



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 176 OF 2024

BIJLABAI W/O LAXMAN KHILLARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Ms. Asha N. Gore Sirsath, Advocate for the appellant
Mr. C. B. Bhadane, APP for the respondent/State
Mr. Aditya Lokhande hf/ Mr. V. G. Deshmukh Advocate for respondent
nos.2 and 3

CORAM : R. M. JOSHI, J.

DATE : 16th OCTOBER, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This appeal takes exception to the order dated 24th January, 2023 passed by the Addl. Sessions Judge (Special Judge), Jalna in Special (Atro.) No. 196 of 2020 whereby the application filed by the appellant herein was rejected.
3. The facts as they appear from the record indicates that the present appellant had filed an application before the Special Judge contending that she along with her daughter are residents of in plot No. 56 at village Jafrabad. It is claimed that respondent no.1 is a teacher and respondent no.2 is a person who was constructing the school building in

front of the house of appellant. It is alleged that they had tried to evict the appellant from house for the reason that she belongs to the scheduled caste. It is specifically alleged that respondent nos.2 and 3 have abused her over the caste and she was tried to be evicted therefrom for reason that the respondent no.1 does not want a member of a scheduled caste to be the neighbor. This application was filed before the Special Court for direction for registration of crime. The Special Court, however, directed an enquiry under Section 202 of Code of Criminal Procedure. After the report was filed by the police to the effect that no offence has been made out, the learned Special Judge has accepted the said report and dismissed the application.

4. Learned counsel for the appellant submits that the Special Judge has committed error in deciding the application by accepting the report submitted by the Investigating Agency. According to her, the statement of the informant is more than sufficient to indicate that the offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has been made out against the respondents. It is her submission that it is not open for the Special Court at this stage of the proceeding to weigh and sift the evidence on record and to hold that there is no substance in the case.

5. Learned counsel for respondent nos.2 and 3 vehemently

opposed the said submissions. It is his submission that no error is committed by the Special Court in issuing direction for calling report under Section 202 of Cr.P.C. from the concerned Police Station. To support this submission he has placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Ramdev Food Products Private Limited versus State of Gujarat in Criminal Appeal No. 600 of 2007***. It is his further submission that the respondent nos.2 and 3 were instrumental in the conduct of raid on the house of appellant and therefore, out of the said grudge false case is filed against them. To support his submission he also relied upon the judgment of this Court in case of ***James T. George and Another Versus State of Maharashtra and Another, 2022 DGLS (Bom.) 3247***.

6. There cannot be any dispute made with regard to the submission of the learned counsel for respondent nos.2 and 3 that it was open for the Special Court to direct police to submit report under Section 202 of Cr.P.C., instead of issuing direction under Section 156(3) of Cr.P.C. The said order of directing the appellant to record verification and to call report from the concerned Police is not challenged by the appellant at any point of time. At this stage, therefore, this Court not required to go into the issue of correctness of the said order of calling report under Section 202 of Cr.P.C.

7. The stage of the proceeding at which impugned order is passed was as to whether there was a case for issuance of process against respondent nos.2 and 3 on the basis of available material on record as well as the report of the concerned police.

8. Learned Special Judge in the impugned order in paragraph no.5 has observed thus:

"5. Durga Khillare stated before the police that both accused abused her at one and the same time as, "आम्हाला महा-याहो धेडयाहो तुम्ही आमच्या शेजारी पाहिजे नाही.". Bhagwan Kakde stated before police that both the opponents abused as "महारे लय माजले"

9. The learned Judge, however, has held that it is not possible for both accused simultaneously to make such abuse at one go in the same words and therefore, it is not the case of issuance of process. Learned Special Court however has failed to take in to consideration the allegation that she was sought to be evicted from the property for the reason that she belongs to scheduled caste community. At this stage the learned Judge was only required to consider as to whether there is any evidence indicating the commission of crime under the Atrocities Act by respondent nos.2 and 3. As recorded in paragraph no.5, the appellant has specifically stated about respondent nos.2 and 3 insulting her over the caste. At this stage it was not open for the said Court to evaluate the

said evidence and to record finding at there is no offence committed by respondent nos.2 and 3. Similarly, contention of respondent nos.2 and 3 about they being instrumental in carrying out raid to the house of appellant also is a defence of the accused, which is available and can be considered during trial and not at that stage.

10. Suffice it to say that from the material on record in the form of statement of the appellant with regard to the involvement of the the present appellants in the offence under the Atrocities Act, impugned order can not sustain. The appeal, therefore, stands allowed. Impugned order is set aside. The proceeding bearing Special (Atro.) No. 196 of 2020 is relegated back to the Special Court for passing order a fresh in accordance with law.

(R. M. JOSHI, J.)

ssp