

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 769 OF 2022

SHAIKH DAULAT SHAIKH AYYUB AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. Shaikh Faiyazuddin

APP for Respondent No.1/State : Mr. Y. G. Gujrati

Advocate for Respondent No.2 : Mr. R. M. Gaikwad (appointed)

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CORAM : KISHORE C. SANT, J.

DATE : 6th JANUARY 2023.

Per Court :

Heard both the parties.

1. The learned Advocate for the appellants submits that in fact the first FIR was lodged on 22.09.2022 by Nilofar i.e. present appellant no.2 against the husband of respondent no.2 for the offences punishable under Sections 354-A, 448, 323, 404, 506 of the Indian Penal Code about the incident dated 21.09.2022 in the noon at 01:00 to 01:30 pm., where in fact the husband of respondent no.2 had outraged modesty of appellant no.2. The present FIR is lodged after

much delay without any sufficient cause. The delay itself is sufficient to show that the FIR is afterthought. He submits that the offence has not taken place in the public place. Therefore no offence is made out under the Atrocities Act.

2. The learned Advocate appointed for respondent no.2 submits that by reading FIR as it is, it is clearly making out a case attracting the ingredients of Section 3(1)(w)(i) of the Atrocities Act and since the ingredients are attracted, this Court did not grant interim relief in view of Section 18 and 18A of the Atrocities Act, by which there is a bar to consider the application for anticipatory bail and the provision of Section 438 of the Criminal Procedure Code cannot be invoked.

3. The learned APP also opposes the appeal saying that the offence is clearly made out and the reason for delay is already explained in the FIR. There is a statement under Section 164 recorded of respondent no.2, which clearly makes out the case against the appellants. There are also statements of other persons namely Vipul Dilip Rasal and Abhishek Dilip Rasal recorded under Section 164. There are

independent witnesses also, whose statements are recorded during the course of investigation. He further submits that in the investigation, it is transpired that the incident as alleged has taken place and prays for rejection of the appeal.

4. Considering that the ingredients are present in the FIR attracting the provision of Section 3(1)(w)(i) of the Atrocities Act and in view of the bar provided under Section 18 and 18A, this Court finds that this appeal need not be entertained. The appeal is therefore dismissed.

5. Looking to the efforts of learned Advocate Respondent No.2, who has appeared through Legal-aid, he is entitled to fees of Rs.5000/- towards fee for assisting the Court by arguing this appeal.

[KISHORE C. SANT, J.]

Najeeb.