IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.819 OF 2019

SHIVAJI TULSHIRAM BADE
VERSUS
THE STATE OF MAHARASHTRA AND ANR
...
Advocate for Appellant : Mr. S. S. Bora
APP for Respondent No. 1: Mr. S. P. Sonpawale
Advocate for Respondent No.2 : Mr. M. S. Farid h/f Mr. A. L. Kanade
...
CORAM : R.M. JOSHI, J

DATE : AUGUST 03, 2023

PER COURT :

1. Appellant apprehends arrest in connection with with C.R. No. 141 of 2019 registered with Shirsala Police Station, Beed for the offences punishable under Sections 323, 504, 506 of IPC and Sections 3(1)(r)(s) and 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '**the Act**').

2. Informant initially lodged complaint with concerned police station recording incident occurred on 06.09.2018, however, since no offence was registered against present Appellant, he filed application before JMFC, Ambajogai under Section 156(3). In the said application, order came to be passed directing

investigation into the crime. Pursuant to the said direction, crime was registered. It is alleged by the informant that on 06.09.2018 there was a quarrel between him and Appellant and that in spite of knowing that informant belonging to SC community, he was made to eat cow dunk forcibly.

3. Learned Counsel for the Appellant states that admittedly there are disputes between parties over the return of alleged hand loan amount of Rs. 90,000/- advanced by the informant to the Appellant. He drew attention of the Court to the notice dated 25.07.2017 issued by Counsel for the informant, which is duly signed by the informant wherein authority is given in case of amount Rs. 90,000/- is not returned to the informant, offence would be lodged against him for abusing him as contemplated under the Act. It is further pointed out that the informant has filed civil suit being Civil Suit No. 428/2017 for recovery of the said amount. The said suit came to be dismissed for want of prosecution. It is submitted that since the informant has failed to recover the said amount, now by lodging this complaint, he is being pressurized. It

is submitted that even otherwise offence punishable under Sections 3(1)(r)(s) is not made out.

4. Learned APP and learned Counsel for the informant opposed the said submissions by stating that there are specific allegations against present Appellant of insulting informant, who is member of SC community, in a public view.

5. As far as offence punishable under Section 3(1)(s) of the Act is concerned, admittedly, there are no abuses hurled against informant by the Appellant over his caste. Thus, *prima facie* it cannot be said that the said offence is attributed against Appellant. With regard to the offence punishable under Sections 3(1)(r) of the Act, it needs to be taken into account that that there are dispute between parties over the issue of alleged recovery of amount. Pertinently the informant had threatened the Appellant for his involvement in the case under the Act. Even perusal of the incident as narrated by the informant shows that some quarrel occurred at the spot of incident. It is, therefore, cannot be said that act in question was committed by the Appellant was intended to cause insult

of the informant as belongs to a particular caste. In view of this Court, having regard to the entire facts and circumstances the offence punishable under Section 3(1)(r) of the Act may not be made out against present Appellant.

6. Admittedly after filing of the charge-sheet, charge has been framed against Appellant and the trial is also in progress. Thus, there is no proprietary in denying liberty of the Appellant at this stage. If it is proved that the Appellant has committed offence, he would be adequately punished for the same after conclusion of trial. He cannot be send behind bar as pre-trial punishment more particularly when there is *prima facie* reason to believe that the offence under the Act may not get attracted against Appellant.

7. In view of above, Appeal stands allowed by confirming order dated 26th August, 2019.

8. The aforesaid observations are made only for the purpose of decision of present Appeal. The trial Court not to get influence by the same.

(R.M. JOSHI, J.)

Malani