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**(2007) 04 BOM CK 0143**

**In the Bombay High Court**

**Case No : Criminal Application No. 483 of 2007**

Kamlabai Shankar Chopde and another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision : 23-04-2007**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 438, 482  
Penal Code, 1860 (IPC) — Section 323, 34, 354, 506, 509

**Citation : (2007) 5 MhLj 430**

**Hon'ble Judges : C.L. Pangarkar, J**

**Bench : Single Bench**

**Advocate : M.A. Bapat, for the Appellant; S.B. Ahirkar, APP, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

C.L. Pangarkar, J.—Heard finally with the consent of parties.

2. This is an application u/s 482 of Criminal Procedure Code filed by one Kamlabai and Shankar. Kamlabai is said to be a President of Sant Bhakre Maharaj Ashram Shala Palora district Wardha. Applicant No. 2 Shankar is her husband and is Secretary of the Society known as Shri Sant Bhakre Maharaj Ashram Shala Palora. It is a residential school. Many boys and girls are taking education in the said school and they reside in the hostel run by the said Institution. There are many teachers in the school. This Institution has also engaged cooks for cooking food for the inmates of the hostel. One Sanjay Gadling is also working as a Assistant Teacher in the school. It appears that relations between the present applicants and Sanjay are strained. On 27-12-2006 it is alleged that Shankar Saduji Chopade applicant No. 2 abused the Assistant Teacher Shri Gadling saying that, You Mahardya, you are untouchable go away. It is alleged that the applicant No. 2 ill treats the members of the staff working in the Institution. All of them, therefore, jointly lodged a report with the police on 3-2-2007, although the incident is alleged to have taken place on 27-12-2006. On the basis of that report which was lodged at Arvi police station a crime was registered by Arvi

police station and was forwarded to Karanja police station for further action. On the basis of the said report an offence u/s 509 read with section 34, Indian Penal Code only came to be registered by police as is apparent from the original F.I.R. placed before me. An affidavit filed on behalf of the prosecution shows that after the investigation commenced in the said crime, offences under sections 354, 509, 323 and 506 read with section 34 of Indian Penal Code and section 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also came to be registered. Since these offences were registered the applicants now apprehend arrest and pray for anticipatory bail and for quashing of the F.I.R.

3. Learned counsel for the applicant contended that the F.I.R. does not at all disclose either the caste of the applicants or complainants. After having gone through the entire contents of the F.I.R. it is clear that the caste of the present accused-applicants as well as of the complainants is not mentioned in it. It is for this reason it appears that initially offence u/s 3 of the Atrocities Act did come to be registered. Learned counsel for the State contended before me that this offence u/s 354 of Indian Penal Code and the offence u/s 3 of the Atrocities Act came to be registered after the investigation commenced. On the basis of statements of Santosh Nakhale and Sanjay Gadling an offence under Atrocities Act came to be registered. I have gone through those statements in the case diary produced before me. The statement of Santosh is at page 42 while that of Sanjay Gadling is at aged 43. After having gone through both these statements it is apparent that even in these statements neither Santosh nor Sanjay gives his caste or that of the accused persons. What the statement of Sanjay discloses is that some abuses in the name of caste were given. It has been held by this Court in the case reported in *Manohar Kulkarni and Another Vs. State of Maharashtra and Others*, , that at the time of registration of crime under Atrocities Act, it is necessary that the caste of the complainants as well as accused must be shown in the F.I.R. and if that is not done the F.I.R. is liable to be quashed. As pointed out earlier the F.I.R. does not disclose the caste of the complainants and that of the accused nor do the statements of Santosh and Sanjay disclose the caste of the complainants and that of the accused. Obviously registration of an offence u/s 3 of the Atrocities Act was improper and the action of the investigating agency in registering the offence u/s 3 of the Prevention of Atrocities Act, therefore, needs to be quashed. F.I.R. to that extent is certainly liable to be quashed and it is so quashed.

4. So far as offence under sections 354, 323 and 506 are concerned, it may be mentioned that after having gone through the F.I. R, as well as the case diary I find that there is enough evidence against applicant No. 2. It is not that he is being falsely implicated in the matter, but it may be mentioned here that so far as Kamlabai is concerned, there is no question of offence being registered u/s 354, Indian Penal Code she being a woman. Even otherwise none of the statements placed before me show any complicity of applicant No. 1. She is shown as accused simply because she happens to be a President. However, so far as applicant No. 2 is concerned it is not the case of no case at all. Nature of the

allegations is very serious. In the circumstances, I find that so far as applicant No. 2 is concerned, he is not entitled to be released on anticipatory bail. Hence the order:

Applicant No. 1 Kamlabai in the event of arrest, be released on bail on her furnishing personal bond in the sum of Rs. 5000/- with one surety in the like amount in Crime No. 3009/07 of Police Station Karanja district Wardha.

Application u/s 438, Criminal Procedure Code so far as applicant No. 2 is concerned is rejected.

Investigating Agency is at liberty to carry out further investigation in the matter except in respect of offence u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Order accordingly.