

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.790 OF 2023

Anita Bernadine Lewis & Ors. .. Appellants
Versus
The State of Maharashtra & Anr. .. Respondents

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Mr.Kishor Patil with Mr.Amar Gharte for the Appellants.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.
Mr.Mandar Soman, Appointed Advocate for the Respondent No.2.
PSI Mohini B. Kapile attached to Kalyan Taluka Police Station, Thane, present.

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CORAM: BHARATI DANGRE, J.
DATED : 27th SEPTEMBER, 2023

P.C:-

1. The four Appellants before me face charge in Sessions Case No.130 of 2013 before the Additional Sessions Judge,Kalyan for committing the offences punishable under Sections 504, 506 read with Section 34 of the Indian Penal Code (for short, **“the IPC”**) and under Sections 3(1)(v) and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short, **“the Atrocities Act”**).

On the charge-sheet being filed, they seek discharge on the ground that no offence, as alleged, is made out against them.

2. Sections 3(1)(v) and 3(1)(x) (Unamended Provisions) read thus :-

“(v) wrongfully dispossess a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

3. From the material in the charge-sheet, it has to be discerned, whether the offence as indicated above, is made out.

4. The complaint came to be filed on 07/03/2013, by stating that the Complainant has his residential house in Survey No.66/5 of village Vasundri and this survey number also house the homes of Adivasis and Katkaris for last two generation and as per the Complainant the said survey number in the 7/12 extract, there is an entry that this land belongs to their community.

It is alleged that one Michael Lewis had initiated steps to sell this land and this was objected by the members of the community, but they were subjected to unnecessary harassment.

The complaint pertains to an incident dated 07/03/2013, when it is stated that at around 10.00 a.m., Michael Lewis (now deceased) alongwith his wife Anita Lewis (Appellant No.1) accompanied with Appellant Nos.2, 3 and 4 arrived in a Bolero and abuses were hurled, by the husband and wife with an intent to intimidate them, so that they should vacate the premises in their occupation. The humiliating and insulting

language is specifically referred to in the complaint. It is then alleged that, all the accused persons left in Bolero.

In order to corroborate the Complainant, the Investigating Officer has recorded the statements of several witnesses, who have in unison, narrated the incident which took place on 07/03/2013, when it is alleged that husband and wife hurled casteist abuses to the Complainant and the people of the community with an intention that they should remove themselves from the land.

5. Prima facie, as far as Appellant No.1 is concerned, since the material in the charge-sheet speaks of intentional insult and humiliation to the members of the community and, since the incident is alleged to have occurred in public view in the presence of the several members of the community, apart from Appellant Nos.2, 3 and 4, prima facie, the material is sufficient to subject Appellant No.1 for trial.

Another accusation levelled under Section 3(1)(v) of the Atrocities Act is of wrongfully dispossessing a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interfering with the enjoyment of his rights over any land, premises or water, is also made out. The truthfulness of the accusations definitely shall be an outcome of trial and, hence, I am not inclined to grant relief of discharge of Appellant No.1.

6. At the stage of charge, whatever may be the defence that is available to her, cannot be taken into account and what

can only be looked into is, sufficiency of the material in the charge-sheet and whether the accused deserves to be tried in the light of the material and on being satisfied that the material does exist, I find no legal infirmity in the impugned order as regards Appellant No.1.

7. As far as Appellant Nos.2 to 4 are concerned, the material in the charge-sheet is only to the effect that on the date of incident, they arrived on the spot, accompanied by Appellant No.1 and her husband. Not a single statement in the charge-sheet attribute any role or overt act to them.

The learned counsel for Respondent No.2 would argue on the point of abetment.

I must note that Abetment specifically contemplate any instigation, incitement to commit an offence and it must satisfy the ingredients of Section 107 of the IPC, but since the material in the charge-sheet falls short of this requirement and except the allegation that they arrived on the spot, in Bolero with Appellant No.1 and her husband and left the spot alongwith them, no other material exist in the charge-sheet against them.

Asking them to undergo the rigmarole of the trial, in absence of any such material, in my considered opinion, would definitely amount to abuse of process of law and it will be an empty formality to make them to undergo the trial, as no ingredients of the relevant provisions under the IPC as well as the Atrocities Act, are made out against them in the charge-sheet.

8. In the wake of the aforesaid, Appellant Nos.2 to 4 are entitled for the relief and they stand discharged from Sessions Case No.130 of 2013.

Appellant No.1 shall, however, undergo the trial before the Additional Sessions Judge, Kalyan.

9. The Appeal is partly allowed in the aforestated terms

Needless to state that the observations made above are limited to the extent of adjudication of the discharge application only.

10. At this juncture, I would like to place on record the words of appreciation for Advocate Mandar Soman, who has effectively represented the cause of Respondent No.2, on being appointed by this Court. The Legal Services Authority is directed to ensure the payment of legal remuneration payable to him within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)