



(1)

appeal476.23 judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.476/2023

1. Bhimrao s/o Ramrao Nare.
Age 55 years,
Occ. Agriculturist.
2. Tushar s/o Bhimrao Nare,
Age 32 years,
Occ. Agriculturist,
3. Manthan s/o Kailash Nare,
Age 30 years,
Occ. Agriculturist,
4. Chetan s/o Kailash Nare,
Age 31 years,
Occ. Agriculturist,

All R/o Village Chakur, Post Dhuli,
Tahsil Manora, District Washim

...Appellants.

Versus

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Manora,
Dist. Washim.
2. Investigating Officer Deputy Superintendent
of Police, Wahsim,
District Washim

(Vide FIR No.0412/2023)

3. Rajana w/o Dilip Gaikwad,
Age 48 years,
Occ. House Wife,
R/o Village Chakur,
Tah. Manora, Dist. Washim
(Complainant)

... Respondents.

...

Mr. A.K.Bhangde, Advocate with Advocates N.P.Singhania and Naman Bhangde for appellants.

Mr. S.M.Ghodeswar, APP for respondent no.1/State.

Mr. Ashutosh Chaudhari, Advocate for respondent no.2.

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CORAM : M. W. CHANDWANI, J.

DATED : 31/08/2023

ORAL JUDGMENT :

1. Heard the learned counsel appearing for the parties.
2. **Admit.**
3. The appeal challenges the order dated 6.7.2023 passed by the Additional Sessions Judge, Mangrulpir in M.C.Bail A.No.152/2023 vide Crime No.0412/2023 for offences punishable under Sections 324, 504 and 506 read with Section 34 of the Indian Penal Code and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station, Manora, District Washim.

4. Brief facts of the case which reads as under:-

On 18.6.2023 at about 7.15 hours, the appellants came in front of the house of the complainant and started abusing to her son. The complainant tried to intervene but, the appellant no.1 - Bhimrao Nare assaulted the complainant whereas appellant nos.2 and 3 assaulted to

her both sons. Therefore, a complaint came to be registered against the appellants.

5. The appellants preferred this appeal on the application seeking anticipatory bail having been rejected by the Trial Court. The application is rejected on the ground of bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of 1989").

6. Learned counsel for the appellants submits that the appellants have not committed any offence much less under the provisions of the Act of 1989. Initially, FIR came to be registered only under the provisions of Indian Penal Code and subsequently provisions under Section 3(2) (va) of the Act of 1989 has been added, with intent to harass the appellants. He submits that the allegation made in the FIR does not constitute the offence under the provisions of the Act of 1989. Therefore, statutory bar under Section 18 or 18-A of the Act of 1989 will not be applicable to preclude the appellants from availing benefit of Section 438 of the Code of Criminal Procedure. The civil dispute between the parties, is pending. The alleged offences have not been committed, just because, the complainant and his family members belong to scheduled caste. Therefore, the provisions of the Act of 1989 will not be attracted. He relied upon the judgment of the Hon'ble Supreme Court in

the case of **Hitesh Verma Vs. State of Uttarkhand and another**, reported in (2021) 1 SCC (Cri).

7. Per contra, learned APP for the State assisted by learned counsel for the respondent no.2 submits that though the caste of the complainant is not mentioned in the FIR but, subsequently, the complainant submitted the caste certificate to the Police Authorities. Since, the scheduled offence has been committed against members of scheduled caste and, therefore, the police have rightly added Section 3(2) (va) of the Act of 1989. It is contended that while considering the anticipatory bail, entire material and case diary need to be considered. He submits that FIR is not encyclopedia. According to him, considering the statement and material i.e. caste certificate collected during the investigation, there is prima facie material against the appellants of having committed the offence under the provisions of the Act of 1989.

8. Perusal of the entire documents produced by the counsel for the appellants shows that there is dispute between the complainant and appellant no.1 on the construction of toilet besides, the house of the complainant where the appellant no.1 owns and possess an agricultural land. Appellant no.1 has also filed Regular Civil Suit No.36/2016 before Joint Civil Judge Junior Division, Washim. Thus, there is civil dispute between the complainant and the appellant no.1 and the same is pending before the Civil Court.

9. There is no dispute to the legal position enunciated by the judicial pronouncement in various judgments by the Apex Court that the application for anticipatory bail can be entertained by the Court only on the ground that if it does not disclose prima facie that the appellants have not committed offence under the provisions of the Act of 1989. Meaning thereby, the bar under Section 18 or Section 18-A of the Act of 1989 can be attracted if offences under the provisions of the Act of 1989 are prima facie made out. Here, the complainant has alleged that offence under Section 3(2)(va) of the Act of 1989 has been committed.

10. Thus, what has to be prima facie established by the prosecution is that the offence under the Act of 1989 has been committed. Just because, victim or a member of scheduled caste.

11. In the present case, there was dispute between the complainant and the appellant no.1 which is subject matter of civil suit between the appellant no.1 and the complainant. The appellant was not allowing the complainant to construct toilet on the agricultural land.

12. The genesis of the quarrel is civil dispute pending between the parties. Even the material on record raises doubt about prima facie applicability of Sections 3(2)(va) of the Act of 1989 therefore, the bar under Section 18 or Section 18-A of the Act of 1989 will not come to

preclude the appellants from getting the benefit of provisions of Section 438 of the Code of Criminal Procedure.

13. Perusal of the case and relevant record show that there is allegation of assault by appellants and caused simple injuries. There is civil dispute between the parties over the toilet. Considering the nature of offence, nature of injury and severity of punishment, I think discretion of Section 438 of the Code of Criminal Procedure can be exercised, rather the other alleged offences are bailable. Therefore, case is made out for relief under Section 438 of the Code of Criminal Procedure. In the circumstances, the appeal deserves to be allowed. Hence, I pass the following order:

ORDER

(i) The appeal is allowed.

(ii) The order dated 6.7.2023 passed by Additional Sessions Judge, Mangrulpir in M.C.Bail A.No.152/2023 (Bhimrao Ramrao Nare and others Vs. State) is set aside.

(iii) In the event of arrest in Crime No.0412/2023 for offences punishable under Sections 324, 504 and 506 read with Section 34 of the Indian Penal Code and Section 3 (2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station, Manora, District Washim, the appellants shall be released on bail

on their executing PR bond of Rs. 25,000/- with one solvent surety each in the like amount.

(iv) The appellants shall attend concerned Police Station on every Wednesday for four weeks between 10.00 a.m. to 12.00 p.m. and cooperate with the investigation.

(v) The appellants shall not induce, give threat and pressurize any witnesses, who are connected with the alleged crime.

(vi) The Secretary, High Court Legal Services, Sub Committee, Nagpur is directed to quantify fees of the appointed counsel as per Rules.

The appeal stands disposed of accordingly.

(M.W.CHANDWANI, J.)

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