



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1075 OF 2023

Umesh Manohar Kapale

Appellant

Versus

The State of Maharashtra & another

Respondents

WITH
CRIMINAL APPEAL NO. 1003 OF 2023

Mangesh Shivaji Kapale

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. M. P. Gandle, Advocate for the appellants.

Mr. S. B. Jadhav, APP for the State.

Ms. T. V. Jadhav, Advocate for respondent No. 2.

WITH
CRIMINAL APPEAL NO. 1104 OF 2023

Prabhu s/o Dhondiram Kapale

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. M. P. Gandle, Advocate for the appellants.

Mr. S. B. Jadhav, APP for the State.

Ms. T. V. Jadhav, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 11th DECEMBER, 2023.

PER COURT :

1. These appeals are filed challenging the order of rejection of anticipatory bail application in connection with Crime No. 224/2023 registered with Peth Beed Police Station, District Beed, for the offences punishable under Sections 323, 326, 504, 506, 34 of Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Informant/victim of the crime claims that on 1st September, 2023, the incident occurred owing to the previous dispute between the parties in which he was abused and insulted over his caste. He also alleged that all appellants by using weapon caused assault on him which has resulted into grievous hurt to him.

3. Learned counsel for appellants submits that the incident has occurred on 1st September, 2023 whereas report is lodged after 16 days i.e. 17th September, 2023. According to him, owing to previous dispute between the parties, possibility of false/over implication cannot be ruled out. It is also argued that allegations in the First Information Report to the extent that appellants in chorus have insulted the informant is not acceptable. Thus, according to

him, since it is a case of false implication, bar of Section 18A of the Act may not get attracted to the present case.

4. Learned counsel for informant opposed the appeals by relying upon the First Information Report wherein the informant has specifically stated about he being admitted in the hospital for treatment and thereafter being further treated in Alen Hospital. Thus, according to her, this is not a case of any deliberate delay on the part of the informant to lodge report. By referring to the allegations in the First Information Report, it is stated that the incident in question has occurred in public view and hence, bar of Section 18 of the Act is applicable to the present case. She also pointed out injury certificate in order to contend that offence under Section 326 of Indian Penal Code is made out against the appellants and as such for the purpose of recovery of weapon, their custodial interrogation is necessary. She placed reliance on judgment of Kerala High Court in case of Vinesh vs. State of Kerala and submits that a stick can be a dangerous weapon.

5. Learned APP opposed the appeals by relying upon the statement of informant as well as injury certificate placed on record.

According to him, grievous injury is caused to the informant which corroborates allegations made in the First Information Report against the appellants.

6. First Information Report itself clearly indicates that there are disputes between the parties on trivial issues. The incident in question has allegedly occurred on 1st September, 2023 whereas report is lodged on 17th September, 2023. Even if the contention of learned counsel for informant that informant was admitted in hospital on 1st September, 2023 is accepted, record indicates that he was discharged on 4th September, 2023. There is no explanation as to why no report was lodged with police from 4th September, 2023 to 17th September, 2023. This is not a case wherein, informant has gone to the police station and police refused to record First Information Report.

7. Needless to say that delay in lodging First Information Report creates possibility of over implication or even false implication. Considering previous dispute between the parties, this possibility is more in the present case. Apart from this, allegations in the First Information Report against the appellants of insulting informant over

his caste are omnibus in nature. This Court finds prima facie substance in the contention of learned counsel for the appellants that it is practically not possible that the appellants in chorus i.e. at one go made a single statement abusing informant over his caste. Apart from this, it is pertinent to note that though allegations are made against all the appellants of causing assault, there are two injuries seen on the person of informant, one of which is grievous in nature. Even on the basis of injury certificate, there is reason for this Court to accept contention of learned counsel for the appellants that this could be a case of over implication. There is no criminal history against the appellants. Since doubt is created about genuineness of report, in considered view of this Court, bar of Section 18 of the Act may not get attracted in the present case. In such circumstances, liberty of the appellants deserve to be protected. For the purpose of recovery, they shall be treated in the custody of police. In the result, appeals are allowed in terms of the interim order.

(R. M. JOSHI)
Judge