



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.226 OF 2022

Sudhakar s/o Vithobaji Waghmare,
aged about 58 years, occupation : business,
r/o Sindhi (Rly.), tahsil Seloo,
district Wardha. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through PSO Police Station
Sindi (Rly.), tahsil Seloo, district Wardha.

2. Sau. Vidya Bharat Kodape,
aged about 35 years, occupation : business,
r/o Shivanphal, Samudrapur,
tahsil : Samudrapur, Wardha. **Respondents.**

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Shri J.R.Kidilay, Counsel for the Appellant.

Smt.S.P.Giratkar, Counsel appointed for Respondent No.2.

Shri A.B.Badar, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/03/2024

PRONOUNCED ON : 04/04/2024

JUDGMENT

1. By this appeal, under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act), the appellant (the accused) has challenged order passed below Exhibit-14 by learned Additional

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Sessions Judge, Wardha in Special (Atrocity) Case No.93/2020 rejecting discharge application of the accused.

2. Heard learned counsel Shri J.R.Kidilay for the accused; learned counsel Smt.S.P.Giratkar appointed for respondent No.2, and learned Additional Public Prosecutor for the State.

3. Facts in a nutshell runs as under:

On 9.6.2019, respondent No.2 Vidya Bharat Kodape (the complainant) approached Sindi Police Station, district Wardha and lodged a report that on the said date, there was a quarrel between her husband and the accused on account of amount Rs.1500/- which was due against her husband who had purchased iron pipes from shop of the accused. It is alleged that the accused abused her and her husband and threatened them. On the basis of the said report, initially, N.C.Report is lodged. Regarding the said incident, again, on 11.6.2019, she lodged a report alleging that on account of Rs.1500/-, she and her husband were abused on their caste and the accused outraged her modesty. On the basis of the said, Crime No.117/2019 was

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registered under Sections 354-A(1)(i), 504, 506, 294, and 323 read with 34 of the Indian Penal Code and under Section 3(1)(w)(i), 3(1)(w)(ii), and 3(2)(va) of the Atrocities Act.

4. After investigation, the Investigating Officer filed chargesheet against the accused.

5. The accused filed an application below Exhibit-14 for discharge on ground that the husband of the complainant had purchased three steel rods on credit from his hardware shop with an assurance that he would pay amount shortly. However, the amount was not paid. On 9.6.2019, when the accused was proceeding with his wife towards railway station for attending marriage, at that time, he noticed the husband of the complainant and, therefore, he enquired with him about the amount due. At that time, the complainant, who was accompanied by her husband, caught the accused and assaulted him with fist blows and abused him and, therefore, he along with his wife approached Sindi Railway Police Station, district Wardha and lodged a report on which the police registered N.C.Report. It is further contended that the complainant has

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also approached the police station and lodged the report alleging that the wife of the accused abused her and lodged a counterblast report to the report lodged by the wife of the accused. Initially, there was no allegation that the accused abused her and her husband on her caste. Subsequently, after two days, i.e. 11.6.2019, after thought, allegations are made that the accused abused her and her husband on her caste and also outraged her modesty. In earlier report, there is no single adverse allegation against the accused, but only to give colour of abuses on caste, the said allegations are made. The alleged incident is witnessed by witnesses who have also not stated that earlier the accused had outraged her modesty and abused on the caste. Thus, no *prima facie* case is made out against the accused to frame charge against him. In fact, neither statement of the complainant nor statements of witnesses disclosed about abuses on caste or allegation of outraging modesty. Thus, there is no material to frame charge against the accused and, therefore, he filed an application for discharge which is rejected by learned Judge below by passing a cryptic order.

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6. Learned counsel for the accused reiterated the said contentions and also submitted that for framing charge against the accused, there should have been *prima facie* material attracting ingredients of the offence, which are not made out. He stated that if after consideration and hearing, the Judge is of opinion that there is a ground for presuming that accused had committed an offence, the concerned Judge has to frame charge. Thus, for framing charge, there should have been sufficient material. However, here, in the present case, *prima facie* material, that exact abuses uttered by the accused are not narrated by the complainant or her husband or witnesses, who witnessed the incident. Merely because she married with a person of a Scheduled Caste is not sufficient to show that she belongs to the Scheduled Caste.

7. In support of his contentions, learned counsel for the accused placed reliance on following decisions:

(1) Criminal Application No.115/2019 (Kishor s/o Chhagan Ghate and ors vs. The State of Mah., thr. PS Paithan, district Aurangabad and anr) decided on 8.4.2019 by this court at Aurangabad Bench;

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(2) Rajendra Shrivastava vs. State of Maharashtra, reported in 2010(2) Mh.L.J. 198;

(3) Satish s/o Harishchandra Yatare vs. State of Mah., reported in 2019 ALL MR (Cri) 1642, and

(4) Yogesh @ Sachin Jagdish Joshi vs. State of Mah., reported in 2008 ALL MR (Cri) 3222 (SC).

8. Learned counsel appointed for respondent No.2 and learned Additional Public Prosecutor for the State supported the order of the lower court and submitted that reports filed by the accused and the complainant sufficiently shows involvement of the accused in the alleged incident.

9. Chapter XVIII of the Code of Criminal Procedure lays down for trial before a Court of Sessions in pursuance of a commitment of the case under Section 209 of the Code. Section 227 of the Code contemplates circumstances under which accused can be discharged at the point of time for framing charge under Section 228 of the Code. It provides that upon consideration of the record of the case and documents submitted with police report, and after hearing the submissions of the accused and the prosecution, the court is expected to decide

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whether there is “sufficient ground to proceed against the accused” and as a consequence thereof either discharge the accused or to proceed or to frame charge against him. The words “not sufficient ground for proceeding against the accused” appearing in the Section postulate exercise of judicial mind in order to determine whether case for trial has been made out by the prosecution. While doing this exercise, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. If two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.

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10. In the light of the aforesaid principles, if facts of the present case are considered, it would show that regarding the incident dated 9.6.2019, two N.C.Reports are filed. One report is filed by the wife of the accused alleging that she and the accused were assaulted by the complainant and her husband on 9.6.2019. The complainant has also lodged report with the same allegation. Admittedly, on 9.6.2019, she has not alleged regarding outraging of modesty or abuses by the accused on her caste. Subsequently, on 11.6.2019, she came with a case that on 9.6.2019 she and her husband were abused and assaulted by the accused and his wife. Insofar as allegation regarding abuses on caste are concerned, the exact abuses are not narrated by her. As per the spot panchanama, the alleged spot of the incident was shown by the complainant which is on the railway station road. From the said spot of the incident, the railway station is at 900 feet. The incident occurred near one pan stall. The alleged incident took place at a public place and was witnessed by Rajendra Durgaprasad Tiwari, Ashok Vitthalrao Thakare, and Udaybhan Mahadeorao Sapate. None of these witnesses stated that the accused abused the complainant and her husband on

her caste. They have also not supported the fact regarding outraging of modesty. The complainant and her husband have also not stated the exact abuses hurled by the accused.

11. Perusal of the First Information Report shows that the complainant has not stated that the accused belongs to caste other than castes falling under the Scheduled Caste and the Scheduled Tribe and the accused was knowing that she belongs to the Scheduled Caste or the Scheduled Tribe. She stated in her report that when she along with her husband was travelling towards railway station, the accused demanded Rs.1500 and abused her and her husband on her caste and outraged her modesty. The said facts were not narrated in the earlier report.

12. Thus, it is clear that the basic ingredients of the offence are absent in the present case. Mere statement of the complainant, which is not supported and was not initially stated by her pertinently in the First Information Report, does not mention that any attempts were made by her on the date of the incident to lodge report alleging abuses on her caste or outraging the modesty.

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13. It is well settled that at this stage the material collected by the Investigating Officer is not to be scanned. However, it is to be looked into and all attending facts and circumstances require to be taken into consideration. If *prima facie* material and all necessary ingredients for constituting offence are absent in the First Information Report, and material collected during course of investigation, and if there are no sufficient grounds for proceeding against the accused, and after application of judicial mind, if conclusion is only that case for trial has not been made out, accused can be discharged. The sufficient ground is required to proceed against the accused and as a consequence thereof either charge is to be framed against the accused or the accused is to be discharged.

14. In the light of the aforesaid principles, admittedly, no offence is made out against the accused to attract provisions of the Atrocities Act. Whereas, offences under Sections 354-A(1) (i), 504, 506, 294, and 323 read with 34 of the Indian Penal Code are made out against the accused. As such, the appeal

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deserves to be allowed partly and, therefore, following order is passed:

ORDER

(1) The criminal appeal is **partly allowed**.

(2) The accused is discharged of offences under provisions of the Atrocities Act.

(3) Fees of learned counsel appointed for respondent No.2 are quantified and the same be paid to her as per Rules.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!