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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1099 OF 2023

Madhukar @ Madan Balasaheb Dugane and Others APPELLANTS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. P. P. More, Advocate for the appellants

Mr. D. B. Bhange, APP for respondent - State

Mrs. Ashwini A. Lomte, Advocate for respondent No.2 (appointed)

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th MARCH, 2024

ORDER :

1. Appellants, by filing this appeal under section 14-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenge order dated 25th March, 2022 passed by learned Additional Sessions Judge-4, Parbhani below Exhibit-24 in Special (A) Case No. 68 of 2014, thereby rejecting the application filed by appellants, seeking discharge under section 227 of the Criminal Procedure Code.

2. FIR is registered on the basis of directions issued by the Trial Court under section 156 (3) of the Criminal Procedure Code, at Crime No. 3025 of 2023 with Parbhani Police Station for offence punishable under sections 323, 504, 506 read with 34 of

the Indian Penal Code and under section 3 (1) (s) of the Atrocities Act. It is alleged in the FIR that respondent No.2 / informant has purchased land Gut No. 266 *ad measuring* 5 Hectare 79 Are, situated at village Arvi, Taluka and District - Parbhani from Laxmikant Khardekar on 14th July 2010 and since then he is owner and possessor of the said land. He belongs to Schedule Caste and accused are from open caste. All the accused persons tried to dispossess him from the said land. On 1st March, 2013 and 28th July, 2013, all the accused persons abused him. Though a complaint in writing was lodged with Rural Police Station, the same was not accepted. On 28th July, 2013, at about 10.00 a.m. when informant was in the said field along with labour Rahul Mhaske, accused No.1 to 7 came there and asked informant to go away from the said land and started assaulting him with fists and kick blows. They threatened that if he does not leave, his hands and legs will be broken. Rahul Mhaske rescued informant from the accused persons. Informant went to lodge FIR on 1st August, 2013, but the same was not accepted by police. Informant was frightened due to the incident and, therefore, he has lodged FIR 3 days later. Since FIR was not registered, he approached the Trial Court.

3. On completion of investigation, charge sheet came to be filed on 22nd November, 2014 and the case is numbered as

Special (A) Case No. 68 of 2014. Appellants filed application Exhibit-24 under section 227 of the Criminal Procedure Code, seeking discharge on the grounds mentioned in the application. Trial Court rejected the discharge application, hence the present appeal.

4. Heard learned advocate for appellants, learned APP for the State and learned advocate for respondent No.2. Perused the charge sheet, documents filed along with appeal, impugned order, affidavit in reply filed on behalf of respondent No.2 and the citations relied on by learned advocates for the parties.

5. It is the case of appellants that they have purchased the said land in the year 1978 from Dattopant Sitaram Khardekar. Appellants have filed Special Civil Suit No. 104 of 2011 against Laxmikant Gopalrao Khardekar and respondent No.2, for declaration that sale deed dated 4th August, 2010 executed by Laxmikant Khardekar in favour of defendant No.2 / respondent No.2 be declared as null and void and not binding on the rights of plaintiffs – appellants. Perpetual injunction is also sought, restraining the defendants from interfering in the legal and peaceful possession of plaintiffs in land Gut No. 266.

6. ROR proceedings were initiated by appellants and others against order of Tahsildar taking Mutation Entry No. 1724,

thereby recording name of respondent No.2 to the revenue record of land Gut No. 266. Laxmikant Khardekar had filed Regular Civil Suit No. 337 of 1985 against Dattopant Khardekar, Balasaheb Dugne, Bapusaheb Kale and Munjaji Bangwade. Dattopant Khardekar along with Balasaheb Dugne, Bapusaheb Kale and Munjaji Bangwade had filed RCS No. 15 of 1986 against Laxmikant Khardekar and 5 others. Both the suits i.e. RCS No. 337 of 1985 and 15 of 1986 were decided on 24th April, 1989 and Dattopant and Laxmikant were held to be owners of the disputed land. District Court has rejected the appeal against said decision and second appeals No. 399 of 1991 and 400 of 1991 filed against said order are pending in this Court.

7. It is observed in the order passed by Sub Divisional Officer that while the matter is pending in the high Court, the said land could not have been transferred by Laxmikant Khardekar in favour fo the second respondent and the same is in violation of section 52 of the Transfer of Property Act. On these grounds Mutation No. 1724 is set aside.

8. In this background, if we peruse the FIR and the statements recorded during investigation, it is clear that there are no allegations that the second respondent – informant was insulted in the name of his caste in public view. Only allegations

against appellants are that they have assaulted informant with fists and kick blows and have threatened him to vacate the said land. No medical certificate is placed on record to support the allegations of assault with fists and kick blows. There is three days' delay in lodging the FIR.

9. Considering all these aspects and decision in **“Shashikant Sharma and Others V/s State of Uttar Pradesh and Another” 2023 DGLS (SC) 1218**, appellants are justified in claiming that *prima facie* offence punishable under the Atrocities Act is not committed. There is no material justifying framing of charge against appellants under the provisions of the Atrocities Act and under Indian Penal Code.

10. Appellants are right in placing reliance on **“Ramesh Chandra Vaishya V/s State of Uttar Pradesh and Another” 2023 (4) Supreme 101**, wherein it is held

18. *That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled. The legislative intent seems to be clear that every insult or intimidation for*

humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks.

Since section 18 of the SC/ST Act bars invocation of the court's jurisdiction under section 438, Cr.PC and having regard to the overriding effect of the SC/ST Act over other laws, it is desirable that before an accused is subjected to a trial for alleged commission of offence under section 3(1)(x), the utterances made by him in any place within public view are outlined, if not in the F.I.R. (which is not required to be an encyclopedia of all facts and events), but at least in the charge-sheet (which is prepared based either on statements of witnesses recorded in course of investigation or otherwise) so as to enable the court to ascertain whether the charge sheet makes out a case of an offence under the SC/ST Act having been committed for forming a proper opinion in the conspectus of the situation before it, prior to taking cognisance of the offence.

Even for the limited test that has to be applied in a case of the present nature, the charge-sheet dated 21st January, 2016 does not make out any case of an offence having been committed by the appellant under section 3(1)(x) warranting him to stand a trial.

19. Paragraphs 15 and 16 of the decision in Hitesh Verma (supra) cited by Ms. Shukla can be pressed in aid to support the view that we have taken above.

21. Section 323, IPC prescribes punishment for voluntarily causing hurt.

Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "in his hand and other body parts". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC.

11. In **"Ramawatar V/s State of Madhya Pradesh" 2021 SCC Online 966**, it is held

"16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers

to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise / settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court from exercising their respective powers under Article 142 of the constitution or section 482 of the Cr.P.C."

12. Case of appellants is squarely covered by the aforestated ratio.

13. Learned Trial Judge has failed to apply settled legal principles that if charge is groundless, application for discharge has to be allowed. Trial Court has erred in holding that *prima facie* there is material against accused persons for offence punishable under section 3 (1) (s) of the Atrocities Act and under section 323, 504, 506 read with 34 of the Indian Penal Code.

14. Learned advocate for respondent No.2 has tried to argue that section 3 (1) (r) of the Atrocities Act is attracted in the facts of the present case and charge under that section needs to be framed.

There is no merit in the said submission, in as much as, there is no material on record to show that alleged offence was committed by appellants only because respondent No.2 belongs to a Scheduled Caste.

15. For the aforesaid reasons the appeal deserves to be allowed. Hence, the following order-

ORDER

- A. Appeal is allowed.
- B. Impugned order dated 25th March, 2022 passed by learned Additional Sessions Judge-4, Parbhani below Exhibit-24 in Special (A) Case No. 68 of 2014 is quashed and set aside.
- C. Application Exhibit-24 in Special (A) Case No. 68 of 2014 is allowed.
- D. Fees payable to learned advocate appointed for respondent No.2 – informant is quantified at Rs.7500/- and the same shall be paid within 4 weeks.

**[NITIN B. SURYAWANSHI]
JUDGE**