

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

CRIMINAL APPEAL NO.751/2022

Lakhan Thakur @ Yuvraj Mukundsingh
Raghuwanshi,
Aged about 30 years,
Occ. Private Job.
R/o Rajputpura, Mangrulpir,
Tq.Mangrulpir,
Dist. Washim

Appellant

Versus

1.The State of Maharashtra,
Through PSO Mangrulpir,
Tq. Mangrulpir, Dist.Washim

2.Mangesh Ramesh Ingole,
Aged about 25 years,
Occ. Driver
R/o Ashok Nagar, Mangrulpir
Tq. Mangrulpir, Dist. Washim

.. Respondents

Mr. P.S. Thakur, Advocate for appellant.

Mr. V.A. Thakre, APP for the respondent no.1.

None for respondent no.2.

CORAM : ANIL L. PANSARE J.

DATED : 20.01.2023.

ORAL JUDGMENT

1. Heard Mr. P.S. Thakur, learned counsel for the appellant and Mr. V.A.Thakre, learned Additional Public Prosecutor for respondent no.1. None for respondent no.2.

2. The appellant has filed this appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (for short "SC & ST Act"). He apprehends arrest in Crime No.297/2022 registered with Mangrulpir Camp at Washim, for the offences punishable under Sections 323, 324, 506 read with Section 34 of the Indian Penal Code read with Section 3(1) (r), 3(1) (s), 3(2) (va) of the SC & ST Act. The maximum punishment, according to learned counsel for the appellant, is five years.

3. Briefly stated the prosecution case is that:

On 6.10.2022 at about 6.30 p.m., the appellant and the co-accused abused the informant on caste, beat and assaulted him. The co-accused has assaulted him by fists and kicks blows. The appellant has also beat but by means of fighter.

4. The appellant and co-accused preferred application before the Sessions Court, apprehending their arrest. The learned Sessions Court granted relief to the co-accused but, not the appellant on the ground that he has used fighter in the assault and that the fighter is not yet recovered. Another ground is that the appellant, who has

hurled on caste based abuses. The learned Sessions Court, therefore, was of the view that the bar under Section 18-A of the SC & ST Act would apply, which prohibits entertaining application under Section 438 of the Code of Criminal Procedure.

5. In case of *Hitesh Verma Vs. State of Uttarakhand and another* reported in *(2020) 10 Supreme Court Cases 710*, the Apex Court while dealing with the offences under the provisions of SC & ST Act particularly, the offence under Section 3(1) (r) of the Act held that all insults or intimidations to person will not be offence under the Act, unless such insult or intimidation is only on account of victim belonging to Scheduled Castes or Scheduled Tribes. It is further held that an offence under the Act would be made out, when member of vulnerable section of society is subjected to indignities, humiliations and harassment. In the case before the Apex Court, there was a dispute about the immovable property and, therefore, it was observed that the cause of use of insult was on the assertion of title over the land by either of the parties and not due to either the indignities, humiliations or harassment.

6. Thus, it is held by the Apex Court that the offence must

have been committed against the person on the ground that such person is member of Scheduled Castes and Scheduled Tribes. In that sense, merely because the caste is uttered while abusing a person, will not attract the provisions of SC & ST Act. The abuse must be on the ground that person belongs to the lower strata. Looking to the present case, it appears that there occurred altercation between the appellant and informant on the ground that the informant assaulted the applicant's brother. Thus the reason of abuse was earlier dispute and not on the ground that informant belongs to SC. Strictly speaking, therefore, bar under Section 18-A of the SC & ST Act will not be attracted.

7. The next question, which arises is recovery of weapon. For that, the applicant could be directed to attend the police station. On inquiry, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the address given since his childhood. He is in service. Thus, it is unlikely that he will abscond. In any case, he can be put to appropriate terms to protect the interest of the prosecution. Hence, the following order:

- (i) Criminal Appeal is allowed.

(ii) Order passed by Additional Sessions Judge, Mangrulpir camp at Washim in the Criminal Bail Application No.297/2022 dated 17.10.2022 is quashed and set aside.

(iii) In the event of arrest, the appellant be released on bail, on executing a PR bond in the sum of Rs.25,000/- (Rupees twenty five thousand), in respect of Crime No.752/2022 for the offence punishable under Sections 323, 324, 506, 34 of Indian Penal Code, read with Sections 3 (1) (r), 3(1) (s), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, registered with Police Station Mangrulpir Camp, at Washim.

(iv) The appellant shall cooperate with the Investigating agency and shall attend the concerned Police Station on every Sunday between 2.00 and 5.00 p.m. so also as and when directed by the Investigating Officer till filing of chargesheet.

(v) The Appellant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating Officer and to the Court concerned and shall not change the mobile number and the residence till the final disposal of the case.

(vi) The Appellant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vii) The appellant shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the Police.

(viii) The appellant shall not leave the territory of Washim District without prior permission of the Court, till the trial is over.

(ix) The appellant shall maintain law and order.

(x) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

JUDGE

Ambulkar

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 22/11/2018 **PAGE 6 of 8**