

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 649 OF 2017**

Rajendra Prasad Gupta

.....Appellant

versus

1. The State of Maharashtra

2. Tushar Khande

.....Respondents

Mr. Niranjan S. Mundargi, advocate for the appellant.

Mr. A. R. Kapadnis, APP for the State.

Mr. M. A. Ingole, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
SMT.SADHANA JADHAV, JJ.**

DATE : 22nd AUGUST, 2017.

P. C. :

Heard Mr. Mundargi, learned counsel for the appellant, Mr. Kapadnis, learned APP for the State and Mr. Ingole, learned counsel for the respondent No.2.

2. The appellant being aggrieved by an order rejecting his anticipatory bail application by the learned Additional Sessions Judge, Sessions Court, Gr.Mumbai, has approached this Court by filing the aforesaid appeal. The M.R.A.Marg Police Station, Mumbai, at the instance of the respondent No.2, registered FIR against the appellant for the offences punishable under Section 3(1) (p) (q) (r) (s) and (u) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act").

3. The appellant is working as Assistant Commercial Manager (claims), Central Railway and the respondent No.2-complainant as Chief Law Assistant in the Chief Commercial Office. The prosecution case is that the respondent No.2 is appellant's subordinate. The subject FIR, a copy of which is annexed at "Exhibit A", page 11, is registered on the basis of respondent No.2's statement dated 3rd July, 2017. A copy of the said statement is annexed at page 14. We have perused the FIR as well as the said statement.

4. As stated above, the FIR is registered under the provisions of Section 3(1) (p) (q) (r) (s) and (u) of the Atrocities Act. Section 3(1) (p) talks about institution of false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe. The FIR does not reveal any allegations that the appellant has instituted any suit or taken criminal or other legal proceedings against the respondent No.2. Section 3 (1) (p) of the Atrocities Act, therefore, has no application.

So far as the offence under Section 3(1)(q) is concerned, it talks about giving any false or frivolous information to any public

servant and thereby causing such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe. The FIR does not disclose that the appellant has given any false or frivolous information to any of the public servant and thereby caused such public servant to use his lawful power to the injury or annoyance of the respondent No.2-first informant.

So far as the offences under Section 3(1) (r) and (s) are concerned, we find that the FIR does not disclose that the alleged incident occurred in a place within public view.

5. As far as offence under Section 3(1)(u) is concerned, Mr. Mundargi invited our attention to the appellant's reply dated 9th March, 2017 to the respondent No.2's application for sanction under Section 197 of the Code of Criminal Procedure, 1973. In this reply, the appellant has alleged that from 10th July, 2016 to 13th July, 2016, the appellant and respondent No.2 stayed in one room in an hotel at Delhi. This averment is not denied though respondent No.2 has filed a reply. If that be so, there is no question of promoting feelings of enmity, hatred or ill-will against the members of the Scheduled Castes or the Scheduled Tribes.

6. The learned APP tendered the statements of two persons recorded by the investigating officer for our perusal to point out

offence under Section 3(1) (r) and (s) is made out and submitted that insult, intimidation and abuse occurred at a place within public view. We, however, find that the respondent No.2/complainant has not referred the names of these two persons in his FIR or in the application for sanction under Section 197 of the Code of Criminal Procedure, 1973. In these circumstances, the presence of the said witnesses at the place of the incident is doubtful.

7. Mr. Ingole, learned counsel for the respondent No.2, placed reliance on the decisions of the Apex Court in **Vilas Pandurang Pawar and anr. Versus State of Maharashtra and ors. AIR 2012 SCC 3316.** **State of Madhya Pradesh and anr. Versus Ram Kishna Balothia and anr. 1995 CRI.L.J.2076 and Manju Devivi Onkarjit Singh Ahluwalia alias Omkarjeet Singh and ors. AIR 2017 SCC 1583.** We have gone through the same. In the facts of the present case, the ratios of these decisions has no application.

8. We have also perused the letter dated 7th March, 2017 of Mr. S.D.Saxena, DY.CCM (Court) as well as respondent No.2's application for sanction which is dated 8th March, 2017. Perusal of the record makes it clear that the complaint is filed as the appellant did not recommend the name of respondent No.2 for GM Award. In our view, a case for

anticipatory bail is made out. The appeal is, accordingly, disposed off by passing the following order :

a) The appeal is allowed. Accordingly, the impugned order dated 26th July, 2017 passed by the learned Additional Session Judge in Anticipatory Bail Application No.1207 of 2017 is quashed and set-aside.

b) In the event of the appellant's arrest in the subject FIR, he shall be released on bail on execution of a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court.

9. It is made clear that the observations hereinabove are prima facie and the same are made for the purpose of disposal of this appeal and the Trial Court should not be influenced by the same.

(SMT. SADHANA JADHAV, J.)

[RANJIT MORE, J.]