

2024:BHC-NAG:13024



Judgment

321 apeal566.21

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

CRIMINAL APPEAL NO.566 OF 2021

Vishal s/o Badrinath Wadekar,
aged about 29 years, occupation:
Software Engineer, r/o besides
Kale Chakki, district Betul,
Madhya Pradesh.

..... **Appellant.**

:: VERSUS ::

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

2. Priyamwada d/o Anupkumar
Choudhary, aged about 28 years.

3. Anupkumar s/o Krushnakumar
Choudhary, aged about 59 years,
respondent Nos.2 & 3, r/o 103,
Civil Lines, Ganesh Ward, Behind
Government Girls High School,
district Betul, Madhya Pradesh.

..... **Respondents.**

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Shri S.Sonwane, Counsel for the Appellant/Complainant.
Shri Nitin Autkar, Additional Public Prosecutor for
Respondent No.1/State.
Shri R.K.Tiwari, Counsel for Respondent Nos.2 & 3/Accused.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 26/11/2024
PRONOUNCED ON : 29/11/2024

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JUDGMENT

1. The present appeal is preferred under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act) challenging order dated 5.8.2021 passed by learned Special Judge under the Atrocities Act whereby respondent Nos.2 and 3 are discharged.

2. Heard learned counsel Shri S.Sonwane for the appellant (complainant), learned Additional Public Prosecutor Shri Nitin Autkar for respondent No.1/State, and learned counsel Shri R.K.Tiwari for respondent Nos.2 and 3 (accused persons).

3. **Admit.**

4. Respondent Nos.1 and 2 are arraigned as accused in connection with Crime No.477/2019 for offences under Section 3(1)(u) and 3(1)(v) of the Atrocities Act on the basis of a report lodged by the complainant. As per allegations, he got acquaintance with accused No.1, who at the relevant time was taking education. Love affair

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was developed between them and they performed marriage in Koradi Temple. However, they kept the said marriage secret and not disclosed to their family members. It is alleged that when accused No.1 came to know that the complainant belongs “Chambhar Community”, she suddenly changed her mind and denied to continue with relationship with the complainant. There were exchange of messages between the complainant and accused No.1 on WhatsApp and and accused No.1 expressed her views over Caste Based Reservation System. It is alleged that accused No.1 humiliated and insulted the complainant by written words and promoted feelings of enmity, hatred, and ill-will against members of Scheduled Castes and the Scheduled Tribes. On the basis of the said report, police registered the crime against accused No.1 and her father accused No.2.

5. After investigation, the Investigating Officer filed chargesheet. After filing of the chargesheet, accused persons preferred an application contending that even

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taking into consideration allegation at its face value, the same do not constitute any offences or make out a case against them under section 3(1)(u) and 3(1)(v) of the Atrocities Act and prayed for their discharge.

6. The application is strongly opposed by the State as well as the complainant. After hearing both sides and perusing investigation papers, learned Judge below held that literature published nowhere discloses that there was any attempts to promote any enmity or hatred or ill-will between two communities and to humiliate Scheduled Castes and the Scheduled Tribes and as such learned Judge below discharged accused persons.

7. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the complainant on contention that messages exchanged by accused No.1 sufficiently show that she attempted to create enmity and hatred between communities. Thus, *prima facie* case is made out as the literature was published by her. As far as framing of the charge is concerned, there is a

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prima facie material and, therefore, the order discharging accused persons deserves to be quashed and set aside.

8. Heard learned counsel for parties and perused material on record.

9. Learned counsel for the complainant submitted that WhatsApp messages forwarded by accused No.1 itself are sufficient to show that she committed the offence by publishing material by way of forwarding messages and creating hatred. As far as framing of charge is concerned, evidence collected is not to be evaluated, but on taking it at its face value, if necessary ingredients are made out to constitute offence, charge requires to be framed. Learned Judge below erroneously held that on its face value, no offence is disclosed and discharged accused persons.

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

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(1) State by Karnataka Lokayukta, Police Station, Bengaluru vs. M.R.Hiremath, reported in (2019)7 SCC 515;

(2) State of Tamil Nadu, by Inspector or Police Vigilance and Anti Corruption vs. N.Suresh Rajan and ors, reported in (2014)11 SCC 709, and

(3) Chitresh Kumar Chopra vs. State (Govt.of NCT of Delhi), reported in AIR 2010 SC 1446.

11. Learned Additional Public Prosecutor for the State also supported the said contentions and prayed for setting aside the order impugned in the appeal.

12. *Per contra*, learned counsel for accused persons supported the order impugned and submitted that the criminal proceeding was set into motion by the complainant with an ulterior motive due to personal grudge against accused No.1. There is a delay of five months in lodging of the report. Messages sent by accused No.1 merely show sentiments or views against Reservation System and no offensive language much less in public view was used and, therefore, offence 3(i) (u) of the Atrocities Act is not made out since there was

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no use of words which in any manner promotes feeling of enmity or hatred or ill-will against members of the Scheduled Caste and the Scheduled Tribes. Messages were sent only to the complainant individually and, therefore, the appeal is devoid of merits and liable to be dismissed.

13. Having heard and perused investigation papers, it reveals that there was love affair between the complainant and accused No.1. They allegedly perform secret marriage and subsequently, accused No.1 came to know that the complainant belongs to the Scheduled Caste i.e. "Chambhar Community" and, therefore, she left company of the complainant. It is alleged by the complainant that by sending message, accused No.1 created hatred as to the Scheduled Caste Community is concerned. Perusal of WhatsApp messages shows that the said messages were forwarded to accused No.1 which she has forwarded to the complainant. Even perusal of the said messages shows that messages express opinion as to the Caste Reservation System.

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Other messages, only reference of Scheduled Caste is mentioned. Even none of messages talks about any act on the part of accused No.2 showing that there is an attempt to create any hatred or enmity or ill-will regarding the Scheduled Caste. It is alleged that accused No.1 by words promoted or attempted to promote feeling of enmity against members of the Scheduled Castes and the Scheduled Tribes.

14. Section 3(1)(u) of the Atrocities Act reads as under:

“3(1)(u) - by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes.”

15. Thus, basic ingredients for constituting an offence under Section 3(1)(u) of the Atrocities Act are; (1) accused should not be member of the Scheduled Caste or the Scheduled Tribe and (2) accused by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings

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of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes.

16. On going through the entire material, it reveals that messages only show feelings expressed as to Caste Reservation System. Such messages nowhere show that there was any attempt to promote any enmity or hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes. At the most, it can be said that her target was just the complainant only. However, accused No.1 did not write any word which would create or promote any ill-will or enmity or hatred against members of the Scheduled Castes and the Scheduled Tribes.

17. The Atrocities Act has been enacted to improve socio-economic condition of Scheduled Castes and the Scheduled Tribes and to protect them from various indignities, humiliation, and harassment. The Legislation, thus, intends to punish acts committed against vulnerable sections of our society for reason that they belong to particular community.

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18. While considering, whether there is a *prima facie* case exists or not, the court has to conduct a preliminary enquiry to determine whether narration of facts in the First Information Report discloses essential ingredients requiring to constitute an offence under the Atrocities Act.

19. Thus, the court has to apply its judicial mind to determine, whether allegations levelled in the complaint, on a plain reading, satisfy ingredients constituting the alleged offence?

20. In the present case, after conducting a preliminary enquiry, learned Judge below came to conclusion that ingredients are not established.

21. It is well settled that at the stage of framing of charges, when the Magistrate or the Judge to consider the above question on a general consideration on material placed before him/her by the Investigation Officer, veracity and effect of evidence which the prosecutor proposes to adduce are not to be

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meticulously judged. At the stage of framing of charge or while considering discharge application, it is to be seen, whether there is a sufficient ground for proceeding against accused. "Ground" in the context, is not a ground for conviction, but a ground for putting accused on trial. It is in the trial, guilt or innocence of accused will be determined and not at the time of framing of charge and, therefore, elaborate enquiry in sifting and weighing materials is not required. It is also not necessary to delve deep into various aspects. All that the court has to consider is, whether evidentiary material, if generally accepted, would reasonably connect the accuse with the crime or not.

22. Thus, a duty is cast on the judge to apply his/her mind to the material on record and if the court does not find sufficient material for proceeding against the accused, the accused can be discharged. On the other hand, if *prima case* is made out, the charge can be framed.

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23. Learned counsel for the complainant placed reliance on the decision in the case of **State by Karnataka Lokayukta, Police Station, Bengaluru vs. M.R.Hiremath** *supra*, wherein the Hon'ble Apex Court laid down principle that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether facts emerging from material, taken on its face value, disclose existence of ingredients necessary to constitute the offence or not.

24. In another decision in the case of **State of Tamil Nadu, by Inspector or Police Vigilance and Anti Corruption vs. N.Suresh Rajan and ors** *supra*, also it is held that no mini trial is contemplated at stage of considering discharge application, but court to proceed with assumption that materials brought on record by the prosecution are true. Only probative value of materials has to be gone into to see if there is a *prima facie* case

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for proceeding against accused. The court is not expected to go deep into the matter and hold that materials would not warrant conviction.

25. In the light of the above settled principles, if the order impugned is perused, it is clear that expectation from the court, while framing of the charge is to consider charge against accused on a general consideration of material placed before it by the investigating agency, which was considered by learned Judge below and learned Judge below rightly came to conclusion that to constitute an offence under Section 3(1)(u) of the Atrocities Act, there is nothing even *prima facie* to indicate that accused No.1 attempted to promote feeling of enmity or hatred or ill-will against members of the Scheduled Castes and the Scheduled Tribes. It is just an expression by her as to the Caste Reservation System. The offence under Section 3(1)(u) of the Atrocities Act will come into play only when any person is trying to promote ill-will or or enmity or hatred against members of the Scheduled Castes and the Scheduled Tribes.

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26. For reasons stated above, the appeal is devoid of merits and deserves to be dismissed and the same is **dismissed.**

Appeal stands **disposed of.**

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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