

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.532 OF 2022

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1. Prathmesh Dilip Ghag
2. Ganesh Tukaram Sawant ..Appellants
VS.
The State of Maharashtra and another ..Respondents

Mr. Sachin R. Pawar for the Appellants.
Mr. Y. M. Nakhwa, APP for the Respondent No.1-State.
Mr. Kushalkumar D. Shukla for Respondent No.2.
Mr. Nitinkumar Pondkule, Dy. S.P., Mangaon, Raigad.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 4, 2023

P.C. :

1. Heard learned counsel for the Appellants, learned APP for the State and learned counsel for Respondent No.2.

2. This is an Appeal filed by the Appellants-Original accused Nos.1 and 2 under Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short). The Respondent No.2 has filed C.R. No.37 of 2022 registered with Tala Police Station, Raigad under Sections 354, 427 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w) of the Atrocities Act. The allegation is that on

24.04.2022 at around 12.30 p.m. when the complainant was at her old house, the Appellants came to the house and asked for curd. It is alleged that as the complainant had filed a previous atrocity case against the uncle of the Appellants which was not liked by the Appellants, the Appellants suddenly abused the complainant on the basis of her caste. The Appellant No.2 caught hold of the hand of the complainant and pulled her towards him thereby outraging her modesty.

3. Learned APP and learned counsel for Respondent No.2 supported the impugned order. It is submitted that the allegations in the FIR clearly constitute the alleged offences under the Atrocities Act against the Appellants. It is further the case of learned counsel for Respondent No.2 that the Appellant No.2 is harassing the complainant even now.

4. I have gone through the FIR. It is alleged that when the Appellants had visited the house of the complainant, the Appellants abused the complainant in the name of her caste and tried to outraged her modesty. The Appellants are closely related to the husband of the complainant. On an

earlier occasion the complainant had filed a complaint under the Atrocities Act against the uncle of the Appellants. This Court by an order dated 22.09.2021 in Criminal Appeal No.580 of 2021 granted anticipatory bail to the Appellants uncle. The order reads thus :-

"1. This is an appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard learned Counsel for the Appellants, Complainant and the learned APP for the State.

3. Investigating Officer is present. I have perused complaint and investigation report. It appears that husband of Complainant and the Appellants are the co-sharers in joint family property. Complainant's husband sold his share in the joint family property, vide sale deed dated 7th May, 2021 to one Mr. Kadam. Thereafter, the co-sharers including the Appellants objected sale and proceedings relating to mutation entries. Objection was fled on 25th May, 2021, before the village revenue officer. Even before that, the co-sharers had fled complaint on 3rd May, 2021, in relation to transaction/sale deed executed by husband of the Complainant. To resolve the dispute among the co-sharers, purchaser Mr. Kadam had called a meeting at village, chavadi. After meeting was over, when the Appellants and other co-sharers were returning home, they allegedly abused the Complainant on caste. Whereupon she lodged the complaint.

4. Primary evaluation of the First Information Report and the investigation record implies that the Appellants and co-sharers were protesting sale of share by Complainant's husband to Mr. Kadam. In the backdrop of this event, one cannot loose sight of the fact, that Complainant's husband was enraged at Appellants, therefore, the complaint was an attempt in retaliation. In consideration of this fact, prima facie no case is made out under the Act of 1989. Even otherwise, it is informed

that the investigation is over, but final report, could not be filed, since this application was pending."

5. The civil dispute between the husband of the complainant and the Appellants is pending. It is further material to note that prior to the filing of the FIR, on the very same day the FIR bearing No.36 of 2022 was filed against the husband of the complainant and two others making allegations which constitute an offence under the Atrocities Act. From this FIR, lodged prior in point of time to the one of the complaint, filed by the wife of complainant's brother, it is seen that at the time of the incident the Appellants were present. Proceedings for divorce are pending between the informant in FIR No.36 of 2022 and the brother of the complainant. The possibility of the FIR filed by the complainant being a counterblast to the FIR No.36 of 2022 cannot be ruled out. As indicated earlier there are civil disputes pending between the parties. Even otherwise it is informed by learned APP that the investigation is almost over but the final report could not be filed since this Appeal is pending. In my opinion, a case is made out for granting pre-arrest bail but on certain

conditions. Hence, the following order :-

ORDER

(i) In the event of arrest of the Appellants in connection with C.R. No.37 of 2022 registered with Tala Police Station, Raigad, they shall be released on executing the P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like sum.

(ii) The Appellants are directed to join the investigation as and when called by the Investigating Officer of the concerned Police Station and co-operate.

(iii) The Appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(iv) The Appellants shall furnish particulars of their residence and mobile numbers and/or change of residence or mobile details, if any from time to time to the Investigating Officer of the concerned Police Station.

(v) So far as the Appellant No.2 is concerned, learned counsel for the Appellants on instructions makes a statement that till the trial is over the Appellant No.2 shall reside outside the jurisdiction of Village Usar, Taluka Tala, District Raigad or subject to

such modification as granted by the trial Court after the charge-sheet is filed.

6. The Appeal stands disposed of.

(M. S. KARNIK, J.)