



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 951 OF 2023

Shabbir Kasam Shaikh And AnotherAppellants

VERSUS

The State Of Maharashtra And AnotherRespondents

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Mr. Shaikh Mazhar Jahagirdar, Advocate for Appellants.

Mrs. S.S. Joshi, APP for Respondent No. 1-State.

Mr. N.S. Shah, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th MARCH, 2024

ORDER :

1. This appeal is directed against the order dated 30.09.2023, passed by learned Additional Sessions Judge, Ahmednagar, in Bail Petition No. 1625/2023 and Bail Petition No. 1626/2023, which are rejected by the Sessions Court.

2. Respondent No. 2 lodged FIR with Shevgaon Police Station, which is registered at C.R. No. 872/2023, under sections 504, 506 of Indian Penal Code and under section 3(1)(r), 3(1)(s) and 3(2)(va) against appellants alleging that appellant No. 1 and his brother had taken 250 centering plates on rent from informant. After one month period, informant asked for the rent

amount of Rs. 2,50,000/- from appellant No. 1 and his brother Ebu Shaikh. They assured to give rent amount in the next month. Thereafter, repeatedly informant asked for the rent amount for 29 months, but they did not give the same. On 26.08.2023 at 10.00 am, informant and his son and worker employed by informant were going to Miri Road, Shevgaon. At that time appellants met them. When informant demanded centering plates and rent amount, appellant No. 1 insulted him by referring to his caste and appellant No. 2 said that he belongs to lower caste and both of them threatened to kill him, if he demands centering plates and rent.

3. Heard learned advocate for appellants, learned APP for respondent No. 1-State and learned advocate for respondent No. 2. Perused the investigation papers.

4. It is the case of appellant No. 1 that he is ex-councilor and his brother Ebu Shaikh has taken centering plates on rent from informant. Since his brother is absconding from last three months, informant wants to recover the rent amount and centering plates from appellant No. 1 and therefore this false FIR is lodged against appellant No. 1. He further claims that at the time of alleged incident he was not present on the spot, on the

contrary he was at different place along with one person to supervise the work of laying down paver blocks, as he had taken the contract of the same. In support of appeal, reliance is placed on *Ramesh Chandra Vaishya vs. State of Uttar Pradesh and another*, 2023 SCC OnLine SC 668.

5. Learned APP for respondent No. 1/State and learned advocate for respondent No. 2/informant submitted that a complaint is lodged by informant on 26.08.2023 with Sub Divisional Police Officer, Shevgaon wherein he has referred to the incident of that day. It is stated that when he demanded Rs. 2,50,000/- appellant No. 1 insulted him by referring to his caste and threatened him that he may do anything, but he will not get the centering plates and payment. It is further stated that Ebu Shaikh, brother of appellant No. 1 is absconding from Shevgaon since last three months. This entire plan is of appellant No. 1. Informant daily calls appellant No. 1, but he does not receive the call. Ebu's phone numbers are switched off since last three months. Learned APP and learned advocate for respondent No. 2 therefore submit that since insult has taken place in public view, on road, offences under Atrocity Act are committed and hence, bar under section 18 is attracted in the present case.

6. FIR of incident dated 26.08.2023 is lodged on 30.08.2023. There appears dispute between informant and appellants about payment of rent of centering plates. *Prima facie*, there appears substance in the contention of appellant No. 1 that he was not present on the spot, which is clear from the statement of one witness recorded by investigating officer, who states that appellant No. 1 is ex-councilor and he along with appellant No. 1 were supervising the work of laying down paver blocks on 26.08.2023, between 10.00 am to 11.00 am, at Indira Nagar, Ward No. 19, as appellant No. 1 had taken the contract of the same. Appellant No. 1 has also placed on record photographs showing that he was present at Indira Nagar, Ward No. 19 on 26.08.2023 from 9.58 am till 3.18 pm.

7. Considering the delay in lodging FIR and previous dispute between informant and appellants, possibility of false implication of appellants cannot be ruled out at this stage.

8. Appellants have rightly relied on Ramesh Vaishya (supra), as in the first complaint allegedly made to Sub Divisional Police Officer on 26.08.2023, informant has not given place wherein incident has taken place. Whereas in the FIR he has mentioned the place, which appears to be afterthought. In

the citation referred supra, there were two FIRs and in the first FIR place of occurrence and person who being member of public was present at the time of incident was not mentioned.

9. In the case in hand also apart from informant, his son and worker employed by him have supported the allegations in the FIR. Apart from these two, no other person from public was present at the time of alleged incident. In that view of the matter, *prima facie*, offences under Atrocity Act are not attracted, therefore, bar under section 18 would not be attracted to the present case.

10. FIR is lodged on 30.08.2023 and investigation appears to be on the verge of completion. Nothing is to be recovered from appellants, therefore, their pre-trial custodial detention is not necessary.

11. In the result, appeal is allowed by setting aside orders dated 30.09.2023, passed by learned Additional Sessions Judge, Ahmednagar, in Bail Petition No. 1625/2023 and Bail Petition No. 1626/2023

12. Interim protection granted to appellants by order dated 13.10.2023 is hereby confirmed.

Bhagyawant Punde

13. Till filing of charge sheet, appellants shall attend the concerned police station as and when called by investigating officer and shall co-operate in the investigation. Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]