



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

CRIMINAL APPEAL NO. 675 OF 2023

APPELLANTS:

1. Vajinath s/o Laxman Ghonge,
Aged about 32 years, Occupation: Service.
2. Karbhari s/o Yadavrao Ghonge,
Aged about 61 Years, Occupation: Forest
Labour. Both the appellants are r/o
Bamkhed, Tah. Deulgaonraja and
District Buldhana.

..V E R S U S..

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sindkhed Raja,
Tah. Sindkhed Raja, District Buldhana.
2. Sau. Seema Rajendra Jadhav,
Aged about 28 years,
Occupation: Business,
R/o Bamkhed, Post Aland,
Tah. Deulgaonraja and District Buldhana.

AND

CRIMINAL APPEAL NO. 666 OF 2023

APPELLANTS:

1. Vilas s/o Samadhan Ghonge,
aged about 37 years,
Occupation: Service – Teacher.

2. Mohan s/o Appa Ghonge,
aged about 48 years, Occupation: Clerk
Both the appellants are R/o Bamkhed,
Tah. Deulgaonraja and District Buldhana..

...V E R S U S...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sindkhed Raja,
Tah. Sindkhed Raja, District Buldhana.
2. Sau. Seema Rajendra Jadhav,
Aged about 28 years,
Occupation: Business, R/o Bamkhed,
Post Aland, Tah. Deulgaonraja and
District Buldhana.

AND

CRIMINAL APPEAL NO. 667 OF 2023

APPELLANTS:

1. Umesh s/o Anantha Ghonge,
aged about 17 years,
Occupation: Student.
2. Pravin s/o Raghunath Ghonge,
aged about 31 years, Occupation:
Forest Student. Both the appellants are
R/o Bamkhed, Tah. Deulgaonraja and
District Buldhana..

...V E R S U S...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,

Police Station Sindkhed Raja,
Tah. Sindkhed Raja, District Buldhana.

2. Sau. Seema Rajendra Jadhav,
Aged about 28 years, Occupation:
Business, R/o Bamkhed, Post Aland,
Tah. Deulgaonraja and District Buldhana.

AND

CRIMINAL APPEAL NO. 676 OF 2023

APPELLANTS:

1. Pradip s/o Vishwanath Ghonge,
aged about 38 years, Occupation:
Agriculturist.
2. Bharat s/o Ganpat Ghonge,
Aged about 50 years, Occupation:
Agriculturist.
3. Gopal s/o Bharat Ghonge,
Aged about 20 years, Occupation:
Agriculturist.
4. Ganesh s/o Kisan Ghonge,
Aged about 39 years, Occupation:
Agriculturist.
5. Vivek s/o Samadhan Ghonge,
Aged about 39 years, Occupation:
Agriculturist.
6. Santosh s/o Manikrao Ghonge,
Aged about 61 Years, Occupation:
Agriculturist.

7. Vijay s/o Ramchandra Ghonge,
Aged about 58 Years, Occupation:
Agriculturist.
 8. Bhagwat s/o Bharat Ghonge,
Aged about 23 Years, Occupation:
Agriculturist.
- All the appellants are R/o Bamkhed,
Tah. Deulgaonraja and District Buldhana.

...V E R S U S...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sindkhed Raja,
Tah. Sindkhed Raja, District Buldhana.
2. Sau. Seema Rajendra Jadhav,
Aged about 28 years, Occupation:
Business, R/o Bamkhed, Post Aland,
Tah. Deulgaonraja and District Buldhana.

Mr. Amol Jaltare counsel with Mr. N.B. Kalwaghe, counsel for appellants.

Ms. H.N.Prabhu, APP for respondent/State.

Mr. M .P. Kariya, counsel for respondent No. 2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 13/12/2024

1. Heard.

2. **Admit.**

3. Heard finally with consent of learned counsel appearing for the parties.

4. By preferring these appeals under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants therein have challenged the order passed by the Special Judge and Additional Sessions Judge, Buldhana, rejecting the application for grant of anticipatory bail.

5. The appellants are apprehending the arrest at the hands of police in connection with Crime No. 194/2023 registered with Police Station Sindkhed Raja for the offences punishable under Sections 143, 147, 452, 354, 354-B, 395, 324, 323, 427 and read with Section 149 of the Indian Penal Code, 1860 and Section 3(1)(r), 3(1)(w)(i), 3(1)(s), 3(1)(t), 3(1)(zc), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The report is lodged by Seema Rajendra Jadhav on an allegation that on 21/08/2023 around 8.00 p.m, the accused Nos.1 to 5 came to her grocery shop adjacent to her house and demanded the Gutkha packets, for which she denied. On that count, they not only abused her but also caused the damage to her grocery shop with a bamboo stick. The accused

no. 1 lifted the shutter of her shop by his hand and again made a demand of contraband Gutkha. On her denial, he got annoyed and abused her in a filthy language and also snatched Rs. 11,000/- from the cash box of the shop and also thrown the grocery articles from the shop. It is further alleged that subsequent to the act of the accused No. 1, the other accused also entered into her shop by holding sticks in their hands and caused the damage to her shop. The first incident happened on 21/08/2023, thereafter all the villagers decided to settle the dispute, and therefore, she has not lodged the report. However, subsequent to the said incident on 01/09/2023 again, when her daughter was about to proceed in a school in the vehicle of accused No. 16. The accused No. 16 denied her the right to take in the vehicle by saying that they are boycotting the community and also used the words against her daughter, which insulted her and humiliated her. They have also caused damage to the photo-frame of Dr. Baba Saheb Ambedkar. On the basis of the said report, police have registered the crime against the present appellants and other co-accused. After registration of the crime, the appellants Vilas Samadhan Ghonge and Mohan Appa Ghonge filed an application for grant of anticipatory bail bearing no. 274/2023 before the

Special Judge. The anticipatory bail was rejected, and therefore, they have preferred the appeal No. 666/2023. The appellants, Umesh Anantha Ghonge and Pravin Raghunath Ghonge, also filed an application before the Special Judge bearing No. 275/2023, the same was rejected, and hence, they have filed appeal No. 667/2023. The appellants, namely Vaijnath Laxman Ghonge and Karbhari Yadavrao Ghonge, also filed an application bearing No. 273/2023, the same was rejected, and hence they filed appeal No. 675/2023. The accused, Pradip Vishwanath Ghonge, Bharat Ganpat Ghonge, Gopal Bharat Ghonge, Ganesh Kisan Ghonge, Vivek Samadhan Ghonge, Santosh Manikrao Ghonge, Vijay Ramchandra Ghonge, and Bhagwat Bharat Ghonge, have also filed an application for grant of bail bearing No.272/2023, the same was also rejected, and therefore, they preferred an appeal bearing No. 676/2023.

6. Heard learned counsel Mr. Jaltare for all the appellants, who submitted that as far as the allegations regarding the abuses on the caste are concerned, which are made against accused No. 1 Deepak Vijay Ghonge, who is not an appellant in the present case. The allegation as to the assault is made against

Uddhav Madan Ghonge, who is also not the appellant, and the allegation that the daughter of the informant was not taken in the vehicle is made against the accused No. 16, who is also not the appellant in the present case. He submitted that as far as the appellants who have preferred these appeals are concerned, general allegations are made, and that allegation is also not to the extent of any abuses by them, by making any specific statements. The omnibus statement is made against them, as far as the assault is concerned or the abuses are concerned. He submitted that, considering the recitals of the FIR, no prima facie case is made out against the present appellants, and therefore, the bar under Section 18-A of the Atrocities Act is not attracted.

7. He also invited my attention towards the fact that, initially, there was a dispute between them on 21/08/2023, however, the said dispute was settled by the villagers, and therefore, as per the informant, no FIR was lodged. As far as the second incident dated 01/09/2023 is concerned, wherein the allegation is against only the accused No. 16, as far as the other accused are concerned, they are not concerned with the same. The allegation regarding the subsequent event that when she had been

to the flour mill, at that time, the accused asked her not to bring the grains to his flour mill, as they have boycotted the entire community, is also against the accused No. 15, who is not the appellant.

8. He submitted that considering the general allegations are levelled against the appellants, who are before the court, and their custodial interrogation is not required. He submitted that general allegations are leveled against them that they have assaulted the informant and her brother-in-law. However, this allegation is to be taken into consideration in the light of the medical certificate, which is placed on record. He submitted that even taking into consideration the entire allegation as it is, that the informant and her brother-in-law are assaulted by all the appellants by using a stick in their hand, but the medical certificate shows that only two injuries are sustained by them, which are also simple in nature, and that the allegation is also omnibus in nature. Thus, considering the same, no offence is attracted, as far as the provisions of the Atrocities Act are concerned.

9. He further submitted that as far as the allegation

regarding the boycott on the community of the informant is concerned, which is denied by the other community members by filing an application before the Sub-Divisional Police Officer on 12/10/2022, wherein it is stated that Rajendra Baburao Jadhav and Baban Asaram Navghire have threatened them, if they have not supported them in a false case, they have to face dire consequences, and therefore, they have apprehension regarding any damage either to their property or their person. The said application is signed by various persons. He submitted that, in the light of the above application, it is crystal clear that only to pressurize the present appellants, this false FIR is lodged, moreover, this FIR is lodged to give a counterblast to the FIR lodged by Kusum Vijay Ghonge.

10. He submitted that considering the entire scenario in which the alleged incident allegedly committed by the present appellants is concerned, no prima-facie case is made, and therefore, the bar under Section 18-A of the Atrocities Act will not be attracted. In support of his contention, he placed reliance on the decision of *Hitesh Verma Vs State of Uttarakhand and Another*, [(2020) 10 SCC 710].

11. Per contra, learned APP submitted that the FIR lodged by the informant in the present case, i.e. Seema, is the earlier FIR, and the FIR lodged by Kusum is the subsequent FIR. She submitted that the present appellants and the other co-accused have formed the unlawful assembly, and in furtherance of the common object of the said assembly, the informant and brother-in-law were assaulted and also caused the damage to their property, i.e. the Shop and the Grocery articles. The present appellants have also practiced the untouchability after so many years of independence. She submitted that, considering the act of the present appellants, it reveals that they have treated the informant and her family members in such a manner as to insult and humiliate them, and therefore, the bar under Section 18-A of the Atrocities Act will attract. She specifically stated there is a specific allegation against the accused No. 18 Mohan, who is the appellant here, and in view of that, she prays for dismissal of the appeals.

12. Learned counsel Mr. M.P. Kariya for the respondent No. 2 submitted that the appellants and the peoples of their community have declared socially boycott against the community that belongs to the respondent No. 2, which resulted in the

respondent No.2 and her family forcibly left the village and residing in a rented premises in another village. Similarly, out of 15 families, one Kantabai Babasaheb Navghire, Ram Asaram Navghire, and others have left the village because of following the practice of untouchability by the appellants, who belong to the upper caste. He submitted that respondent No. 2, through her husband, has agitated the issue of untouchability and accordingly informed the various authorities. Thus, considering the act of the present appellants, which resulted into the humiliation and intentional insult of the informant and her family members. Therefore, the bar under Section 18-A of the Atrocities Act will attract, and the appeal deserves to be dismissed.

13. After hearing both sides and on perusal of the recitals of the FIR and the investigation papers, it reveals that crime No. 194/2023 was registered, on the basis of the report lodged by Seema Rajendra Jadhav alleging that she is a resident of Bamkhed Tah. Deulgaon Raja, District Buldhana. On the day of incident i.e. on 21/08/2023, as per her allegation, the co-accused Deepak Vijay Ghonge came to her shop and asked for the Gutkha, which she has denied, and thereafter, accused Nos. 1 to 5 i.e. Deepak,

Pradip, Bharat, Gopal and Vajjnath, entered her shop and caused damage to her shop by sticks in their hands. As far as the allegations as regards to the abuses on the caste are concerned, they are levelled against the accused No. 1, Deepak Vijay Ghonge, who is not the appellant in the case. The recitals of the FIR further show that as far as the appellants before the Court are concerned, there is an allegation against them. They have assaulted her by means of stick and caused damage to her shop, as well as assaulted her and her brother-in-law. The second incident alleged by her is on 01/09/2023, wherein the allegations are levelled against the accused Nos. 15 and 16. As far as the accused No. 1, Deepak and Accused Nos.15 and 16 Gajanan and Parmeshwar, are not the appellants in the present case. The investigation papers, which are placed on record, which shows that the statements of the other witnesses are also recorded during the investigation, wherein also the similar allegations are levelled against the accused Nos. 1, 15 and 16. As far as the present appellants, who preferred these appeals, are concerned, there is general allegations levelled against them, except accused No. 18 i.e. Mohan Appa Ghonge. Against him, there is specific allegations that he has informed the informant that they have boycotted her.

Though it is submitted by the learned counsel for the respondent that due to the conduct of the present appellants, the informant and other community members were constrained to leave the village, and they are staying in another house, which is denied by the learned counsel for the appellants, who stated that they are still residing in the same village. He has also placed reliance on one application which is filed by the other community members against the Bhagwan Asaram Navghire, wherein other community members specifically alleged that they have forced them and supported them in a false case and also threatened them, otherwise they have to face the dire consequences. It is imperative to note that none of the statements of the witnesses shows that they are forced to leave the village, and they are staying in another village. The statements of the witnesses are also silent, as far as the boycott by the upper caste community is concerned. Thus, it is apparent that there are omnibus allegations levelled against the accused Nos. 2 to 7, 9 to 14, 17, and 18. It is well settled that, when there is an omnibus allegation and no specific allegations are levelled against the accused persons, the bar under Section 18 the Atrocities Act will not attract.

14. The constitutional validity of Section 18 challenged before the Apex Court and while considering the same and referring to various judgments, the Apex Court in the case of *Shajan Skaria Vs The State Of Kerala & Anr., in Criminal Appeal No. 2622 Of 2024 (Arising Out Of Slp (Crl.) No. 8081 Of 2023) Dated 23/08/2024*, has observed that a plain reading of the above provisions shows that there should be intentional insult, the persons who belongs to the Scheduled Caste or Scheduled Tribes. The ingredients of the offence are that;

- a. Whoever not being a member of the Schedule Caste or Scheduled Tribe;
- b. Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;
- c. Accused must do so with the intent to humiliate such a person; and
- d. Accused must do so at any place within public view.

15. As far as the second incident dated 01/09/2023 is concerned, admittedly it is not within the public view. The subsequent incident, which took place at the flour mill, is also not within the public view. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled

Caste or a Scheduled Tribe. All insults or intimidation to a person will not be an offence under the Act unless such insult or intimidation is on account of the victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations, and harassment.

16. The Hon'ble Apex Court in the case of *Khuman Singh vs State of Madhya Pradesh (2020) 18 SCC 763*, held in a case for applicability of Section 3(2)(v) of the Atrocities Act, the fact that deceased belong to the Scheduled Caste or Scheduled Tribe would not be enough to inflict the enhanced punishment. Therefore, the offence under the Atrocities Act is not established, merely on the fact that the informant is a member of the Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or the Scheduled Tribe for the reasons that the victim belongs to the such caste.

17. Moreover, while interpreting the expression "intent to

humiliate” appearing in Section 3(1)(r) of the Act, 1989, the Hon’ble Apex Court observed that the words “with intent to humiliate” as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the “upper castes” over the “lower castes / untouchables”, the notions of ‘purity’ and ‘pollution’, etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

18. Thus, it is clear that from the plain reading of the provision would show that any insult against a member of a Scheduled Caste or Scheduled Tribe on the ground of “untouchability” was punishable with imprisonment for a maximum term of six months under the Civil Rights Act. With the passage of time, it was realised by the legislature that the Civil

Rights Act was not adequately sufficient to tackle caste-based offences and the practice of “untouchability”, leading to the enactment of the Act, 1989 introducing more stringent provisions for combating such practices. Section 3(1)(r) of the Act, 1989 should, thus, be seen in the context of Section 7(1)(d) of the Civil Rights Act.

19. Thus, basic ingredients for constituting an offence under Section 3(1)(u) of the Act, 1989 are as (a) accused person must not be a member of the Scheduled Caste or Scheduled Tribe; (b) Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe; (c) accused must do so with the intent to humiliate such a person; and (d) accused must do so at any place within public view.

20. In the light of the above observation, if the facts of the present case are taken into consideration, admittedly there is an allegation as to the untouchability as the abuses or insults against some of the abuse. As far as the present appellants are concerned, against them, the general allegations is levelled, that they have assaulted the informant and other family members. As far as the injury certificate is concerned, which shows that two persons

stained the injury and i.e. also simple in nature. The allegation of the abuses on the caste are not levelled against the present appellants. Thus, prima-facie case is not made out against the present appellants. It is well settled that when prima-facie case is not made out against the accused, on perusal of the FIR, the bar under Section 18A will not attract, and application for anticipatory bail is mandatory.

21. In view of the above said provisions and by considering the various judgments especially the judgment passed in *Prathvi Raj Chauhan vs Union Of India [(2020) 4 SCC 727]*, wherein it is held that when prima-facie case is not made out, the application for anticipatory bail is made out and the bar under Section 18 will not attract. In view of that all the appeals deserves to be allowed.

- a] The criminal appeals are **allowed**.
- b] The appellants (1) Vajinath s/o Laxman Ghonge (2) Karbhari s/o Yadavrao Ghonge (3) Vilas s/o Samadhan Ghonge (4) Mohan s/o Appa Ghonge (5) Umesh s/o Anantha Ghonge (6) Pravin s/o Raghunath Ghonge (7) Pradip s/o Vishwanath

Ghonge (8) Bharat s/o Ganpat Ghonge (9) Gopal s/o Bharat Ghonge (10) Ganesh s/o Kisan Ghonge (11) Vivek s/o Samadhan Ghonge (12) Santosh s/o Manikrao Ghonge (13) Vijay s/o Ramchandra Ghonge (14) Bhagwat s/o Bharat Ghonge (15) shall be released anticipatory bail, in the event of arrest the arrest, in connection with Crime 194/2023 registered with Police Station Sindkhed Raja for the offences punishable under Sections 143, 147, 452, 354, 354-B, 395, 324, 323, 427 and read with Section 149 of the Indian Penal Code, 1860 and Section 3(1)(r), 3(1)(w)(i), 3(1)(s), 3(1)(t), 3(1)(zc), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act, 1989, on executing P.R. Bond of Rs. 25,000/- each with one solvent sureties in the like amount.

- c] The order passed by the Additional Sessions Judge, Buldana in Criminal Bail Application Nos. 273/2023, 274/2023, 275/2023, 272/2023 are quashed and set aside.

- d] The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] All the appellants excluding Umesh Anantha Ghonge shall attend the concerned police station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. till filing of the charge-sheet and they shall produce the sticks, which they are holding and the said period will be considered as their custody in view of Section 23(2) Bharatiya Sakshya Adhiniyam, 2023.

The Appeals are disposed of.

[URMILA JOSHI-PHALKE, J.]