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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1106 OF 2023

NILESH DAYANAND CHUMBALE

..APPELLANT

VS.

1. THE STATE OF MAHARASHTRA

2. ASHWINI DILIP BHINGARDIVE

..RESPONDENTS

Adv. Vaibhav R. Gaikwad for the appellant.

Ms. S. D. Shinde, APP for the State-respondent No.1.

Adv. Priyanka H. Chavan for respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 6, 2024

ORAL JUDGMENT :

1. Learned counsel for respondent No.2 who was requested by this Court to appear on behalf of respondent No.2 to assist this Court submits that she is not getting proper instructions from the respondent No.2. Despite service respondent No.2 is not appearing.

2. Advocate Priyanka H. Chavan requested for discharge as she is unable to contact the respondent No.2. However, I have requested Advocate Priyanka H. Chavan to continue to assist this Court and plead the case on behalf of respondent No.2 on the basis of the materials available which she graciously agreed.

3. Heard learned counsel for the appellant, learned APP for the State and learned counsel for respondent No.2.

4. This is an appeal for quashing and setting aside the impugned order dated 26.09.2023 rejecting the application for pre-arrest bail passed by the Special Judge, Wai in connection with C.R. No.7 of 2020 registered with Panchgani Police Station, Satara on 28.01.2020 for the offences punishable under Sections 354, 294, 504 and 506 of the Indian Penal Code and under Sections 3(1)(r)(s)(w) (ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short).

5. Briefly stated it is the case of the prosecution that in respect of an incident dated 09.01.2020, the appellant abused the complainant in the name of her caste. The appellant as well as the complainant were working at different toll booths as managers. The toll booths were operated by different companies who had entered into joint venture agreement. Due to the working relations, the appellant and respondent No.2 were knowing each other. It

is alleged by the complainant that the appellant was insisting that the complainant should not collect toll from the vehicles in respect of which request is made by the appellant. However, on the date of the incident, the complainant did not pay any attention to the request made by the appellant and proceeded to collect toll from the vehicles which the appellant was interested. The appellant telephonically abused the employees of the toll booth. The complainant thereupon questioned the appellant. The appellant personally came to the toll booth and abused the complainant in the name of her caste using filthy language. There are witnesses to the incident. These witnesses were working under the supervision of the complainant. There is one witness who only says that there was a verbal altercation between the appellant and the complainant and that the appellant was shouting at the complainant. He does not mention about abuses in the name of caste. Though the incident is dated 09.01.2020, the FIR was lodged only on 28.01.2020 after a delay of almost 19 days. In the supplementary statement the complainant has sought to

explain the delay. According to the complainant she had telephonically informed her superiors about the incident but did not send any e-mail to them. In this statement there is nothing to indicate as to whether the complainant had informed her superiors although telephonically, about the appellant abusing her in the name of her caste. There is nothing in writing about such complaint made to her superiors.

6. Learned APP and Advocate Priyanka H. Chavan who I requested to assist this Court on behalf of respondent No.2, opposed the appeal vehemently. Learned APP as well as learned counsel for respondent No.2 submitted that the materials on record would clearly indicate that the appellant has abused the respondent No.2 in the name of her caste and therefore the bar under Section 18 of the Atrocities Act is clearly attracted in the present case.

7. Learned APP on instructions of the Investigating Officer submitted that now the charge-sheet has been filed. In my opinion, in the facts of the present case the appeal can be allowed as the bar under Section 18 of the Atrocities

Act may not be attracted. Hence, the following order :-

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The order dated 26.09.2023 passed by the Special Judge, Wai, is quashed and set aside.
- (c) In the event of the arrest, the appellant be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more sureties in the like amount.
- (d) The appellant shall co-operate with the investigation and shall report to the Investigating Officer as and when called.
- (e) The appellant shall not tamper with the evidence or establish any contact with the complainant.

8. The Criminal Appeal is disposed of.

9. I appreciate the assistance rendered by Advocate Priyanka H. Chavan who appeared on behalf of the respondent No.2 at my request. The Legal Aid Services Authority to regularize her engagement.

(M. S. KARNIK, J.)