

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.873 OF 2018

1. Sachin Gopal Wagdare
Age : 36 years, Occu.: Hotel Business
- 2 Santosh Vasant Chorage
Age. : 41 years, Occu. : Labour,
Both R/of : Mahabaleshwar,
Tal. : Mahabaleshwar,
Dist. : Satara. ... **Appellants**

V/s.

- 1 The State of Maharashtra
(At the instance of the P. I.
Mahabaleshwar Police Station,
Satara)
- 2 Yogesh Gorakhnath Shinde,
Age : Adult
R/at. : Bon View Bungalow,
Mahabaleshwar, Dist.Satara. ... **Respondents**

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Mr.Aniket U. Nikam with Mr.Piyush Toshnival i/b. Mr.Aashish Satpute, Advocate for the Appellants.

Mr.S.V.Gavand, APP for the Respondent No.1/State.

Mr.Sanjeev P. Kadam with Mr.Prashant Raul & Vilasini B., Advocate for the Respondent No.2.

Mr.Ajit Rajaram Tike, Dy.S.P., SDPO, Wai, Satara is present

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CORAM : A.M.BADAR J.

DATED : 25th SEPTEMBER 2018.

ORAL JUDGMENT :

1 Heard.

2 Admit.

3 Heard forthwith considering the short controversy involved in the instant appeal.

4 The appellants are accused in Crime No.104 of 2018 registered with Police Station, Mahabaleshwar, District Satara at the instance of respondent No.2 Yogesh Shinde for offences punishable under Sections 3(1)(r)(s) 3(2)(VA) and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity) as well as under Sections 143, 147, 149, 385, 504 and 506 of the Indian Penal Code. By this appeal, they are challenging the Order passed by the learned Additional Sessions Judge, Satara on 4th July 2018 below Exhibit 1 in Criminal Miscellaneous Application (Anticipatory Bail) No.451 of 2018 rejecting the prayer for their release on anticipatory bail.

5 Heard Shri.Nikam, the learned Counsel appearing for the appellants/accused at sufficient length of time. He drew my attention to the FIR lodged by respondent No.2/Yogesh Shinde

and argued that this FIR is not specifically describing and specifying the place of the incidence and presence of witnesses at the time of commission of alleged offences. By drawing my attention to the FIR dated 14/06/2018 lodged by Vijay Jadhav, Talathi against respondent No.2 Yogesh Shinde (the First Informant) as well as Yatiraj Kadam, Senthil Kumar and others, it is argued by the learned Counsel for the appellants that Yatiraj and Senthil are arraigned as accused at the instance of Talathi along with respondent No.2/First Informant Yogesh Shinde and, therefore, they are having close relationship and as such, they cannot be considered as public persons present at the time of commission of alleged offence. The learned Counsel further argued that respondent No.2/First Informant Yogesh Shinde had an axe to grind against the present appellants as appellant No.1 Sachin Wagdare had lodged report against Kumar Shinde and others in respect of corruption in the Municipal Council, Mahabaleshwar. This Kumar Shinde is brother of respondent No.2 Yogesh Shinde and, therefore, out of grudge, the subject FIR came to be lodged by the respondent No.2/First Informant. It is further argued that the FIR itself shows that no public person was present at the time of the alleged incident and the persons, who were allegedly present at the time of commission of the offence were having close association with the respondent No.2/First Informant and, therefore, it cannot be said that offence took place in a place within public view. With this, it is argued that the learned

Additional Sessions Judge erred in rejecting the application for grant of anticipatory bail moved by both the appellants.

6 Shri.Nikam, the learned Counsel for the appellants for buttressing the contentions so raised has placed reliance on the following Judgments :

- (a) Reliance is placed on the Judgment of the Honourable Apex Court in the matter of *Asmathunnisa v. State of A.P & Anr.*¹, wherein in paragraph 10, the Honourable Apex Court has held that the public must view the person being insulted for which he must be present and no offence on the allegations under the relevant Section gets attracted if the person is not present.
- (b) Judgment of the learned Division Bench of this Court in the matter of *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*² is relied in order to demonstrate that the word 'public' not only relates to the location defined by the word 'place' but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Such incident has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients is absolutely necessary to constitute an offence punishable under Section 3(1)(x) of the Atrocities Act.

1 Criminal Appeal No.766 of 2011

2 2005(3) Mh.L.J. 368

- (c) Judgment of the Honourable Delhi High Court in the matter of *Daya Bhatnagar & Ors. v. State*¹ is relied only to demonstrate that persons having any kind of close relationship or association with the complainant are required to be excluded while determining the fact as to whether the incident took place within public view.
- (d) Judgment of the learned Single Judge of this Court in the matter of *Balu s/o Bajirao Galande v. State of Maharashtra*² is relied on to substantiate the same proposition.
- (e) Reliance is also place on the Judgment of the Honourable Madras High Court in the matter of *Manimeglai & Ors. v. State*³, wherein it is held that some independent members of the public should hear and view the utterances made by the accused towards the member of the Scheduled Caste/Scheduled Tribes community.
- (f) Reliance is also placed on Judgment of the Honourable Orissa High Court in the matter of *Ratikanta Ray v. State of Odisha*⁴ to demonstrate that the persons having association with the complainant would be necessarily excluded.

1 MANU/DE/0085/2004

2 2006 ALL MR (Cri.) 3197

3 MANU/TN/2976/2016

4 MANU/OR/0322/2015

7 The learned Additional Public Prosecutor appearing for the State vehemently argued that statements of witnesses recorded by the prosecuting agency do show that the incident took place at the public place within public view.

8 Shri.Kadam, the learned Counsel appearing for the respondent No.2/First Informant by relying on Judgment of the Honourable Apex Court in the matter of ***Swaran Singh & Ors. v. State & Anr.***¹ argued that the test of 'public view' is passed in the case in hand because the incident took place on the road in front of bungalow of Respondent No.2/First Informant Yogesh Shinde and, therefore, the appeal deserves to be dismissed. He also placed reliance on the Judgment of the learned Division Bench of this Court in the matter of ***Bajirao Narayan Deshmukh & Ors. v. State of Maharashtra & Ors.***², wherein Judgment in the matter of ***Swaran Singh (supra)*** came to be considered by this Court.

9 I have carefully considered the rival submissions and also perused case diary. Perusal of the FIR makes it clear that the incident took place on the road in front of gate of bungalow of respondent No.2/First Informant Yogesh Shinde. In his FIR submitted on 20/06/2018, this First Informant reported that because of paucity of water, he started the work of flushing the bore-well already existed in his bungalow. As per his version,

1 2009(2) Mh.LJ.22

2 2015 DGLS (Cri.) Soft. 632

when the work was going on his driver Jishan and Manager of Bore-well Company namely Yatiraj Kadam were present. At about 12.30 hours on 14/06/2018, appellant No.1 Sachin Gopal Wagdare, appellant No.2 Santosh Chorage and Akshay Kale came there. Appellant No.1 Sachin Wagdare questions him as to under whose permission bore is being drilled. It is further averred in the FIR that appellant No.1 Sachin Wagdare gave casteist taunt by uttering as to why persons belonging to *Mahar* caste are in need of water. Appellant No.2 Santosh Vasant Chorage demanded an amount of Rs.50,000/- from the respondent No.2/First Informant with a threat that on failure to fulfill the demand, he will report the matter to the Tahsildar. It is further averred that subsequently police came on the spot and at about 12.45 a.m. of 14/06/2018, both the appellants and others came. They abused him and threatened to kill him.

10 On behalf of the appellants, reliance is placed on the FIR lodged by Vijay Jadhav, Talathi against respondent No.2/ First Informant Yogesh Shinde as well as Yatiraj Kadam, Senthil Kumar and others under the Environment Protection Act as well as the Water Conservation Act. However, if sequence of events which took place is considered in proper perspective, then it makes it clear that threat given by the appellant No.2 that unless and until an amount of Rs.50,000/- is paid, the respondent No.2/First Informant cannot dug the bore-well and on failure to pay the

amount, the matter will be reported to the Tahsildar, came to be true. This is reflected from the FIR lodged by Vijay Jadhav, Talathi. This FIR shows that upon being informed by the Tahsildar, at about 00.30 hours of 14/06/2018, First Informant Vijay Jadhav. Talathi had visited the bungalow of respondent No.2 Yogesh Shinde and found the fact that the bore-well was being drilled. Thus averments in the subject FIR are *prima facie* gaining corroboration from the FIR lodged by the Talathi against respondent No.2 Yogesh Shinde and others. This is *prima facie* indicating that the incident as reported by the respondent No.2 in fact did take place.

11 Statement of witness Yatiraj Kadam shows that he is resident of Satara and not of Mahabaleshwar. It further clarifies that he is not the Manager but working as a Supervisor on a vehicle carrying a bore-well digging machine owned by Senthil Kumar. Statement of witness Yatiraj Kadam does not reflect that he is having any close association or business transaction with respondent No.2/First Informant Yogesh Shinde. This Yatiraj Kadam being Supervisor was present on the spot where the work of flushing the bore-well at the residence of respondent No.2/First Informant Yogesh Shinde was going on. As such, it cannot be said that witness Yatiraj Kadam is a person having close relationship or association or friendship with respondent No.2/First Informant Yogesh Shinde. His statement makes it clear that he is neither

friend nor relative of respondent No.2/First Informant Yogesh Shinde. Statement of witness Yatiraj Kadam duly corroborates version of respondent No.2/First Informant Yogesh Shinde that appellant/accused Sachin Wagdare hurled casteist taunt with an intention to insult or humiliate respondent No.2/First Informant Yogesh Shinde, who belongs to the scheduled caste in a place within public view. The incident, as seen from the spot panchanama, took place on the road in front of bungalow of respondent No.2/First Informant Yogesh Shinde. The FIR is also reflecting this fact. In this view of the matter, it cannot be said that the incident did not take place in any place within public view. The same was witnessed by an independent public person namely Yatiraj Kadam. In this view of the matter, the learned Additional Sessions Judge has committed no error in holding that bar of Section 18 of the Atrocities Act is applicable so far as the case against appellant/accused Sachin Wagdare is concerned.

12 So far as appellant/accused Santosh Chorage is concerned, the FIR does not reflect commission of any offence under the Atrocities Act committed by him so as to attract bar of Section 18 of the Atrocities Act. Averments against him taken as it is does not show that his custodial interrogation in the subject crime is warranted. The impugned Order rejecting application for anticipatory bail of this appellant/accused Santosh Chorage, as such, cannot be sustained.

13 The net result of foregoing discussion requires me to pass the following Order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned Order dated 4th July 2018 in Criminal Miscellaneous Application (Anticipatory Bail) No.451 of 2018 so far as it relates to rejection of application for anticipatory bail of appellant No.2/accused Santosh Vasant Chorage is quashed and set aside.
- (iii) The application for anticipatory bail of appellant No.2 Santosh Vasant Chorage is allowed.
- (iv) In the event of arrest of appellant No.2/accused Santosh Vasant Chorage in the subject crime bearing No.104 of 2018 registered with Police Station, Mahabaleshwar, District Satara at the instance of respondent No.2/First Informant Yogesh Shinde, he be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (v) As a condition of this Order, appellant No.2 Santosh Vasant Chorage should not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

(vi) As a condition of this Order, the appellant No.2 Santosh Vasant Chorage should attend the concerned Police Station as and when directed by the Investigating Officer for the purpose of investigation.

(vii) The appeal of appellant No.1 Sachin Gopal Wagdare is dismissed.

14 At this stage, the learned Counsel appearing for the appellants prays that interim protection granted in favour of the appellant No.1 be extended for a period of three weeks in order to enable the appellant No.1 to challenge the Order before the Honourable Apex Court. The learned Additional Public Prosecutor as well as the learned Counsel for the respondent No.2 are opposing such request. However, since inception the interim Order is operative in favour of the appellants. Hence, the interim protection granted to the appellant No.1 vide Order dated 19th July 2018 is extended for further period of three weeks.

(A.M.BADAR J.)