

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.555 OF 2023

SANTOSH SHIVAJI GAVHANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. S. J. Salunke
APP for Respondent No. 1: Mrs. R. P. Gour
Advocate for Respondent No. 2: Mr. A. S. Wakode

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CORAM : R.M. JOSHI, J

DATE : AUGUST 03, 2023

PER COURT :

1. When this Court has shown its disinclination to grant relief to Appellant – Sharad Baliram Gapat, learned Counsel for the Appellant, on instructions, seeks withdrawal of the Appeal.

2. Appeal stands dismissed as withdrawn to the extent of Appellant – Sharad Baliram Gapat.

3. Appellants – Santosh and Aniket apprehend arrest in connection with Crime No. 143 of 2023 registered with Washi Police Station, Dist. Osmanabad for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(12)(r), 3(1)(s) of the Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Act (for short '**the Act**').

4. It is the contention of informant that an incident occurred on 05.07.2022 wherein present Appellants and co-accused alleged to have abused and insulted him over his caste. There is further mention against co-accused that he assaulted informant with rod on his leg and fracture was caused. The allegation against Appellant – Santosh is about assaulting him with chair on his head. Appellant – Aniket is claimed to have been given fist blow into his stomach.

5. Learned Counsel for the Appellants submitted that there is inordinate delay in lodging of the FIR. He further submits that there are no specific allegations against the present Appellants of abusing and insulting informant over his caste. As far as Appellant – Santosh is concerned, it is stated that allegation made against him of assaulting informant on his head is not supported by the injury certificate. It is further contended that Appellant – Aniket since is claimed to have assaulted the informant with fist blows, no custodial interrogation of this Appellant is

necessary. In support of his submissions that allegation against Appellants that in chorus they made abusive remarks against informant, cannot be accepted. He placed reliance on the order of this Court in case of Vijaymala W.o. Tanaji Dolare and Ors Vs. The State of Maharashtra and Anr, 2020 ALL MR (Cri) 1835.

6. Learned APP and learned Counsel for informant opposed the said submissions by pointing out the averments in the FIR. It is submitted that there is no delay in lodging FIR as the police has failed to take cognizance of the complaint made by the informant and he was constrained to file an application under Section 153(3) of CrPC before learned Magistrate. It is submitted that only after the order was passed by learned Magistrate offence was registered by the concerned police. Learned APP submitted that the injury certificate placed on record shows that the assault caused on the informant by Appellant – Santosh. According to her, the blackening of eye can result from the assault on the head with chair. As regards Appellant – Aniket, it is contended that there is allegation against him about the abuses hurled by him

over the caste of the informant. Thus, rejection of the Appeal is sought by them.

7. Perusal of the FIR shows that the incident in question has occurred on 05.07.2022, however, thereafter report sought to be lodged by informant was not recorded by police and only after direction obtained from Magistrate, first information report was recorded. Thus, delay in lodging of report is not attributable to the informant. Perusal of the injury certificate shows that provisional diagnosis made on 13.07.2022 which indicates that there was a fracture of fibula. Further blackening of eye is also recorded therein. Thus, *prima facie* allegations about assault made on informant are corroborated by medical evidence.

8. As far as Appellant – Aniket is concerned, allegation against him is that in one stroke he and co-accused Sharad abused informant over his caste. There is substance in the contention of learned Counsel for the Appellants that it is difficult to accept that at once/simultaneously such statement could be made by them. It is further clear from FIR that Aniket has not used any weapon to cause assault on the informant. The

allegation against him is restricted to the giving fist blows on the abdomen of informant. Having regard to these facts, the offence punishable under the Act as well as under Section 326 IPC does not get attracted against him. For want of offence being made out against him under Atrocities Act, there is no impediment to protect his liberty.

9. As far as Appellant – Santosh is concerned, there is specific allegation against him that he has abused and insulted the informant by referring to his caste. Thus, *prima facie* there is material on record to indicate his involvement in the offence punishable under the Act. Hence, as far as Appellant – Santosh is concerned, bar of Section 18 of the Act get attracted.

10. Hence, Appeal is partly allowed qua Appellant – Aniket Bhaurao Shinde. Hence, the order:

O R D E R

- (i) In the event of arrest the Appellant – Aniket Bhaurao Shinde in connection with Crime No. 143 of 2023 registered with Washi Police Station, Dist. Osmanabad for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(12)(r), 3(1)(s) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, he shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one solvent surety in the like amount.

- (ii) He shall attend the concerned police station as and when required.
- (iii) He shall not contact the witnesses directly or indirectly.
- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) He is further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)

Malani