

Shakeel Khan Vs State Of MP And Anr

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: March 12, 2021

Acts Referred: Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 " Section 3(2)(v), 3(1)(w)(ii), 3(2)(va), 14A(2), 15A

Code Of Criminal Procedure, 1973 " Section 439

Indian Penal Code, 1860 " Section 376, 506

Hon'ble Judges: G.S. Ahluwalia, J

Bench: Single Bench

Advocate: Hemant Singh Rana, GK Agrawal

Final Decision: Dismissed

Judgement

G.S. Ahluwalia, J

It is submitted by the Counsel for the State that the complainant has been informed about the pendency of this appeal, as required under Section 15-A

of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Case Diary is available.

This first appeal has been filed under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the order

dated 05/02/2021 passed by Special Judge (Atrocities), Shivpuri rejecting the application filed by the appellant under Section 439 of CrPC.

The appellant has been arrested on 02/02/2021 in connection with Crime No.18/2021 registered at Police Station Phori, District Shivpuri for offence

under Sections 376, 506 of IPC and under Sections 3(2)(v), 3(1)(w)(ii), 3(2)(v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act.

The first Criminal Appeal of the appellant has already been dismissed on merits by order dated 22/02/2021 passed in Criminal Appeal No. 941/2021.

It is submitted by the Counsel for the appellant that the police, after completing investigation, has filed the charge sheet.

So far as filing of charge sheet is concerned, the same cannot be treated as change in the circumstance.

The Supreme Court in the case of Virupakashappa Gouda and Another vs. State of Karnataka and Another, reported in (2017) 5 SCC 406 has held as

under:-

"12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it

amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution.

On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the

charge-sheet for trial of the accused persons. As is further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the

appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail

application was filed before the Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled

to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge. He has been swayed by the observations made in

Siddharam Satlingappa Mhetre vs. State of Maharashtra (2011) 1 SCC 694, especially in paragraph 86, the relevant part of which reads thus:-(SCC p.

729)

“The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering

to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.”

Thus, it is clear that filing of charge sheet indicates that the police has formed a prima facie opinion against the accused.

Accordingly, no change in circumstance could be pointed out by the counsel for the appellant. The Criminal Appeal fails and is accordingly dismissed.

However, a liberty is granted to the appellant to revive the prayer after examination of the prosecutrix.