

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

CRIMINAL APPEAL NO.429 OF 2023

RASHADBI MEHBUB SHAIKH

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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**Advocate for Appellant : Mr. S. S. Shaikh
APP for Respondent No. 1: Mr. S. N. Morampalle
Advocate for Respondent No. 2 : Mr. K. P. Rathod
(appointed)**

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CORAM : R.M. JOSHI, J

DATE : JULY 28, 2023

PER COURT :

1. Appellant is lady and apprehends arrest in connection with with C.R. No. 30 of 2023 registered with Naldurg Police Station, Dist. Osmanabad for the offences punishable under Sections 323, 504, 506, 509, 143, 147, 148, 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Rajkumar informant reported the incident occurred on 17.01.2023 at around 11.00 am in his agricultural field. According to him, the present Appellant and the co-accused abused and assaulted him. It is alleged against present Appellant that she abused and insulted him over his caste. Allegation is also

made that she abused wife of the informant.

3. Learned Counsel for the Appellant states that there are disputes between the parties and considering the delay in lodging o the FIR, false implication cannot be ruled out. In support of his contention that offence is not made out for want of its occurrence in any public view, he placed reliance on the judgment of Division bench of this Court in case of Pradny Pradeep Kenkdare and Anr Vs. State of Maharashtra (2005) SCC OnLine Bom 574.

4. Learned Counsel for informant and learned PAP opposed the appeal by contenting that the allegations made in the FIR clearly show the insult of the informant over his caste. It is also submitted that at the relevant time the another person was present at the spot and his statement has been recorded. Thus, is is their contention that the incident has occurred in public view.

5. Admittedly, incident in question has occurred in agricultural field of informant. Though perusal of the FIR shows that the present Appellant has made

insulting statements against the informant over his caste, however, perusal of the statement recorded of witness, does not support the said contention. Thus, doubt is created as to whether any such incident of abuses hurled at the informant by the present Appellant has ever occurred or not. Except for the statement of interested witness i.e., wife of the informant, there is no other support to the statement of the informant in the FIR. *Prima facie* considering the facts involved in the present case, it is conveyed by judgment of Hon'ble Apex Court in case of Hitesh Verma Vs. State of Uttarakhand, 2020(10) SCC 710. Thus, there is reason to accept contention of Counsel of the Appellant that the offence is not committed at place in public view. Hence, bar of Section 18 of the Act does not get attracted. Appellant is lady aged about 61 years with no criminal history. She is not likely to flee from justice.

6. Considering the aforesaid facts, Appeal stands allowed by confirming order dated 12th May, 2023.

7. Fees of Mr. K. P. Rathod, learned Counsel appointed for Respondent No. 2, is quantified @ Rs.

6,000/- (Rupees Six Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)

Malani