

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 293 of 2017**

1. Rajesh Shrivastav S/o Late Shri Lakhanlal Shrivastav, Aged About 46 Years R/o Village Masturi Thana Masturi, District- Bilaspur Chhattisgarh, Civil & Revenue District- Bilaspur, Chhattisgarh.
2. Rakesh Shrivastav, S/o Late Shri Lakhanlal Shrivastav, Aged About 42 Years R/o Village Masturi Thana Masturi, District- Bilaspur, Chhattisgarh, Civil & Revenue District- Bilaspur, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Masturi, District-Bilaspur, Chhattisgarh.

---- Non-applicant**And****MCRCA No. 298 of 2017**

1. Mahesh Shrivastava S/o Late Shri Lakhanlal Shrivastav Aged About 36 Years R/o Village Masturi Thana Masturi, District- Bilaspur, Chhattisgarh Civil & Revenue District- Bilaspur, Chhattisgarh.
2. Vivek Tripathi S/o Shri Kedarnath Tripathi Aged About 27 Years R/o Village Masturi Thana Masturi, District- Bilaspur Chhattisgarh Civil & Revenue District- Bilaspur, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Masturi, District Bilaspur, Chhattisgarh.

---- Non-applicant

For Applicants:	Mr. Mateen Siddiqui, Advocate
For State:	Mr. Ashish Shukla, Government Advocate and Mr. Arvind Shukla, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****09.05.2017**

1. Apprehending arrest in connection with Crime No.113/2017

registered at Police Station- Masturi, District - Bilaspur, for offence punishable under Sections 294, 506, 323, 34 of the Indian Penal Code and Sections 3(1)(X) of the S.C./S.T. (PA) Act, the Applicants have preferred these Applications for grant of anticipatory bail.

2. Case of the prosecution as per the case diary is that on 19.03.2017 it is said that the present Applicants is said to have finding the complainant, Ex. Sarpanch of the village namely Chamru Sarthi on the public road near a Tea Shop, have surrounded the complainant and started abusing him, threatened and insulted him on his caste. Subsequently, the said complainant – Chamru Sarthi lodged report, on the basis of which the FIR has been lodged and the present Applicants have prosecuted for the offence punishable under Sections 294, 506, 323, 34 of the Indian Penal Code and Sections 3(1)(X) of the S.C./S.T. (PA) Act.
3. Learned Counsel for the Applicants submit that except for the offence under Section 3(1)(X) of the S.C./S.T. (PA) Act all the other offences are bailable offences. He submits that no offence under Section 3(1)(X) of the S.C./S.T. (PA) Act is made out as there is no clear accusation of any caste related terms used by the present Applicants and that the accusation made would not constitute intention to humiliate or intimidate the complainant on his caste. Further, the present complaint has been lodged to counter the two other sets of complaints lodged by the group to which the Applicants belong against the complainant in the present case and the present complaint has been lodged only to counter those cases. He submits that no such incident in fact occurred and it is false and baseless complaint which has been lodged by the complainant. It was further contended that it is a case where complaint in fact is clear abuse of process of law and abuse of justice delivery system.
4. Learned Counsel for the Applicants refers to *Abdul Abbas v. State of*

Chhattisgarh [2006(1) M.P.H.T. 66] and also referred two of the decisions passed by this Court in MCRCa No. 3332 of 2006 and MCRCa No. 444 of 2015 decided on 02.02.2007 and 24.06.2015 respectively.

5. Learned State Counsel however strongly opposing the bail application submits that a plain reading of the complaint and the FIR clearly reflect the active participation made by each of the Applicants herein. He further submits that a plain reading of the contents of the allegation levelled as also the contents of the FIR would reflect that there are sufficient materials by which the offence under Section 3(1)(X) of the S.C./S.T. (PA) Act. is made out. He drew attention of this Court towards averments made by the complainant. A relevant portion for ready reference is reproduced herein :-

".....मै रात्रि 8:30 बजे गौरीशंकर स्वीट्स अवस्थी होटल के पास चाय पीने खड़ा था । उसी समय गांव के राजेश श्रीवास्तव, राकेश श्रीवास्तव, महेश श्रीवास्तव तथा विवेक उर्फ रिन्कू त्रिपाठी चारों आकर चुनाव के समय हुए विवाद को लेकर पूर्व रंजिशवश मुझे व्यक्तिगत रूप से साले घसिया जाति के हो तुम लोगो का काम ढोल, मादर बनाने का है। चमड़ा छिलते है उसी से गुजर चलता था बड़ा नेतागिरी करता है। सरपंच बना था क्या कर लिया कहते मां बहन की गन्दी गालियां....."

6. A plain reading of the aforesaid contents reproduced from the complaint clearly indicates the object and intention of the Applicants while using those terms. What is also to be seen is the fact that where the incident took place was a public road and was near a Tea Shop which also means that there would had been more number of persons present at the place of incident, which would clearly bring the place of incident within the precinct of public place.
7. From the perusal of the record and submissions put forth by the Counsel for the Applicants what clearly also is established is the fact

that the complainant is Ex-Sarpanch of the village as such he is a man of some reputation in the village and he is a public figure at least for the villagers of the village to which he belongs to. If the terms which have been reproduced in the preceding paragraph have been used by the Applicants against a public figure like the complainant herein, it definitely would have adverse impact and is detrimental to the stature and reputation of the complainant.

8. Learned State Counsel also referred to the objection of the Applicants of not being maintainable in view of Section 18 of the S.C./S.T. (PA) Act prescribing there to be specific bar. So far as the objection of maintainability of the case is concerned, the issue is no longer *res-integra* for the reason that there are catena of decisions which have been decided by this Court. That in the given facts of the case where prima facie an offence itself seems to have not taken place, the bar of Section 18 would not come to the aid of the prosecution for opposing the bail application.
9. Now, if we read the above reproduced portion in the preceding paragraph it would clearly reflect the intention of the Applicants while making the said insinuation. It would be relevant to reproduce the provision of 3(1)(X) of the S.C./S.T. (PA) Act for ready reference.

“Section 3(1)(x) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 -

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

10. Thus, in the given factual matrix of the case and the aforesaid statement of the complainant, this Court has no hesitation in reaching to the conclusion that the statements made by the Applicants against the complainant would fall one under Section 3(1)(X) of the S.C./S.T. (PA) Act.

11. So far as the judgments referred by the Counsel for the Applicants the facts of the said case are easily distinguishable. The allegation and submissions made by the complainant against the Applicants herein are entirely different as compared to the facts of the present case and therefore the judgments are easily distinguishable.
12. For the foregoing reasons this Court is of the opinion that in the light of there being strong prima facie allegation and active participation of the Applicants in committing the offence, this Court is of the opinion that a strong case for grant of anticipatory bail has not been made out.
13. Accordingly, both the MCRCAs are dismissed.

Sd/-

(P. Sam Koshy)
JUDGE