

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 217 OF 2019

1. Sunil Rajesh @ Raju Chavhan age : 19 years, Occupation : Student.
2. Shobha Raju Chavhan age : 34 years, Occupation : Labourer
3. Raju Nathu Chavhan, age : 40 year, Occupation : Labourer
4. Lalitha Vijay Chavhan, age : 32 years, Occupation : Labourer.
5. Vikas Pratap Rathod, age : 28 years, Occupation : Labourer.

All r/o Village : Nampur Tanda, Taluka :
Ghatanji, District : Yavatmal.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer of Police Station Ghatanji , Taluka : Ghatanji, District Yavatmal.
2. Sheetal Amol Deotale, Age : 27 years, Occupation : Labour, r/o Village – Nampur Tanda, Taluka : Ghatanji District : Yavatmal.

... NON-APPLICANTS

Shri P.W. Mirza, Advocate for the applicants.
Shri N.R. Rode, A.P.P for the non-applicant/State.
Non-applicant no.2 served.

CORAM : VINAY JOSHI AND BHARAT P. DESHPANDE, JJ.
DATED : 24/04/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of learned Counsel appearing for the respective parties. Non-applicant no.2 though served, chooses to remain absent.

3. By this application, the applicants are seeking to quash the First Information Report (FIR) in Crime No.535 of 2018 registered with the Ghatanji Police Station District Yavatmal for the offence punishable under Sections 143, 147, 323, 354 of the Indian Penal Code, Sections 3(1)(2)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (‘the SC and ST Act) along with the related Final Report filed by the non-applicant no.1.

4. It is the applicants’ contention that registration of FIR for

the offences under the SC and ST Act itself is untenable since the informant has not stated in the FIR that she belongs to the member of scheduled caste or scheduled tribe nor filed caste certificate at the time of registration of crime. Moreover, it is contended that the entire allegations are against co-accused Vijay Chavhan, who is not before the Court.

5. The informant-lady has stated that on the date of occurrence in the afternoon, co-accused Vijay Chavhan caught hold her, outraged her modesty and thus, committed the offence. On the same day, in the evening, there was meeting for settlement in which the applicants allegedly abused in the name of caste and manhandled the informant party, therefore the report.

6. We have gone through the police report and the statement of witnesses. The entire focus of the informant is about the incident of sexual advances made by co-accused Vijay Chavhan on the date of occurrence, around 11.30 am. The FIR speaks about two instances. It is stated that in the evening around 6.30 pm, there was a meeting about the incident occurred in the afternoon. In said meeting, the applicants were present. It is alleged that particularly, applicant nos.3 and 5 have manhandled the informant's husband and father-in-law whilst

remaining applicants abused them in the name of caste, and therefore, the report. There is no manner of doubt that the principal allegations are against co-accused Vijay Chavhan. The applicants came in picture in the second part i.e. in the evening, where they allegedly abused and manhandled the others. The Police have registered the offence under the provisions of the SC and ST Act. It is vehemently argued that in absence of disclosure of caste by the informant at the time of report, registration of offence itself is illegal. In this regard, the applicants have relied on the decision of this Court in cases of *Sheikh Shama Sheikh Iqbal and anr. vs. State of Maharashtra and anr. 2019 LawSuit(Bom) 384, Bai @ Laxmibai w/o Nivratti Poul and ors. vs. State of Maharashtra [2001 (1) B.Cr.C.321] and Prakash Gopalrao Pohare vs. State of Maharashtra and anr. 2008 (1) AIR Bom R 390*. Contextually, we have gone through the FIR wherein the informant has merely stated that she belongs to the 'Buddha' community. According to the applicants, the informant never stated her caste since Buddha is a religion. To substantiate said contention, reliance is placed on the decision of the Supreme Court in cases of *M. Chandra vs. M. Thangamuthu and anr. (2010) 9 SCC 712 and State of Maharashtra vs. Parbatrao alias Prabhakar Govindrao Bhote and ors. [1992 (2) Mah.LR 596]*. In above referred decisions, it has been expressed that in absence

of positive statement made in the complaint itself or non-production of caste certificate at the time of registration of crime, the law would not permit the Investigating Officer to register the crime and start the investigation. In view of the law laid down in that regard, registration of crime as regards to the provisions of the SC and ST Act against the applicants is untenable.

7. Moreover, reliance is placed on the decision of the Supreme Court in case of *Hitesh Verma vs. State of Uttarakhand and anr. (2020) 10 SCC 710*, wherein it is ruled that the offence under the SC and ST Act is not tenable unless there is an intention to humiliate the member of the scheduled caste or scheduled tribe. In other words, it is expressed that the provisions of the SC and ST Act can only be made applicable if the act was committed only because of the caste/tribe of the victim.

8. Reading of FIR and the police paper discloses that the principal allegations are about the incident occurred in the afternoon alleging physical advances at the hands of the co-accused Vijay Chavhan. The statements show that the allegations against rest of the accused i.e. the applicants are not consistent. Mere general allegations are levelled that, Vijay Chavhan and Raju Chavhan gave slaps whilst

the lady members gave abuses. No specific abuses have not been stated to believe the statement to that effect. Second incident involving all other family members of co-accused Vijay Chavhan appears to be exaggeration. The provisions of Section 3(1)(w)(i)(ii) of the SC and ST Act would not attract against the females. No *prima facie* case is made out to show that the applicants have committed the offences as alleged. The tendency of involving all family members are at rise. Continuation of such prosecution amounts to abuse of the process of Court. Chances of conviction of the applicants are remote and bleak.

9. In the circumstance a case for invoking inherent jurisdiction is made out. In view of that, following order is passed :

- (a) The application is allowed.
- (b) We hereby quashed and set aside the First Information Report (FIR) in Crime No.535 of 2018 registered with the Ghatanji Police Station District Yavatmal for the offence punishable under Sections 143, 147, 323, 354 of the Indian Penal Code and Section 3(1)(2)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('the SC and ST Act) along with the related Final Report filed by the non-applicant no.1, as regards to the applicants only.

10. The application stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

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