

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 371 OF 2022

Kavita Sunil Sharma ...Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Mithilesh Mishra a/w Mr.Gopal Bhosale Advocate for Appellant.

Mr. Vinod P. Sangvikar a/w Ms. Namrata Vora, Advocate for Respondent No.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 7th JULY, 2023.

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P.C.:-

1. The appellant is apprehending arrest in connection with C.R. No.260 of 2021 registered with Haveli Police Station, Pune (rural) for offences punishable under Sections 323, 504, 506 of Indian Penal Code and Sections 3(1)(r)(s), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short “SC/ST (Prevention of Atrocities) Act”). The FIR was registered on 25th November 2021.
2. The complainant has alleged that on 28th October 2021 the applicant and the other accused had abused the complainant on the basis of his caste and also assaulted.
3. The Applicant had preferred application for anticipatory bail before the learned Special Judge, Pune. The said application was rejected vide

order dated 19th January 2022.

4. Learned Advocate for appellant submitted that, there is inordinate delay in lodging the FIR. Although, the alleged incident had occurred on 28th October 2021. FIR was registered on 25th November 2021. The registration of FIR is counter-blast to the FIR lodged by the appellant in respect to the incident dated 28th October 2021 and on 30th October 2021 for offences under Sections 354, 323, 324, 504, 506 of I.P.C has been registered. The appellant was assaulted by opponents which is evident from the photographs annexed to this appeal. There are no independent witnesses to support the version of complainant about the abuses on caste. The incident has not occurred within public view.

5. Learned APP submitted that, investigation is completed and charge-sheet is filed. Interim order passed by this Court was executed.

6. Learned counsel for Respondent No.2/complainant submitted that, on the day of incident, husband of complainant had approached the police by submitting his statement about the incident dated 28th October 2021. However, the cognizance of his complaint was not taken. There are continuous instances of abuses on caste at the instance of accused. The abuses are audio recorded. The incident had occurred within public view at public place. The offences are clearly made out.

7. Apparently, FIR was registered on 30th October 2021 at the instance of the appellant for offence as stated herein above. The FIR against the

appellant was registered on 25th November 2021. Although, the statement produced by learned Advocate for Respondent No.2 is dated 20th October 2021 it does not contain any date of receiving complaint. Be that as it may, the investigation is completed and charge-sheet is filed. Prosecution has not pointed out that, there are any independent witnesses to corroborate the version of complainant. The alleged video clip referred to learned Advocate for complainant are not in respect of the incident which is subject matter of the F.I.R.. Bar under Section 18 of the Atrocities Act would not be an impediment to allow this appeal.

ORDER

- (i) Criminal Appeal No. 371 of 2022 is allowed.
- (ii) Interim order dated 11th April 2022 is confirmed.
- (iii) The order dated 19th January 2022 passed by the Special Judge, (cases under SC/ST (PoA) Act) and Additional Sessions Judge, Pune in Criminal Bail Application No. 8604 of 2021 is set-aside.
- (iv) In the event of arrest of appellant in C.R. No. 260 of 2021 registered with Haveli Police Station, Pune (Rural), the appellant be enlarged on bail on furnishing PR bond in the sum of Rs.15,000/- with one or two sureties in the like amount.
- (v) Criminal Appeal stands disposed off.

(PRAKASH D. NAIK, J.)