

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 915 OF 2017

Nileshbhai Chhotubhai Solanki and Ant. ..Appellants.

Versus

Mithunbhai K. Baraf & Another. ..Respondents.

Mr. B. D. Joshi for the Appellants.

Mr. S. V. Marwadi i/b Trupti M. Khamkar for Respondent No. 1.

Mrs. P. H. Kantharia for Respondent No. 2.

Coram : RANJIT MORE &
SANDEEP K. SHINDE, JJ.

Date : **December 6, 2017.**

P. C. :

1. Heard Mr. Joshi, learned Counsel for the Appellants, Mr. Marwadi, learned Counsel for Respondent No.1 and Mrs. Kantharia, learned Counsel for Respondent No. 2.

2. This appeal arises out of an order dated 4th November 2017 passed by the learned Sessions Judge at Dadra Nagar Haveli, Silvassa in Criminal Bail Application No. 55 of 2017. By the said order, Appellants' prayer for grant of anticipatory bail has been rejected and therefore the Appellants are before this Court.

3. In respect of the incident dated 27th September 2017, a complaint was filed by Respondent No.1, however FIR was not registered. On 5th October 2017, Appellant no.1 was arrested under section 151 of the Code of Criminal Procedure, 1973. He was released

on bail on 6th October 2017 at about 11.00 p.m.. In respect of the incident which was reported by Respondent No. 1 on 27th September 2017, the subject FIR bearing CR No. 181 of 2017 was registered on 5th October 2017 at about 11.00 pm.. This FIR is registered on the allegation of commission of offence punishable under sections 323, 384, 504 and 506 of the Indian Penal Code, 1860 and sections 3(1)(r) and (s) of the SC & ST (Prevention of Atrocities) Act, 1989

4. Appellant no.1 is the Up-Sarpanch of village Naroli and Respondent No.1 is the Up-Sarpanch of village Kharadpada. M/s. Super Tilesh Company, the business of which is manufacturing of tiles, is also situated in village Kharadpada. It appears that Appellant No. 1, under a contract, was supplying dust powder to this company, Respondent No.1 was also desirous of obtaining contract for supply of dust powder to the said company and therefore approached the manager of the said company, Shri. Acharyaji. It seems that Shri. Acharya permitted him to supply dust powder. On 27th September 2017, Respondent No.1 came in the said company along with a truck loaded with dust powder. The Appellants opposed to Respondent No. 1 supplying dust powder to M/s. Super Tilesh Company. The FIR reveals that appellant No.2 demanded *hafta* of Rs.70,000/- from Respondent No. 1 for getting business of supply of dust powder to M/s

Super Tiles Company. The FIR also reveals that Shri. Acharya told Respondent No.1 to unload the truck. Unloading of the truck was opposed by Appellant no.1. Despite opposition, truck was unloaded. The FIR thereafter proceeds to state that after some time Appellant no.1 came in the company, caught hold of Respondent No. 1, slapped him twice on his face and also abused him in relation to his caste.

5. We have gone through the FIR. The allegations made are about the commission of offence punishable under section 3(1)(r) and (s) of the Atrocities Act. Under these provisions intimidation, insult or abuses must be within the public view. The phrase “within public view” is interpreted by the learned Single Judge of this Court in *Mahesh Sakharam Patole vs. State of Maharashtra [2009 ALL MR(Cri). 1601]*. The learned Single Judge made following observations in paragraph 5 :

“Therefore, while interpreting the expression “in any place within public view”, one will have to hold that occurrence of the incident was viewed by the public. The expression “within public view” will have to be read to mean that the offence under section 3(1)(x) of the Act, should take place in view of the “public”. If no member of the public has either seen the incident or heard the remarks, then even if the place is a “public place” or a place “visible to the public”, it would not attract the ingredients of the offence under section 3(1)(x) of the Act.”

6. The subject FIR does not reveal that anybody apart from Respondent No. 1 and Appellants, was present at the time of incident. Therefore, it cannot be said that the incident has occurred “within the public view”.

7. Mrs. Kantharia as well as Mr. Marwadi, the learned Counsel for the Respondents invited our attention to the 1st respondent's statement recorded by the police on 27th November 2017 as well as statements of one Dhakalbhai Manjibhai Salgar and Jashubhai N. Goanaria in order to show that they were present at the time of incident, and that they heard the abuses hurled by Appellant no.1 to Respondent No.1. We have also gone through these statements. So far as Respondent No.1's complaint dated 27th September 2017 is concerned, there is no reference that apart from himself, any other person was present at the time of incident. As far statement of witness Dhakalbhai Salgar is concerned, he states that he was present at the time of incident and he heard the abuses. However, his statement is recorded on 13th November 2017, i.e., subsequent to the filing of the present petition on 9th November 2017. Statement of Jashubhai was recorded on 2nd November 2017. What is relevant is the fact that the FIR does not disclose that either Jashubhai or Dhakalbhai was present at the time of incident. The FIR also does

not disclose that Respondent No. 1 was aware that Appellants were not the members of scheduled caste or scheduled tribes. In the light of above, *prima facie* we are of the opinion that the offence under section 3(1)(r) and (s) of the Atrocities Act is not made out. The bar under section 18 of the Atrocities Act, therefore, will not apply in the present case.

8. So far as the offence under the Indian Penal Code, 1860 are concerned, they are bailable offences except the offence punishable under section 384 of the Code. So far as the offence under section 384 is concerned, *prima facie* the FIR or statements do not disclose that Appellants put Respondent No.1 in fear and thereby dishonestly induced him to deliver any property or valuable security. Therefore *prima facie* in our view the offence under this section is also not made out.

9. Taking totality of the facts and circumstances of the case into consideration, we are of the view that the case for anticipatory bail is made out. Therefore, the impugned order is quashed and set aside. In the event of arrest of the Appellants, they shall be released on bail on their furnishing PR bond of Rs. 25,000/- each with one or two sureties of the like amount on condition that Appellants shall co-operate with the Investigating Officer. They shall report to Silvassa

Police Station as and when required.

10. Appeal stands disposed of.

[SANDEEP K. SHINDE, J.]

[RANJIT MORE, J.]