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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.194 OF 2024

- 1) Vasanta s/o Asruji Landkar
Aged 48 Years,
Occupation – Agriculturists,
- 2) Pandurang s/o Asruji Landkar,
Aged 45 Years,
Occupation – Agriculturist,
Both r/o. Borgaon, Taluka Malegaon,
District Washim.

..... APPELLANTS

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Jaulka,
District Washim.
- 2) Manohar s/o Kisan Gudadhe,
Aged 50 Years,
Occupation : Labourer,
R/o. Borgaon, Taluka Malegaon,
District Washim.

.... RESPONDENTS

Mr. A. V. Band, Counsel for the appellants.
Mr. S. A. Ashirgade, APP for respondent No.1/State.
Ms. C. S. Bhute, appointed Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27.09.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

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3. By preferring this appeal under Section 14-A, the appellants have challenged the order passed by the learned Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Washim by which the application of the present appellants for grant of anticipatory bail is rejected.

4. The crime is registered against the present appellants vide crime No.65/2024 for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'). The FIR is lodged by Manohar Kisan Gudade alleging that on 06.03.2024 at about 9.00 p.m., he along with the Sarpanch of the village had been to the Well which is owned by the Government and shut down the electric motor. At the relevant time, the present appellants came there and manhandled him and also abused him on his caste. On the basis of the said report, police have registered the crime against the present appellants.

5. Learned Counsel for the appellants submitted that after registration of the crime, the appellants approached to the learned Special Court for grant of bail, but the Special Court has rejected the application on the ground that there is a bar under

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Section 18 of the Act of 1989. He submitted that the observation of the learned Special Court as far as the bar is concerned, is erroneous. He invited my attention towards the recitals of the FIR and submitted that even accepting the recitals of the FIR as it is and allegations, no offence is made out against the present appellants as far as the provisions of the Atrocities Act are concerned. He invited my attention towards the another FIR registered vide Crime No.66/2024 which is registered on the basis of report lodged by the son of the appellant No.1 and submitted that the son of the present appellant No.1 has also filed a report against the informant and the Sarpanch and therefore to give a counterblast to the said complaint, this false report is filed. He submitted that by taking assistance of the Sarpanch, this false report is filed against him. He further submitted that even accepting the allegations as it is, no offence is made out under the Atrocities Act, as mere reference of the caste is not sufficient to attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act). In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in **Shajan Skaria vs. The State of Kerala and another in Criminal Appeal No.2622/2024 (Arising out of SLP (Crl.) No.8081 of 2023)** wherein the Hon'ble Apex Court has considered the basic ingredients to constitute the offence under Section 3(1)(r) of the Act of 1989.

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He submitted that every insult or intimidation to a member of the Scheduled Castes or the Scheduled Tribes will not amount to an offence as observed by the Hon'ble Apex Court.

6. Learned APP and the learned appointed Counsel for the respondent No.2 – informant strongly opposed the said ground on the count that, the present appellants have uttered the words which is sufficient to show that within the public view the abuses were hurled against the informant and therefore, the *prima facie* case is made out against the present appellants. In view of that, the bar under Section 18 of the Act of 1989 is attracted and the application deserves to be rejected.

7. After hearing the learned Counsel for the appellants and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the recitals of the FIR and the investigation papers from which it reveals that there was a dispute on account of fetching of the water from the Government Well and therefore, the quarrel was took place between the parties. As far as the alleged incident is concerned, two crimes are registered regarding the said incident. As per the allegation made by the son of the of the present appellant No.1 that his father and family members were assaulted by the informant and the Sarpanch of the village by bringing the weapons in their hands, whereas it is alleged by the present informant that he

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was abused and assaulted by abusing him on his caste. Thus, cross complaints are filed against the said incident. As far as the application of the provisions of the Atrocities Act are concerned, which is extensively dealt by the Hon'ble Apex Court in the case of **Shajan Skiria** (supra) which is referred by the learned Counsel for the appellants. In Para No.58 it is specifically observed by the Hon'ble Apex Court that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe. There is nothing in the transcript of the uploaded video to indicate even *prime facie* that those allegations were made by the appellant on account of the fact that the complainant belongs to a Scheduled Caste.

8. Here also there is no statement in the recitals of the FIR that these abuses are used by the present appellants intentionally to insult by mentioning the statement that though the appellants know that the informant belongs to the Scheduled Castes or the Scheduled Tribes, they have uttered the said words. Thus, as far as the bar under Section 18A of the Act of 1989 is concerned and to attract the bar at least *prima facie* case is to be made out from the recitals of the FIR. By considering the recitals of the FIR, mere reference of the caste in the FIR itself is not sufficient to show that

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the *prima facie* case is made out to show that there was an intentional insult or humiliation of the informant by the present appellants by abusing him. Thus, the bar under Section 18 of the Act of 1989 is not attracted. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 26/03/2024 passed by the learned Special Judge, Washim in Criminal Bail Application No.48/2024 is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant **No.(1) Vasanta s/o Asruji Landkar No.(2) Pandurang s/o Asruji Landkar** shall be released on anticipatory bail on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount, in connection with crime No.65/2024 registered with Police Station, Jaulka, District Washim for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (iv) The appellants shall attend the concerned Police Station as and when required for the investigation papers and shall cooperate with the investigating agency.
- (v) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

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9. The fees of the appointed Counsel be quantified as per rules.

10. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.