



Judgment

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

CRIMINAL APPEAL NO.350 OF 2023

Prabhakar Shriram Hande,
aged about 64 years, occupation : retired,
r/o Vaibhav Colony Amravati,
taluka and district Amravati,
presently at Nagpur.

..... **Appellant.**

:: V E R S U S ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Rajapeth, taluka and district Amravati.

2. Sarla Vijay Ingale,
aged about 48 years, occupation : household,
r/o Vaibhav Colony, Amravati,
taluka and district Amravati,
presently at Amravati.

..... **Respondents.**

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Shri M.N.Ali, Counsel for the Appellant.

Mrs.C.S.Bhute, Counsel appointed for Respondent No.2.

Mrs.H.S.Dhande, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 15/03/2024

PRONOUNCED ON : 08/04/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged
order dated 3.4.2023 passed below Exhibits-4 by learned Special

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Judge and Additional Sessions Judge-1, Amravati in Special Case No.29/2021 whereby application for discharge is rejected.

2. Heard learned counsel Shri M.N.Ali for the accused; learned counsel Mrs.C.S.Bhute appointed for respondent No.2, and learned Additional Public Prosecutor Mrs.H.S.Dhande for the State.

3. **Admit.**

4. Brief facts runs as under:

On 8.9.2020, one Sarla Vijay Ingle (the complainant) lodged a report at Rajapeth Police Station, Amravati alleging that she is residing in a premises owned by the accused. On the said day, at about 11:30 am, when she was present along with her daughter, the accused came in front of her room and asked her to vacate room immediately, on which when she disclosed that she will vacate the room after Diwali, he abused her and asked her to vacate the room immediately. She further alleged that though he was aware that she belongs to the Scheduled Caste, he abused her on her caste and thereby committed an offence. On the basis of the said report, police registered the crime vide Crime

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No.588/2020 under Sections 323, 504, and 506 of the Indian Penal Code and 3(1)(r), 3(1)(s), 3(1)(z), and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act).

5. Learned counsel for the accused submitted that the accused preferred an application for discharge on ground that the report lodged against him is false and frivolous and even if allegations in the First Information Report are taken at their face value, no offence is made out against him. He is residing at Nagpur and gave a room of his house at Amravati to the complainant. The complainant was not paying rent and therefore, he asked to vacate the premises on which she lodged the report. Moreover, the alleged incident has not taken place within public view. The ingredients of Section 3(1)(r) of the Atrocities Act are not disclosed. Mere reference of the caste is not sufficient to attract the offence against him. Learned counsel submitted that from the entire chargesheet no offence is made out against the accused. Question to be considered is, whether the alleged act of the accused is sufficient to attract provisions of the Atrocities Act. As

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such, learned counsel submitted that the accused deserves to be discharged.

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

1. **Criminal Appeal No.1283/2019 (Khuman Singh vs. State of Madhya Pradesh)** decided by the Honourable Apex Court on 27.8.2019;
2. **Hitesh Verma vs. State of Uttarakhand and anr**, reported in 2020 AIR (SCW) 5584, and
3. **Gorige Pentaiah vs. State of A.P. & ors**, reported in 2008 DGLS (SC) 1092.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that during investigation, the Investigating Officer recorded relevant statements of witnesses from which it reveals that the accused, within public view, insulted and abused the informant on her caste. For framing charge, there is a sufficient material. As such, learned Judge below rightly rejected the application and, therefore, no interference is called for.

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8. Learned counsel appointed for respondent No.2 endorsed the same contentions and pressed for dismissal of the appeal.

9. Before entering into the controversy, it is necessary to see legal position as to when charge can be framed.

10. Chapter-XVII of the Code of Criminal Procedure deals with charge.

Section 211 of the Code stated about of charge.

Whereas, Section 212 of the Code states about particulars of charge and Chapter XVIII of the Code deals with the trial to be conducted by Public Prosecutor.

Section 227 of the Code deals with discharge which states that if, upon consideration of record of case and documents submitted therewith, and after hearing submissions of accused and prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against accused, he shall discharge accused and record his reasons for so doing.

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Section 228 of the Code deals with the framing of the charge. Sub section (1) of Section 228 of the Code states that If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence, he may frame a charge.

11. Here, sufficient ground does not mean grounds which are sufficient to convict the accused, but sufficient grounds to support allegations.

12. Perusal of the entire chargesheet reveals that the complainant, though alleged that she was abused on her caste within public view, she has not narrated about exact abuses hurled by accused. She refers that the said incident occurred in front of her house. During investigation, statements of two witnesses Manohar Sukhkdev Chauhan and Abdul Khalid are recorded. They have also not stated exact abuses uttered by the accused.

13. In **Criminal Appeal No.1283/2019** *supra*, on which learned counsel for the accused placed reliance, the Honourable Apex Court held in paragraph No.11 that, next question falling for

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consideration is whether the conviction under Section 3(2)(v) of the Atrocities Act can be sustained? Deceased belongs to “Khangar” Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name “Khangar” and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of buffaloes. It is further observed that The object of Section 3(2)(v) of the Atrocities Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe. The Honourable Apex Court, by referring its earlier judgment in the case of **Dinesh alias Buddha vs. State of Rajasthan**, reported in **(2006) 3 SCC 771**, held as under:

“15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste.

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In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

14. As held by the Honourable Apex Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Atrocities Act. The offence must have been committed against person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe.

15. In the present case, fact that the complainant belongs to “Mahar” (Scheduled Caste) is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was member of Scheduled Caste. Admittedly, the incident occurred between the landlord and tenant.

16. Another ground raised by learned counsel for the accused is that the alleged incident has taken place in front of house and not within public view.

17. The concept of public view is dealt by the Honourable Apex Court in the case of **Hitesh Verma vs. State of**

Uttarakhand and anr, reported in (2020) 10 SCC 710 wherein it is held that there should not be confusion as to expression “place within public view”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies. The basic ingredient that the words were uttered “in any place within public view” is not made out.

18. Admittedly, in the present case, statements of witnesses show that they have heard abuses uttered by the accused. If the offence is committed outside the building, the said place would certainly be a place within public view. When some members of public are there, it would be an offence since it is in the public view and, therefore, contentions of the accused that the alleged incident has taken place in private place is not acceptable.

19. In order to prove the charge, there should be some material to show that the alleged insult or intimidation of person belonging to the Scheduled Caste and the Scheduled Tribe is made

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with an intent to humiliate him, he being a member of the Scheduled Caste and the Scheduled Tribe. Mere an act of humiliating a member of the the Scheduled Caste or Scheduled Tribe is not made punishable. Humiliation must be on account of he being a member of the Scheduled Caste or Scheduled Tribe.

20. In the instant case, there is absolutely no material to show that the accused insulted or intimidated the complainant being she is a member of the Scheduled Caste. Whatever uttered, which appears from recital of the First Information Report, is that he referred the complainant by her caste. Mere reference of the caste is not sufficient to show that the accused has committed an offence in question. Rule 7 of the Atrocities Act has been embodied only with a view to eliminate, misuse of strict provisions of the Atrocities Act and, therefore, the legislature thought it fit to impose conditions whereby investigation can be carried out by responsible officer.

21. Thus, for framing charge, the basic ingredients of the offence has to be made out.

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22. Considering the entire material, from the chargesheet it reveals that the complainant as well as other two witnesses only discloses about the reference of the caste. The exact abuses are not narrated by the complainant or other two witnesses. As the entire material is not sufficient to attract provisions of the Atrocities Act, it reveals that reference of the caste was there during quarrel on account of paying rent and, therefore, it cannot be said it was an intentional intimidation or humiliation of the complainant. Learned Judge below has not considered these facts and erroneously rejected the application.

23. As *prima facie* offence is not made out to fulfill ingredients of Sections 3(1)(r), 3(1)(s), 3(1)(z), and 3(2)(va) of the Atrocities Act, the accused has made out a case for discharge of offences punishable under the Atrocities Act.

24. In this view of the matter, as the appeal deserves to be allowed partly, following order is passed:

ORDER

(1) The Criminal Appeal is **partly allowed**.

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(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 !!