



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

CRIMINAL REVISION APPLICATION NO. 101 of 2024

1. **The State of Maharashtra, through.** **APPLICANT**
Police Station Officer,
Police Station, Shendurjana Ghat,
Tq. Warud District Amravati

// V E R S U S //

1. **Ganesh Pandurang Khadge,** **NON-APPLICANTS**
Aged about 55 years,
2. **Nitin Ganesh Khadge,**
Aged about 25 years,
3. **Sunil Namdeo Chimote,**
Aged about 45 years,
4. **Suresh Ramchandra Dhore,**
Aged about 45 years,

All above resident of Malkapur,
Tq. Warud, District Amravati

Mr. N.B. Jawade, APP for the applicant/State.
Mr. A.P. Thakre, Advocate for non-applicants.

CORAM : URMILA JOSHI PHALKE, J.

DATED:- 05.02.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. By this revision State has challenged the order passed by the District Court Judge-1 and Additional Sessions Judge, Warud dated 12.04.2024 rejecting the application filed by the State under Section 311 of the code of Criminal Procedure seeking issuance of summons to the S.D.O. Wardha along with original caste certificate in revenue case in favour of Mamta Ramkrushna Khobragade and Executive Magistrate Warud along with the caste certificate in revenue case No.MRC 81/Pusla / 187/ 92-93 in favour of Sunil Namdevrao Chimote and S.D.O. Morshi (along with original caste certificate in revenue case No.21659/2009-10 in favour of Harshal Suresh Dhore.

4. As per the contention of the State that the non-applicants are facing charge under Section 294 read with Sections 34, 506 read with 34 of Indian Penal Code and under Section 3(1) (x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complainant had filed a complaint and her statement was recorded wherein she has stated that she

belongs to Mahar Caste and accused Nos.1 and 2 belongs to Koshti and accused Nos.3 and 4 belongs from Mali that the material ingredients of her complaint as well as statement of the complainant.

5. It is submitted by the learned APP that as far as caste certificate of the complainant is concerned, which is a part of charge-sheet. Only prosecution has to prove the same by bringing original caste certificate on record and by examining the relevant witnesses. It is also duty of the prosecution to establish the offences punishable under the provisions of the Prevention of Atrocities Act that accused therein are not belonged to the Scheduled Caste and Scheduled Tribe. In view of that and for the just decision of the case the evidence of these witnesses is required and in view of that, the State has filed application before the Sessions Court which came to be rejected. Learned APP also invited my attention towards the order passed by District Judge-1 and Additional Sessions Judge Warud below Exh.105 in Spe.Case No.79/2023 wherein it is observed by the Sessions Judge that it is not the defence of the accused that Sunil Chimote is either the member of Scheduled Caste and Scheduled Tribe. It has come to

cross-examination of PW-3 that she belongs to Mahar Caste. The accused Ganesh Khadge and Nitin Khadge are belonging to Koshti Caste and accused Sunil Chimote and Suresh Dhore are belonging to Mali caste. It has also come in her evidence that she as well as the accused are residing in the same village and she has knowledge about the caste of the accused. Thus, learned APP submitted that in view of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act the basic ingredients to constitute offence that is to be shown that accused persons are not the member of the Scheduled Caste and Scheduled Tribe and they have intentionally insulted or intimidated a member of Scheduled Caste and Scheduled Tribe and that they have done so, with intent to humiliate to such person. In view of that, the burden is on the prosecution to establish that the complainant belongs to the Scheduled Castes and Scheduled Tribe; whereas, the accused are not the member of the scheduled castes and scheduled tribes. However, the learned Sessions Judge has not considered the same and rejected the application.

6. Being aggrieved by the same the present revision application is filed by the State.

7. Per contra the learned counsel for the non-applicants submitted that permitting the State to examine these witnesses could be filling up the lacuna which is not permissible in view of Section 311 of the Cr.PC and therefore, application deserves to be rejected. He further submitted that the earlier order passed by the Sessions Court wherein similar types of the application was rejected by the Sessions Court and now again the similar application is filed. Therefore, the application deserves to be rejected. In support of his contention he placed reliance on the decision of Hon'ble Apex Court in the case of ***Sethuraman vs. Rajamanickam*** reported in ***(2009) 5 SCC 153***. Learned counsel for the non-applicants submitted that revision is not maintainable as is interlocutory order.

8. On the perusal of the entire investigation papers and the application filed by the State, the State is seeking permission to issue the summons to examine the relevant witnesses i.e. SDO, Wardha, in connection with the original caste certificate of the

complainant whereas the Executive Magistrate Warud and SDO Morshi regarding the original caste certificates of Sunil Namdeorao Chimote and Harshal Suresh Dhore. The present application is preferred by the State under Section 311 of Cr.P.C. In view of Section 311 of Cr.P.C. any Court may, at any stage of any inquiry, trial or other proceeding under this Court, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case. Thus, material consideration under Section 311 of Cr.P.C. is that necessity of the summoning the witness requires for just decision of the case. Admittedly, Section 311 of Cr.P.C. cannot be used for filling up the lacuna. However, Court has to consider whether the evidence of these witnesses is essential for the just decision of the case. Admittedly the accused are facing charge of the offence punishable under Sections 294, 506 read with 34 of the IPC and under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. To establish the said offence the burden is on the prosecution to establish that the complainant

belongs to the Scheduled Castes and Scheduled Tribes and with intention to humiliate her she was abused within the public view and humiliated within the public view and to establish these facts the prosecution has to first establish that she belongs to the Scheduled Caste. At the same time, burden is on the prosecution to establish that the accused are not from the Scheduled Castes and Scheduled Tribes and therefore, the evidence of these witnesses is essential for the just decision of the case. In view of that order passed by the District Judge- 1 and Additional Sessions Judge Warud is erroneous and liable to be quashed and set aside.

9. The submission of learned counsel for the non-applicants that it is an interlocutory order it is not sustainable as it is affecting the rights of the parties. The order which affecting the rights of the parties is not an interlocutory order and therefore, the revision is maintainable against such order.

10. In view of that I proceed to pass following order:-

ORDER

(i) Criminal Revision Application No.101/2024 is allowed.

(ii) The application of the State seeking issuance of summons to the witnesses mentioned in the application Exh.105 is hereby allowed.

(iii) The summons be issued to SDO Wardha to come along with the caste certificate which was issued in favour of Mamta Ramkrushna Khobragade on 20.02.2025 as well as Executive Magistrate Warud to come along with caste certificate of Sunil Namdeorao Chimote and SDO Morshi along with the caste certificate of Harshal Suresh Dhore.

(iv) The prosecution shall examine these witnesses without delay and the Sessions Judge shall give opportunity to the accused to cross-examine these witnesses.

11. With these observations the revision application stands disposed of.

(URMILA JOSHI PHALKE, J.)