

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.469 OF 2022**

- 1) Narayan S/o Ganpatrao Ghuge,  
Age-34 years, Occu:Agriculture,
- 2) Kailas S/o Ganpatrao Ghuge,  
Age-32 years, Occu:Agriculture,

Both above R/o-Dabha, Tq-Jintur,  
Dist-Parbhani

**...APPELLANTS**

**VERSUS**

- 1) The State of Maharashtra,  
Through the Police Station,  
Jintur, Tq-Jintur, Dist-Parbhani,
- 2) Machhindranath S/o Kisan Khilare,  
Age-47 years, Occu:Agriculture,  
R/o-Dhaba, Tq-Jintur,  
Dist-Parbhani.

**...RESPONDENTS**

...  
Mr.Amol N. Patale Advocate h/f. Mr. Aashish T. Jadhavar  
Advocate for Appellants.  
Mr.B.V. Virdhe, A.P.P. for Respondent No.1.  
Mr.S.S. Jangada Advocate for Respondent No.2.  
...

**CORAM: SMT. VIBHA KANKANWADI, J.**

**DATE : 22<sup>nd</sup> JULY, 2022**

**ORAL JUDGMENT :**

1. Learned Advocate Mr. Jangada submits that he has instructions to appear for respondent No.2. He may file Vakalatnama with the office.

2. Heard learned Advocate Mr. Patale holding for learned Advocate Mr.Jadhavar for the appellants, learned APP Mr. Virdhe for respondent No.1 – State and learned Advocate Mr. Jangada for respondent No.2.

3. Learned Advocate Mr. Patale holding for learned Advocate Mr. Jadhavar for the appellants submits that the appellants have been falsely implicated and there is boundary dispute between the appellants and the informant and taking disadvantage of the caste, the informant has lodged the report. This Court has protected the appellants and therefore, that protection deserves to be confirmed by allowing the appeal.

4. Learned APP as well as learned Advocate appearing for respondent No.2 strongly opposes the appeal and they support the reasons given by the learned Special Judge / learned Sessions Judge, Parbhani in order dated 6<sup>th</sup> June 2022 in Criminal M.A. (Bail) No.491 of 2022. They also submit that the

incident had taken place near the common boundary and the facts of the case may also give rise to offence under Section 3(1) (g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act") when there is interference by the appellants in the enjoyment of the land by the informant. It was then stated that the incident had taken place in public view and it was witnessed by Mr. Gajanan Tulshiram Dumne. His statement has been recorded. So also there is supporting provisional injury certificate stating that the informant has sustained two simple injuries, which shows that the incident had taken place and therefore when the facts of the case give rise to the offences under the Atrocities Act, then the application under Section 438 of the Code of Criminal Procedure is barred in view of Section 18 of the Atrocities Act.

5. The contents of the First Information Report (for short "FIR") would disclose that the informant is the owner of 2 and ½ acres of land from Gat No.80 in village Dabha. The appellants have their land adjacent to the land of the informant. The informant had grievance against the appellants on the count that the cattle belonging to the appellants do come in the field of the informant causing damage to his crops. He had several times requested the appellants that they should not let their cattle

roam around, but according to the informant, they used to abuse him. He states that on 19<sup>th</sup> May 2022 at about 11.00 a.m. informant was digging earth from well and placing it on the boundary near his land with the help of J.C.B. At that time both the appellants went there and asked the informant that he should not put earth on the boundary of the land and then abused the informant in the name of caste, and assaulted him by kicks and fists and after giving threat to him they left. According to the informant, the incident has been witnessed by Mr. Gajanan Tulshiram Dumne.

6. After lodging of the FIR, the informant has submitted his caste certificate before the Investigating Officer. The Investigating Officer has executed the spot panchnama, and the perusal of the panchnama would show that informant was present at the spot. It is necessary to consider the contents of the spot panchnama in view of the fact that, whether the case has been made out that whatever incident had taken place, covers the ingredients of the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, at present. The spot panchnama states that at the spot of incident which was shown by the informant there were stones, *murum* (powdered rock) etc. of the well which was dug out with the help of J.C.B. and it is stated

that the same were placed on the common boundary / bandh. It is stated that said bandh runs east-west and those stones and *murum* were placed at a distance about 60 ft. towards western side of bandh of the land. The said spot, which was shown by the informant was stated to be the spot where the accused persons had assaulted and abused the informant. If we consider it along with the map, rough sketch, in column No.9 of the spot panchnama, it can be seen that it is within the field of the informant, yet the prosecution, at this stage, has not come with the case that the appellants have committed offence under Section 452 of the Indian Penal Code. Further, the spot panchnama shows that the spot which was shown by the informant was at a distance of 5 ft. towards north from the bandh. The said bandh is stated to be common between the land of the informant and the accused. It is then also stated that the said stones and *murum* were placed on the side of the informant. Interestingly, neither the contents of the spot panchnama nor map shows that there is any well in the field of the informant. But the well of which the construction was going on, was in the field of Mr. Gajanan Dumne, the adjacent land owner towards west. The distance between the spot and the boundary of the lands between informant and said Mr. Dumne

has not been stated. It is not the case of the prosecution, at this stage, that Mr. Gajanan Dumne had come to the field of the informant to witness the dispute.

7. Section 3(1)(r) and Section 3(1)(s) of the Atrocities Act reads thus:-

“(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

“(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view”

“(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.”

8. In both the above Sections, the word used is “within public view” and the word “any place” is also used. Therefore, at the most we can say that the field of the informant was “any place” within the meaning of these Sections. But in order to prove the offence, the prosecution should show that the incident had taken place “within public view”. Here “within public view” cannot be restricted to only watching but it will have to be considered that it also includes hearing. The distances, therefore, ought to have been correctly stated in the spot panchnama and could have prima facie shown that even if Mr. Gajanan Dumne would have

been in his field, he could have not only seen but heard what the appellants had allegedly stated to the informant. Statement of Mr. Gajajan Dumne would disclose that he was present at the place of construction of his new well. In fact he had brought J.C.B. for the construction of that well. He says that there is common bandh between his land and the land of the informant. Informant had requested that *murum* and stones excavated while digging the well be placed and a curve like line be made on that bandh. Accordingly, J.C.B driver Mr. Rajeshkumar had put *murum* as well as stones on the common bandh for a distance of about 60 ft. What Mr. Gajanan Dumne is referring to the bandh, is the common bandh between his land and the land of the informant and not the common bandh between the land of the informant and the appellants. If this is to be taken, why the appellants could object. Said J.C.B. driver Mr. Rajeshkumar in his statement under Section 164 of the Code of Criminal Procedure states that he put the *murum* and stones excavated from the well of Mr. Gajanan Dumne on the common bandh and at that time the farmers whose fields are at a lower level, objected to the fact that the stones had gone to their fields and there was a dispute. But then he specifically states that no dispute took place in his presence nor any assault had taken place. Even the J.C.B.

owner Mr. Gangadhar Aghav, who claims that he was present at the said place, had not witnessed any dispute or assault. Therefore, taking into consideration whatever the investigation has taken place up-till now, except Mr. Gajanan Dumne there is no corroboration to what the informant is saying. Rather, other two witnesses, who were present at the spot, are not saying that they have witnessed the appellants giving abuses in the name of caste to the informant.

9. For considering application under Section 438 of the Code of Criminal Procedure, the investigation that has been carried out till the date the Court takes up the matter for consideration should be considered and on the basis of papers of investigation, it will have to be then arrived at, as to whether any *prima facie* offence under the Atrocities Act is made out against the appellants or not. Learned Sessions Judge / Special Judge under the Atrocities Act, Parbhani has failed to take into consideration the investigation papers. In view of ***Prathvi Raj Chauhan vs. Union of India and others, [(2020) 4 SCC 727]***, the Special Court should come to a conclusion, as to whether *prima facie* case has been made out under the Atrocities Act against the appellants or not. If no *prima facie* case is made out, then as is held by the Apex Court in ***Prathvi Raj Chauhan*** (supra), there

is no bar under Section 18 of the Atrocities Act for entertaining an application under Section 438 of the Code of Criminal Procedure.

10. As aforesaid, taking into consideration the spot that has been shown by the informant, it is doubtful as to whether it can be considered to be the place which was "within public view" and further, in view of the fact that two other witnesses, whose presence is indirectly indicated by the informant as well as Mr. Gajanan Dumne, say that no such incident had taken place in their presence, it will have to be held that *prima facie* case attracting the offences under the Atrocities Act is not made out and therefore there was no bar under Section 18 of the Atrocities Act for the bail application that was filed by the appellants before the learned Special Judge. Since the learned Special Judge has failed to consider the same and failed to use his powers, the appeal deserves to be allowed. The interim protection granted by this Court on 6<sup>th</sup> July 2022 deserves to be confirmed. Hence the following order:

### **ORDER**

(I) The Appeal stands allowed.

(II) The interim protection granted to the appellants by this Court by order dated 6<sup>th</sup> July 2022 stands confirmed. It is clarified that in the event of arrest of appellant No.1 – Narayan S/o Ganpatrao Ghuge and appellant No.2 – Kailas S/o Ganpatrao Ghuge, in connection with Crime No.181 of 2022, registered with Jintur Police Station, Taluka-Jintur, District-Parbhani, for the offence punishable under Sections 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, they be released on bail on PR and SB of Rs.15,000/- each, if already not released.

(III) The appellants shall not indulge in any criminal activity nor they shall tamper with the evidence of the prosecution in any manner.

(IV) The appellants shall remain present before the Investigating Officer as and when called and co-operate with the investigation.

**[ SMT. VIBHA KANKANWADI, J. ]**

asb/JULY22