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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.772 OF 2023

1. Shiva Malaku Birajdar APPELLANTS

2. Sachin Arvind Birajdar

VERSUS

The State of Maharashtra and Another RESPONDENTS

.....
Mr. Shoyab Shaikh Advocate for the appellants
Mr. S. B. Jadhav, APP for respondent - State
Mr. S. R. Choudhari, Advocate for respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th JANUARY, 2024

ORDER :

1. After arguing on merits at length, when this Court was not inclined to grant relief to appellant No.1 Shiva Malaku Birajdar, learned advocate for appellants, on instructions, seeks permission to withdraw appeal to the extent of appellant No.1. Permission granted. Criminal appeal to the extent of Appellant No.1 Shiva Malaku Birajdar is dismissed as withdrawn.

2. Appellant No.2 Sachin Arvind Birajdar apprehends his arrest in Crime No. 259 of 2023 registered with Omurga Police Station, District – Osmanabad for offence punishable under

section 324, 323, 504 of Indian Penal Code and under section 3 (1) (r), 3 (2) (va) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. FIR is lodged by Prakash Ishwar Kamble alleging that on 17th May, 2023, at 5.30 p.m. when he was sitting along with Santosh Gaikwad and Bapu Gaikwad, at that time, Shiva Birajdar (Appellant No.1) came there in intoxicated condition and assaulted him with stone on head, due to which he suffered a bleeding injury. When informant and his wife went to house of Shiva and asked him to pay the medical expenses for the injury suffered by informant, at that time Sachin Birajdar (Appellant No.2), came from outside and pulled informant down, abused and assaulted him with fist and kick blows on chest and stomach. When wife of informant tried to intervene, he also gave slap on her face.

4. Heard learned advocate for appellants, learned APP for State and learned advocate for respondent No.2. Perused the papers of investigation.

5. On going through injury certificate, it appears that informant has suffered injury on occipital region, which is attributed to Appellant No.1 Shiva. So far as allegations against

Appellant No.2 Sachin are concerned, injury certificate of informant does not support the assault alleged against appellant No.2. *Prima facie*, provisions of the Atrocities Act are not attracted in the facts of the present case. In that view of the matter, Appellant No.2 deserves relief.

6. Appeal to the extent of Appellant No.2 Sachin Arvind Birajdar is, therefore, allowed in terms of interim protection granted on 30th August, 2023, on the same terms and conditions.

7. Legal Aid Services Sub Committee, High Court, Aurangabad shall pay fees of learned advocate appointed to represent respondent No.2, as per rules, within four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE