

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.398 OF 2022

Ganesh Sunil Mandale] .. Appellant

vs.

State of Maharashtra & Anr.] .. Respondents

WITH

APPEAL NO.178 OF 2022

Sanjay Sahebrao Narute] .. Appellant

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Pranav Pokale a/w Aditya Bagal and Abhishek Patil, for the Appellant in Appeal No.398/2022.

Mr.Shailesh Chavan i/b Sushil Shinde, for the Appellant in Appeal No.178/2022.

Mr.S.R. Agarkar, APP for the State.

PHC Haridass Borate, Akulj Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 16th March, 2023

P.C.

1] The Appellants in two appeals are admitted to interim protection by orders dated 19.04.2022 and 29.03.2022 respectively. The order recorded a prima-facie case for grant of ad-interim protection.

2] Respondent No.2 was directed to be served and the office noting reflect that the notice issued to Respondent No.2, is served. On 07.02.2023 also this court recorded that the APP has produced report

indicating that respondent No.2 is served. Once again liberty was given for appearance of Respondent No.2, but there is no appearance even today.

3] Hence, heard the learned counsel for the Appellant and the learned APP for the State, in absence of Respondent No.2 being represented before this Court.

4] Perusal of the FIR and perusal of the complaint dated 03.12.2021 which has resulted in invocation of offence under Section 143, 147, 149, 323, 338, 427, 504, 506 of the Indian Penal Code and under Section 3(1)(r) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, would reveal that the complaint is into two parts i.e. the first incident having taken place at 6.45 pm on the day of incident where reference is made to one Raju who is alleged to have indulged with the complainant. Another incident is referred to have taken place at 7.00 p.m. when it is alleged that two named accused and 15 other persons had pelted stones on the house of the complainant and also caused damage to the vehicles standing nearby and it is also alleged that in the incident, his family members sustained injuries.

5] As far as the first incident is concerned, admittedly, the Appellants are not involved. As far as incident of stone pelting is concerned and for which Section 323 of the IPC has been invoked, it was necessary to establish that the scheduled offence is committed against the person or property belonging to Scheduled Caste or Scheduled Tribe person, with a knowledge that such person is a member of scheduled caste or scheduled tribe.

6] No such material has been brought on record by the prosecution to establish the said offence on the part of Appellants.

In the wake of above facts, I deem it appropriate to confirm the orders dated 19.04.2022 and 29.03.2022, subject to the same terms and conditions.

7] Criminal Appeal No.398/2022 and 178/2022 are disposed off in the above terms.

[BHARATI DANGRE, J]