

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPLN] No.38 of 2017
[Sanghpal Ananda Wagh Vs. Nandkishor Ramkrishna Mahore & another]

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's orders

Mr. R. D. Dhande, Adv., for the applicant.
 Mr. A. M. Ghare, Adv., for non-applicant no.1.
 Mr. A. Madiwale, APP for non-applicant no.2.

CORAM : A. S. CHANDURKAR, J.

DATE : 23rd November, 2017

01. By this application filed under Section 439 (2), Criminal Procedure Code, 1973 [for short, "the Code"], the informant seeks cancellation of the pre-arrest bail granted in favour of the non-applicant no.1.

02. According to the applicant, Field Gat No. 51 stands in the name of his mother. There was a dispute with regard to use of way in regard to that field and the adjoining field. A report of the Tahsildar had been called in those proceedings. On 6th July, 2017, when the

applicant was proceeding towards Akola, he met the non-applicant no.1 who was the Talathi near the godown of the Food Corporation of India [FCI]. On making enquiries about the report submitted by the non-applicant no.1, it is claimed that he abused the applicant in the name of his caste and gave him two slaps. At that point of time, two persons, namely Chandu Nalat and Dhananjay Sontakke, were present. A report was accordingly lodged on 8th July, 2017 for offences punishable under Sections 294, 323 and 504 of the Indian Penal Code Code, read with Section 3 (r) (s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, "the said Act"].

03. The non-applicant no.1 on 11th July, 2017 moved an application under Section 438 of the Code before the Sessions Court. By order dated 17th July, 2017, the learned Judge of the Sessions Court allowed the said application and granted protection from arrest. Being aggrieved, the present application has been moved.

04. It is submitted on behalf of the applicant that the order granting protection from arrest has been passed disregarding the provisions of Section 18 of the said Act. On a plain reading of the report, it was the stand of the applicant that he was abused in the name of his caste in a public view and, therefore, the offence as alleged was made out. The learned Judge of the Sessions Court by ignoring the statements of the witnesses who were present gave importance to statements of two other

persons who were near the godown. Even the version of those two witnesses indicated that they were not fully aware of what transpired between the applicant and non-applicant no.1. It is then submitted that in view of the law laid down by the Honourable Supreme Court in **[1] Vilas Pandurang Pawar & another Vs. State of Mah. & others** [2012 (8) SCC 795], and **[2] Manju Devi Vs. Onkarjit Singh Ahulwalia @ Omkarjeet Singh & others** [2017 AIR (SC) 1583], the relief under Section 438 of the Code cannot be granted when the offence is alleged to have been committed under the provisions of the said Act. The impugned order having been passed overlooking the material on record, the same deserves to be cancelled.

05. The application is opposed on behalf of the non-applicant no.1 by filing reply. It is submitted that learned Judge of the Sessions Court after considering the entire material on record found that the accusations as made therein were improbable. Hence, the bar under Section 18 of the said Act was not applicable. There was a delay of about two days in registering the crime. The considerations for cancellation of bail were not available in the present case as none of the conditions while granting pre-arrest bail had been breached by the non-applicant no.1. In that regard, reliance was placed on the decisions in **[1] Dolat Ram & others Vs. State of Haryana** [(1995) 1 SCC 349], **[2] State of Maharashtra Vs. Sanjay Moreshwar Damle & others** [1999 (3) Mh. L.J. 881]. It is further submitted

that if it is found that the protection from arrest has been granted overlooking certain material, the matter needs to be remanded to the Sessions Court for the application to be re-considered. It is then submitted that the non-applicant no.1 has filed report being Crime No. 187/17 against the present applicant. This report is dated 12th July, 2017 and same indicates that it was the present applicant who was the aggressor and he had given threats to the non-applicant no.1. As the non-applicant no.1 was a Talathi, it was not likely that he would have abused the applicant in the name of his caste. Moreover, the impugned order was passed on 17th July, 2017 and the charge-sheet in the said crime was likely to be presented on 24th November, 2017. It is, thus, submitted that the application was liable to be rejected.

Shri A. Madiwale, learned Addl. Public Prosecutor, appeared for non-applicant no.2 and produced the police papers in connection with said crime.

06. I have heard the learned counsel for the parties and I have given due consideration to the respective submissions.

07. Perusal of the report dated 6th July, 2017 indicates that there is a clear accusation made by the applicant against the non-applicant no.1 that on the said date between 11.00 and 11.30 a.m., the non-applicant no.1 while being asked about the report submitted by him had abused the applicant in the name of his caste. These abuses were given in the presence of two persons

named in the report. The learned Sessions Judge while considering the application under Section 438 of the Code observed that the report was registered after two days of the incident. The case diary was then perused and statements of Mohammad Rashid and Aminur Miyan Khan were taken into consideration. It was noted that these two witnesses did not state anything about the incident. It was then observed that two persons accompanying the applicant had referred to the occurrence of the incident. By observing that it was the applicant who opened the talk, a prima facie opinion was formed that giving of abuses by the non-applicant no.1 was not possible. As nothing was to be recovered from the non-applicant no.1, he was granted protection.

08. According to the applicant, the abuses in question were given in the presence of one Chandu Nalat and Dhananjay Sontakke. Perusal of their statements indicate that they were present with the applicant when the non-applicant no.1 gave abuses to the applicant in the name of his caste. The statement of Mohd. Rashid Abdul indicates that he was having his workshop on the main road, but as there used to be traffic on said road, he used to concentrate on his work and he was not aware if there was any conversation between any people or giving of abuses. A similar statement is that of the other witness – Aminur Miyan Khan.

09. In *Manju Devi* [supra], while considering the earlier decision in *Vilas Pandurang Pawar* [supra], it was

observed that while considering application under Section 438 of the Code, the Court is not expected to indulge in critical analysis of the evidence on record. Provisions of Section 18 of the said Act cannot be given a go-by when there is prima facie material on record in support of the accusations as made. I find the observations made in the aforesaid decisions to be applicable to the facts of the case. The learned Judge of the Sessions Court has ignored the statements of witnesses present and has proceeded to give weightage to statements of persons who were slightly far away from the spot in question. On a prima facie consideration of this material, the statements of the witnesses who were present at the spot could not have been brushed aside and statements of the witnesses who were far away from the spot could not have been relied upon for overcoming the bar under Section 18 of the said Act.

10. There can be no dispute that the considerations while rejecting a bail application and while cancelling the bail already granted are different. However, in the present case, the challenge is based on the aspect of the provisions of Section 18 of the said Act being disregarded despite necessary material being available on record. As held recently in *Manju Devi (supra)*, offences under the said Act form a separate and special class and the provisions of Section 438 of the Code stand excluded. As it is found that the material on record has

been overlooked and said material if taken into consideration results in the bar under Section 18 of the said Act coming into play, the impugned order cannot be sustained. Moreover, considering the statements recorded by the Investigating Officer which I have taken into consideration, I do not find any case made out for remanding the proceedings to the Sessions Court. In that view of the matter, the aspects that the non-applicant no.1 has not violated any condition of bail or that the charge-sheet is likely to be filed shortly are not of much importance when it is found that applicant was not entitled for protection from arrest in view of Section 18 of the said Act. In the light of material on record, I find said bar applies to the facts of the present case.

In view of aforesaid discussion, the following order is passed:-

- [a]** Order dated 17th July, 2017 passed by Additional Sessions Judge-2, Akola, under Section 438 of the Code is set aside.
- [b]** It is held that applicant is not entitled for protection from arrest in view of the bar of Section 18 of the said Act.

Application stands allowed in aforesaid terms.

11. At this stage, learned counsel for the non-applicant no.1 prays that this order be kept in abeyance

for a period of fifteen days.

This request is opposed by the learned counsel for the applicant.

Considering the fact that applicant was granted protection since 17th July, 2017, this order shall come into effect on expiry of the period of two weeks from today.

Judge

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