

reached at village-Noni and were crossing the house of Suresh Sharma and Dilip Kumar, at that very moment, Suresh Sharma forced him to stop his motorcycle and abused in the background of caste identity addressed to his wife. He also objected over transportation of chip-stone. Even on his protest, he continued with abusing. When resisted, took out spear from his house and attempted upon him. At that very moment, Dilip Kumar caught hold collar of Panchayat Sachiv and tried to assault, but due to timely arrival of the villagers, they were rescued.

4. It has been submitted on behalf of appellant that no case could have been registered under S.C./S.T. (Prevention of Atrocities) Act, on account of the fact that neither informant was Mukhiya nor informant was abused on that very score. Mukhiya was not present and so, the abusive language, so used relating to her, would not be a ground for institution of a case under S.C./S.T. (Prevention of Atrocities) Act. Moreover, it has been submitted that as per finding recorded by this Court in *Lalit Kumar and others v. the State of Bihar reported in 2007(1) P.L.J.R. 432* as well as *Mahesh Prasad Singh and another vs. the State of Bihar and another reported in 2005 (3) P.L.J.R. 744*, wherein it has been held that the allegation by way of calling his caste name in a public street would not per se constitute the offence permissible



under S.C./S.T. (Prevention of Atrocities) Act, and on account thereof, the barriers so prescribed in terms of Section 18 of the Act would not lie.

5. On the other hand, learned Special Public Prosecutor has resisted submission having been made on behalf of learned counsel for the appellants and submitted that now the controversy no more remains under cloud, as a result of which, instant appeal is found non-maintainable.

6. After authoritative pronouncement having been made by the Hon'ble Apex Court in *Vilas Pandurang Pawar and another vs. State of Maharashtra and others reported in A.I.R. 2012 SC 3316*, the matter has finally been settled at rest whereunder it has been held that basically whenever a case is instituted under the S.C./S.T. (Prevention of Atrocities) Act, on account thereof, in terms of Section 18 of the Act, the anticipatory bail would not lie. However, some sort of relaxation has been allowed during consideration of prayer whereunder, the Court should gather a prima facie case on perusal of the fard-bayan/ written report/ complaint. Putting reliance thereupon, the Division Bench in *Bisheshwar Mishra and another vs. State of Bihar reported in 2016(4) P.L.J.R. 1058 (D.B.)*, has held:-

“27. In view of specific embargo of [Section 18](#) of the



Act and the binding precedents of the Supreme Court noticed above, we hold that pre-arrest bail, under [Section 438](#) of the Code, is not available to persons committing offences under the Act. We further hold that [Section 18](#) of the Act totally bars a court from either making a judicial scrutiny of the case or granting pre-arrest bail to the accused of committing offence under the provisions of the Act. However, from the law laid down by the Supreme Court in Vilas Pandurang Pawar (supra), it becomes clear that notwithstanding the embargo created by [Section 18](#) of the Act against grant of pre-arrest bail, a duty is cast upon the court, hearing an application under [Section 438](#) of the Code, to determine, on the basis of the statements, made in the Complaint/First Information Report, if the ingredients of any offence, under the Act, are made out or not. If the ingredients of the offence are attracted against a person seeking pre-arrest bail, the embargo of [Section 18](#) of the Act would, immediately, come into play against such person; but merely because a criminal case is instituted against a person under the Act without there being any allegation against him of having committed an offence under the Act, the Court can very well entertain an application under [Section 438](#) of the Code and under such circumstance, the embargo, created under [Section](#)



18 of the Act, would not come into play inasmuch as the legislative intent is to exclude the power of the Court to grant pre-arrest bail to a person apprehending arrest, who is alleged to have committed an offence under the Act and not a person, whose name finds place in the column of accused either in Complaint or in the First Information Report without there being any accusation against him of having committed an offence under the Act.

28. We reiterate that while considering the application under Section 438 of the Code, it is not open to the Court to enter into roving inquiry of the veracity of allegations levelled under the Act. It can only look to the First Information Report or the Complaint just in order to prima facie determine whether the ingredients of any offence under the Act at all can be said to have been attracted against the person seeking pre- arrest bail.”

7. After the aforesaid authoritative pronouncement, it has become abundantly clear that though prayer for anticipatory bail would be entertainable, but for the said purpose, the Court is required to see a prima facie case that too, without making roving inquiry, perceiving from the written report/ fard-bayan/ complaint and if so, the prayer would be barred under Section 18 of the Act.



8. Now, coming to the allegation part, it is true that Mukhiya was not present, but she was abused in presence of her husband on account of being a Member of Scheduled Caste and so, by such action, denuded a Member of Scheduled Caste and that being so, certainly there would be application of S.C./S.T. (Prevention of Atrocities) Act. In ***Shakuntla Devi vs. Baljinder Singh reported in 2014(15) SCC 521***, it has been held:-

*“3. We find that [Section 18](#) of the Scheduled Castes and [Scheduled Tribes \(Prevention of Atrocities\) Act, 1984](#) provides that nothing in [Section 438](#) of the Criminal Procedure Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. This Court has also held in *Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra & Ors.*, reported in 2012 (8) SCALE, 577 that [Section 18](#) of the Act creates a specific bar to the grant of anticipatory bail to a person against whom any offence is registered under the provisions of the aforesaid Act and, therefore no Court shall entertain an application for anticipatory bail unless it, prima facie, finds that an offence under the Act is not made out.*

4. The High Court has not given any finding in the impugned order (Baljinder Singh v. Shakuntla Devi)



that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of [Section 18](#) of the aforesaid Act as well as the aforesaid decision of this Court in Vilas Panduranga Pawar & Anr. case (2012)8 SCC 795. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order (2012)8 SCC 795 of the High Court granting bail to the respondent.”

9. Accordingly, the prayer for anticipatory bail relating to appellant no.1 **Suresh Sharma** is found non-maintainable and on account thereof, instant memo of appeal to his extent is dismissed.

10. So far appellant no.2, Dilip Kumar is concerned, he has got no presence during the aforesaid episode nor any such thing has been alleged against him to attract any of the ingredients of the Act, rather he alleged to have caught hold collar of Panchayat Sachiv regarding whose identity, the written report is found completely silent.

11. That being so, in event of his arrest/ surrender within four weeks from the date of receipt of the instant order, appellant, **Dilip Kumar** is directed to be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two



sureties of the like amount each to the satisfaction of the learned Special Judge, S.C./S.T. Act, Gaya in connection with Tekari P. S. Case No.364 of 2016, in terms of condition so laid down under Section 438(2) Cr.P.C. after setting aside the order impugned to the extent of interest of appellant, Dilip Kumar.

12. Accordingly, instant appeal is allowed relating to appellant no.2, Dilip Kumar.

(Aditya Kumar Trivedi, J)

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