



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

973 CRIMINAL APPEAL NO. 1085 OF 2023

Pashumiya Rasul Mulla And Others

....Appellants

VERSUS

The State Of Maharashtra And Another

.....Respondents

Mr. V. Y. Bhide, Advocate for Appellants.

Mr. N. B. Patil, APP for the State.

Mrs. S. S. Renge (Doke) Advocate (appointed) for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 14th DECEMBER, 2023.

PER COURT :

1. At the outset, learned counsel for appellants states that though appellants/original accused No. 2 to 4 are challenging order of framing of charge passed below Exhibit 34 in Special (Atrocity) Case No. 1/2021, on instructions, he does not wish to press appeal to the extent of charge framed against them for the offence punishable under Section 506 of Indian Penal Code. Statement is accepted.

2. It is the contention of learned counsel for the appellants that there is absolutely no evidence in order to frame charge against appellants under Sections 363, 323, 341, 342 of Indian Penal Code and Sections 4(1)(1)(s) of Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act. He drew attention of the Court to the charge-sheet which shows that there is no allegation against present appellants that they took informant against her will and consent. Leaving apart the arguments advanced by learned counsel for appellants, offence under Section 363 of Indian Penal Code will not get attracted to the present case as the victim is not minor. Apart from this, evidence on record shows that allegations are against accused No. 1 and not against other accused. Further there is nothing to indicate that these accused shared common intention with accused No. 1.

3. As far as offence under Section 323 of Indian Penal Code is concerned, learned counsel for appellant states that there is no evidence to show that they had assaulted the victim. Learned counsel for victim drew attention of this Court to supplementary statement of the victim to claim that there is allegation of assault even against present appellants. Even perusal of said statement prima facie indicates that allegation of assault against accused No. 1 and not against present appellants.

4. Finally offence under Atrocities Act also seems to have been framed without any material being there to that effect. This Court, therefore, finds substance in the challenge to the order or framing of charge against accused persons to the aforesaid extent. Prima facie consideration of material on record does not show any material to frame charge against them for offence punishable under Sections 363 and 323 of Indian Penal Code and any offence under Atrocities Act.

5. Resultantly, appeal stands allowed partly. Order of framing charge is set aside against present appellants except charge framed under Section 506 read with Section 34 of Indian Penal Code. Fees of the appointed counsel is quantified at Rs. 6,000/-.

6. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb