



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

924 CRIMINAL APPEAL NO. 37 OF 2024

1. Kusum Ashok Lipane.
2. Gitanjali D/o Ashok Lipane
@ Gitanjali Aditya Suryawanshi. **... Appellants**

Versus

1. The State of Maharashtra.
2. Sneha Nilkanth Lipane
@ Sneha Suresh Sonawane. **... Respondents**

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Advocate for Appellants : Mr. Anand S. Deshpande & Mr. Shaileshkumar Panditrao Ade.

APP for Respondent No.1 / State : Mr. P. P. Dawalkar.

Advocate for Respondent No.2 : Mr. Shubham Pawar. (Appointed)

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 07th August, 2024.

P.C.:

. By this appeal, the appellants are challenging the issue process order dated 4th October, 2021 passed by learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Aurangabad, below Exhibit-1 in Miscellaneous Criminal Application No.115 of 2021.

2 It is the contention of the learned counsel for appellants that respondent No.2 / original complainant is the wife of original accused No.1. Appellant No.1 is the mother-in-law of respondent No.2 and appellant No.2 is the sister-in-law of respondent No.2. i.e. original complainant. The marriage of respondent No.2 and original accused No.1 was solemnized on 30th December, 2018. After the marriage, respondent No.2 and her husband were residing separately as it was love marriage. Respondent No.2 belongs to scheduled caste, whereas the original accused No.1 belongs to upper caste. After the marriage, there was dispute between respondent No.2 and her husband. On that count, she filed complaint for the offences punishable under Sections 498-A, 323, 504 and 506 read with 34 of the Indian Penal Code and under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against her husband and the appellants. The appellants never resided with respondent No.2 and her husband. The allegations against the appellants are that they used to abuse respondent No.2 on phone. These are general allegations. The appellants have been falsely implicated in this case. No such incident occurred. But these facts are not considered by the learned Special Court and has passed issue process order against the appellants, which is erroneous. Hence, he requested to allow the appeal.

3 It is the contention of the learned APP alongwith the learned appointed counsel for respondent No.2 that the appellants used to harass respondent No.2 mentally and physically. It was an inter-caste marriage between the son of appellant No.1 and respondent No.2. The appellants were not agreed for the said marriage. On that count, they used to harass respondent No.2. They abused her on phone. There are material against the appellants on record. The order passed by the learned Special Judge is legal and valid. No interference is required in it. Hence, they requested to dismiss the appeal.

4 I have heard all the learned counsel. Perused the impugned order passed by learned Special Judge. The appellants are mother-in-law and sister-in-law of the complainant. The allegations of cruelty and harassment are made against them. The complainant belongs to scheduled caste. Considering the allegations against the appellants, the learned Special Court has ordered to issue process against them. Perused the complaint filed by respondent No.2. In the complaint, it is mentioned that after the marriage, respondent No.2 and her husband were residing separately. It is alleged that the appellants were instigating the husband of respondent No.2 and on that basis he used to abuse respondent No.2 on her caste. There are no specific allegations against the appellants made in the complaint.

5 In the case of ***Pradnya Pradeep Kenkare and another Vs. State of Maharashtra, 2005(3) Mh.L.J. 368***, the Division Bench of this Court has observed that, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. The Division Bench of this Court further observed that, the FIR nowhere discloses any offence under the said Act having been committed by either of the petitioners. On that ground, the FIR was quashed. The ratio laid down in this case is squarely applicable to the present case, as the complaint is filed by respondent No.2 before the learned Special Court and in the said complaint no specific allegations are made against the appellants. Considering this fact, I pass the following order:-

ORDER

- I. The criminal appeal is allowed.
- II. The issue process order dated 4th October, 2021 passed by learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Aurangabad, below Exhibit-1 in Miscellaneous Criminal Application No.115 of 2021, is quashed and set aside.

III. The fees of Mr. Shubham Pawar, learned appointed counsel for respondent No.2 is quantified as Rs.10,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[SHIVKUMAR DIGE, J.]

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