



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

CRIMINAL APPEAL NO.628 OF 2023

KIRAN HARISHCHANDRA NIMSE
& ANR.

..APPELLANTS

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Mr. Saurabh D. Butala a/w Shubham Gangan for the
Appellants.

Ms. Gayatri Takalkar for Respondent No.2.

Mr. Y. M. Nakhwa, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 11, 2023.

P.C. :

1. Learned counsel for the appellants seeks leave to
annexe the impugned order. Leave is granted as prayed for.
Amendment to be carried out forthwith.

2. Heard learned counsel for the appellants, learned
counsel for respondent No.2 - Ms. Gayatri Takalkar
appointed through legal aid and learned APP for the State.

3. The appellants are apprehending arrest in connection
with C.R. No. 137 of 2023 registered with Shahapur Police
Station, Thane (Rural) for offences punishable under

Sections 323, 504 read with Section 34 of the Indian Penal Code (IPC) and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2), 3(V), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act").

4. The reading of the First Information Report reveals that the incident occurred on 11/04/2023. There was a meeting of the villagers and during the meeting, it is alleged that the appellants abused respondent No.2 with reference to his caste. No role of caste abuse is attributed to appellant No.2. In respect of the very same meeting, N.C. was lodged by the co-accused Laxman Mhaskar in the same police station on 12/04/2023 for the offence under Sections 323, 504 and 506 of the IPC against the complainant and others for abusing and assaulting the co-accused. On record is a complaint lodged by Gramasth Mandal of Shahapur with the Senior Inspector of Police, Shahapur Police Station on 15/04/2023 against the complainant in the present case and others in relation to the incident of 11/04/2023. The FIR which is the subject

matter of the present appeal is lodged thereafter on 16/04/2022 in respect of the incident dated 11/04/2023. Thus, there is a delay in lodging the FIR and it is done after the complaints lodged, in respect of the very same meeting, by the co-accused and by the Gramasth Mandal.

5. Learned counsel for respondent No.2 submitted that the delay in lodging the FIR is not such that it could be a ground for allowing the appeal.

6. *Prima facie*, it appears that the present FIR is the counterblast to the said complaints. Learned APP and learned counsel for respondent No.2 supported the impugned order and submitted that the FIR contains specific allegations regarding abuse with reference to the caste. The possibility of false implication cannot be ruled out. There is a delay in lodging the FIR.

7. Taking an overall view of the matter, the appeal is allowed. The impugned order is set aside.

8. The interim order passed by this Court dated 08/06/2023 is hereby confirmed.

9. The appellants to cooperate with the investigation.

10. The appeal is disposed of in the above terms.

11. I appreciate the assistance rendered by Ms. Gayatri Takalkar who appeared on behalf of respondent No.2 in these proceedings.

(M. S. KARNIK, J.)