

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

40 CRIMINAL APPEAL NO.691 OF 2023

MADHUKAR PRALHAD BANDPATTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...

Advocate for Appellant : Mr. Vivekanand B. Deshmukh
APP for Respondent – State : Mr. G.O. Wattamwar
Advocate for Respondent No.2 : Mr. Angad L. Kanade
...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 28, 2023

PER COURT :

. This appeal is filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short, 'Atrocities Act') taking exception to the order dated 26.07.2023 passed by the learned Special Judge, Osmanabad rejecting the application under Section 438 of the Code of Criminal Procedure in connection with Crime No.319 of 2023 registered with Naldurg Police Station, Dist. Osmanabad for the offences under Sections 143, 147, 149, 294, 323, 327, 504 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act.

2. The FIR came to be lodged on 12.07.2023 in respect of the incident occurred wherein informant was abused and assaulted by the appellant. It is further contended that when the brother of the informant intervened in the said assault, he was also assaulted and co-accused were called to the spot. Informant further stated that all accused persons abused him over the caste and also assaulted relatives of the informant who came to the spot. There is further allegation that the gold chain of the informant was snatched.

3. Learned counsel for the appellant states that the incident in question has not occurred in the public view and as such, the offences does not get attracted under the Atrocities Act. He further states that there is delay in lodging the FIR which creates possibility of the false implication of the appellant in the crime in question.

4. Learned APP and learned counsel for the informant opposed the said contention. It is argued by learned counsel for the informant that there is specific allegation against the present appellant about abusing the informant over the caste. According to

him, the said incident has occurred in front of the hotel on road and hence the incident must be treated to have been occurred in a public view.

5. Learned APP drew attention of this Court to the statements of witnesses who supported the occurrence of the incident in the manner in which it is alleged in the FIR. It is also sought to be argued that the presence of Ajay Bhosle is appearing in the FIR and hence the incident about abusing the informant over the caste has occurred in public view. In order to explain the delay caused in lodging of FIR, reference is made to the discharge card issued by the Government Hospital indicating the discharge of the informant on 11.07.2023.

6. The Hon'ble Apex Court in the case of **Hitesh Verma vs State of Uttarakhand & another, 2020 (10) SCC 710** has held that in order to constitute an offence of abusing or insulting, the incident should take place within public view. While explaining the terms 'public view' it is observed that even in case the incident occurred in a private place but witnessed by independent person, the said offence is said to be committed in public view. It is thus clear that the place of

the occurrence of the incident could not be relevant for the purpose of deciding as to whether the provisions of the Act would apply to any case or not but what is relevant is that the incident must occur in public view.

7. Perusal of the FIR though indicates that the informant and his brother were waiting in front of the hotel of Ravi Bhosle and Ajay Bhosle was present there, perusal of the investigation papers do not show that any statement has been recorded of Ajay Bhosle in order to indicate that at the time of actual occurrence of the incident i.e. hurling of abuses and insult to the informant he was present at the spot of incident.

8. It is pertinent to note that the incident in question has occurred on 10.07.2023 whereas the report has been lodged on 12.07.2023. No doubt, it is sought to be argued that the informant had taken treatment and was discharged from the hospital on 11.07.2023, however there is no explanation as to why the offence has been registered belatedly at around 08:00 p.m. on 12.07.2023. Needless to state that the delay caused in lodging of the report creates possibility of false implication. Such possibility is further supported by

the statements of witnesses who are the family members of the informant. These witnesses claimed that the appellant and others had abused them too over their caste. Such allegation is completely absent in the FIR. Thus, there is reason to believe that this could be a case of over implication of the appellant and others in this crime. In considered view of this Court having regard to the fact that no independent witness was present at the spot of incident as it appears from the investigation papers, the judgment of the **Hitesh** (*supra*) has application to the present case.

9. At this stage, learned counsel for the informant submits that considering the cross complaints filed by the parties against each other, the appellant be restrained from entering the village till filing of the charge-sheet. Perusal of the record does not indicate that any further incident having been occurred in order to pass such order. Apprehension of the informant can be taken care by directing the appellant to attend the concerned police station once in a week till filing of the charge-sheet.

10. In view of above, following order is passed.

ORDER

- (i) Appeal stands allowed.
- (ii) In the event of arrest of the appellant in connection with Crime No.319 of 2023 registered with Naldurg Police Station, Dist. Osmanabad for the offences under Sections 143, 147, 149, 294, 323, 327, 504 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail on furnishing PR Bond of Rs.15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount.
- (iii) He shall attend the concerned police station once in a week till filing of the charge-sheet.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate with the investigating agency for further investigation.

[R. M. JOSHI]
JUDGE