

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.208 OF 2023

Nagnath @ Anna Bhimrao Gosavi
versus
The State of Maharashtra and another

Appellant

Respondents

Mr.Viresh V.Purwant with Mr.Suraj V. Gadkari, Advocate for Appellant.
Mr.Sushan Mhatre, Advocate for Respondent no.2.
Ms.PN.Dabholkar, APP, for State.
ASI Sarde, Tembhurni Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th July 2023

PC :

1. This is an appeal under Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Atrocities Act'). Appellant is apprehending arrest in connection with C.R No.716 of 2022 registered with Tembhurni Police Station, District Solapur for offences u/s.354-D, 506 of Indian Penal Code and u/s.3(1)(w)(ii), 3(1)(r), 3(1)(s), 3(1)(2)(va) of Atrocities Act. The FIR was registered on 6th December 2022.

2. The case of prosecution is that on 5th December 2022 the informant had been to stationery shop. Accused came there. The informant left the shop after purchasing the articles. On her way accused was on his motorcycle. He approached the informant. She went ahead. Accused came to her and told her to sit on his motorcycle. He would drop her. The accused dropped chit and something was written on it. As the informant was frightened, she did not lift the chit and went to her friend's house. After reaching

friend's house, the informant disclosed her the incident. Thereafter husband of informant and his friend went to the accused to make inquiry about the incident. At that time accused abused the husband of informant in the presence of his friends by abusing him on the basis of his caste and threatened him of dire consequences.

3. Appellant preferred application for anticipatory bail before Special Court at Barshi which was rejected vide order dated 3rd February 2023.

4. This appeal was heard on 27th February 2023 and interim protection was granted to the Appellant.

5. Learned advocate for Appellant submitted that the FIR is false. The offence u/s.354-D of IPC is not made out. The alleged incident of abuses on caste are not supported by any independent witnesses. Bar u/s.18 of Atrocities Act is not attracted.

6. Learned APP submitted that complainant belongs to Scheduled Caste. Offence u/s.354-D and 506 of IPC is made out. Investigation is carried out and charge sheet is filed against Appellant. During investigation statements of witnesses were recorded.

7. Learned counsel for Respondent no.2 submitted that prima facie offences are made out. Specific overt act has been attributed to the Appellant. Appellant has abused the husband of complainant on his caste. Two cases were registered against Appellant in the past and amongst them one case was registered under Atrocities Act.

8. On perusal of FIR it is debatable whether Section 354-D of IPC can be attracted in the present case. Alleged incident had occurred on 5th December 2022 and the FIR was registered on 6th December 2022. Investigation is complete and charge sheet is filed. Apparently interim order passed by this Court is executed. Perused the charge sheet which includes statements of witnesses. Statements of friend

of complainant's husband and his wife are recorded. They had referred to the alleged incident of abuses on caste. Considering the close acquaintance of those witnesses to the complainant and her husband, they cannot be termed as independent witnesses. Thus, the incident has not occurred in public view.

9. Considering the circumstances, in spite of bar under Section 18 of Atrocities Act, relief sought in this appeal can be granted.

ORDER

- (i) Criminal Appeal No.208 of 2023 is allowed and disposed off;
- (ii) Impugned order dated 3rd February 2023 passed below Exhibit-1 in Criminal Bail Application No.1026 of 2022 by Special Judge, Barshi is quashed and set aside;
- (iii) Interim order passed by this Court dated 27th February 2023 is confirmed;
- (iv) In the event of arrest of Appellant in connection with C.R No.763 of 2022 registered with Tembhurni Police Station, District Solapur, the Appellant be released on bail on executing PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(PRAKASH D. NAIK, J.)

MST