

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

CRIMINAL APPEAL NO. 417 OF 2025

Bhimraj @ Bhimrao Rohidas Ghadge Appellant
V/s.
Sureshsingh Ramsingh Gaud & Ors. Respondents

**WITH
CRIMINAL APPEAL NO. 419 OF 2025**

Bhimraj @ Bhimrao Rohidas Ghadge Appellant
V/s.
Sunil Pawar & Ors. Respondents

Mr. Ashish Shuddhodhan Ingl, for the Appellant/Appellants.
Mr. Ashok S. Gawai, APP for the State.

CORAM : R.M. JOSHI, J.

DATE : 7th NOVEMBER 2025

P.C:-

1. Heard learned counsel for both the sides.
2. Learned counsel for the appellant submits that the Trial Court had committed error in rejecting the application at threshold by ignoring the observations of the Hon'ble Supreme Court in case of ***Priti Agarwalla and Ors. Vs. State of GNCT of Delhi and Ors.***¹. To support his submission he placed reliance on paragraph 43(4) of the said judgment. It is his contention that unless the report is is

1 AIR Online 2024 SC 384

called for from the department against the public servant, it is not open for the Trial Court to reject the application.

3. Learned APP on behalf of both respondents supported the impugned order. It is his submission that in view of the Section 4(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989"), there is bar for taking cognizance by the Court against a public servant in absence of recommendation by the department.

4. No doubt there is a substance in the contention of learned APP with regard to the provisions of law as referred to law, the Hon'ble Supreme Court in paragraph No. 43(4) has held that :

"43.4. The absence of recommendation would bar taking cognizance by the Court. In a given case, if a complaint without recommendation is filed before the Magistrate, the Magistrate before proceeding further to keep his decision conforming to section 4(2) read with the proviso, calls for a report/recommendation from the Department against the named public servant. The Special Court or the Exclusive Special Court based on an administrative enquiry report can take cognizance of the alleged offence and thereon direct penal proceedings. By keeping in perspective, the language/scheme of section 4, and on the literal interpretation of sub-sections (1), (2) and (3) of section 4, it would be legally permissible that the jurisdiction for infraction of sub-section (2) of section 4 is attracted only on the recommendation of the administrative enquiry and then, the cognizance under sub-section (3) of section 4 is ordered."

5. Above Judgment therefore requires the Magistrate /Special Court before proceeding further to take decision on an application filed under Section 4(2) of the Act to call for a report /recommendation from the department in respect of the public

servant and then to decide application. Admittedly, here in this case the said procedure has not been followed. The order impugned therefore cannot sustain and deserves to be set aside.

6. Appeals stand allowed and disposed of.

7. The impugned Orders are set aside. Proceedings of Special Case No. 248 of 2024 and Special Case No. 331 of 2023 are relegated back to the Trial Court for decision afresh in accordance with law.

(R.M. JOSHI, J.)