

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPEAL NO.469 OF 2023

1. SHRIMANT BHAGUJI DHANDE
2. RAM SHRIMANT DHANDE
3. HARIBHAU BHAGUJI DHANDE
4. RAJU BHAGUJI DHANDE .. Appellants

VERSUS

THE SUPERINTENDENT OF POLICE, JALNA
AND OTHERS .. Respondents

...
Advocate for Appellants : Mr. Vijay Shivaji Wakale
APP for Respondent – State : Mr. S.P. Sonpawale
Advocate for Respondent No.3 (appointed) : Mr. D.R. Dhumal
...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 1, 2023

PER COURT :

1. Appellants are apprehending arrest in connection with Crime No.358 of 2023 registered at Ambad Police Station, Dist. Jalna for the offences punishable under Section 323, 504, 506, 427 r/w. 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (For short, 'Atrocities Act').

2. Informant reported the incident occurred on 16.05.2023 at around 06:00 p.m. in his agricultural field. It is alleged that

present appellants came to the spot and apart from abusing and assaulting the informant also insulted him over his caste.

3. Learned counsel for appellants states that even if contention of informant as recorded in the FIR is accepted, no offence is made out under the provisions of Section 3 (1)(r) and 3(1)(s) of the Atrocities Act. According to him, in order to establish such offence the intentional insult or intimidation is not sufficient unless it is made at the place within public view. He further states that alleged incident is occurred in the agricultural field of the informant. Therefore, this place cannot be termed as place within a public view.

4. Learned counsel for the informant submits that the alleged statement made in the FIR is enough to show that appellants intended to insult the informant over his caste. In support of his submission about the bar of Section 18, he placed reliance on the judgment of the Apex Court in the case of **Vilas Pandurang Pawar & Anr. vs. State of Maharashtra & Ors., 2012 AIR (SC) 3316.**

5. Learned APP opposed the appeal by contending that in the instant case even if it is accepted that the incident is occurred in

the agricultural field of the informant, the said incident was witnessed by two independent persons. Thus, according to him, case is made out for offences under the Atrocities Act.

6. First informant specifically states that the incident in question has occurred in agricultural field. He further states that no other person from the village was present at the time of occurrence of the said incident. The agricultural field is a private property of the informant. Thus, *prima facie* it cannot be said that the incident in question has occurred at the place which is within public view.

7. Perusal of the investigation papers indicate that there are statements of two witnesses recorded who claimed to have been present at the spot. None of these witnesses whisper about any abuses being hurled by any appellant over the caste of the informant. Thus, there is no *prima facie* evidence to show involvement of the appellants in the crime under Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Hence, in this view, the bar of Section 18 does not apply to the present case. Rest of the offences are bailable in nature. Appellants are liable to be protected. Hence, following order.

ORDER

- (i) Criminal Appeal stands allowed in terms of interim order dated 20.06.2023.

[R. M. JOSHI]
JUDGE

GGP