

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 939 OF 2022**

Vinaya Vijay Sawant

.....Appellant

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Karan Mehta a/w Adv. B.M. Jadhav a/w Adv. Punit Vyas i/by Karan Mehta & Associates for the Appellant.

Ms. M.H. Mhatre APP, for the Respondent-State.

Mr. S.G.Rajput a/w Adv. Chaitali Rajput for the Respondent No.2.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 13th JANUARY, 2023.

PC:-

Heard Mr. Mehta, learned counsel for the Appellant. Ms. Mhatre, learned APP and Mr. Rajput, learned Advocate for the Respondent No.2. Perused charge-sheet.

2) By an Order dated 17th October, 2022 the Appellant, mother of Original Accused No.1, has been granted interim relief by this Court.

3) Perusal of first information report would itself indicate that, the alleged abuses on the caste of Respondent No.2 by the Appellant were not at public place and within a public view. Therefore, provisions of Section 3 (1) (r) and 3 (1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short, "*the SC & ST Act*") are not

applicable *qua* the Appellant herein.

As far as the application of Section 3 (1) (w) (1) of the SC & ST Act is concerned, we are of the view that the said provision is not applicable to the Appellant as she did not touch the Respondent No.2 with sexual intent.

4) Mr. Rajput, learned Advocate for the Respondent No.2 submitted that, two witnesses namely Tanuja @ Ruchita Kadam and Chandani @ Renuka Kamble have given their statements to the police on 6th May, 2022 and 24th May, 2022 respectively stating that they witnessed abuses hurled by the Appellant to Respondent No.2 on her caste. It be noted here that, though the Respondent No.2 in her first information report has referred to the fact of presence of the said two witnesses in the night of 2nd May, 2022 at the residence of Appellant when they had been there to question the Accused No.1 about his alleged act under Section 376 of the IPC, there is no reference at all about hurling of abuses on caste of Respondent No.2 by the Appellant in presence of the said two witnesses. *Prima facie* it appears that, the said two witnesses by and way of an afterthought by improving their version, have given the said statements to the police. The said two witnesses are closely related to the Respondent No.2. and are not independent witnesses to the alleged abuses by the Appellant.

5) Ms. Mhatre, learned APP on instructions submitted that,

principal accused namely Prasad Sawant was arrested and after filing of the charge-sheet was released on bail by the Trial Court.

6) In view of the above, interim relief granted by Order dated 17th October, 2022 is confirmed.

Appeal is accordingly allowed.

7) It is needless to mention that, the trial Court will not get influenced with the observations made by this Court in the present Order, at the time of conducting trial.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

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MASHALKAR

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