy of order dated 3rd September, 2022 passed in Criminal Appeal No. 102/2022. It is also submitted that in respect of the alleged offence against him, police has filed report under Section 169 of the Code of Criminal Procedure.

6. First Information Report indicates that the incident in question has occurred on 1st March, 2023. There is absolutely no explanation in the report as to why the complaint was not lodged immediately to the concerned police station. Even if it is accepted for the sake of argument that the informant was scared to go to the police, however, she does not explain as to what happened on 4th March, 2023 that she could lodge the complaint. Thus, there is prima facie substance in the contention of learned counsel for the appellant that this could be a case of false implication. Apart from this, perusal of investigation papers show that the incident in question has not occurred in the presence of any independent witness. The witnesses to the said incident are the blood relatives of the informant. In view of the judgment of the Hon'ble Apex Court in

the case of Hitesh Verma vs. State of Uttarakhand, **2020(10) SCC 710**, a doubt is created as to whether the provisions of the act are attributable to the present case or not. In such circumstances, appeal is allowed in terms of the interim order with a condition that the appellant shall attend the concerned police station once in a week till filing of the charge-sheet. Fees of the appointed counsel is quantified at Rs. 6,000/-.

(R. M. JOSHI)
Judge

dyb