

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.69 OF 2018

RAJAN RAGHUNATH RAJE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Amin Solkar i/b. Mr.Umeshchandra Yadav a/w. Mr.Dhiraj Gole, Advocate for the Appellant.

Ms.Trupti Khamkar, Appointed Advocate for Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 28th JUNE 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally, by consent of parties considering the nature of controversy involved in the instant appeal.

2 This is an appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as the “Atrocities Act” for the sake of brevity), by which the appellant/accused is challenging the order dated 20th January 2018 passed by the learned Sessions Court, Thane, in Anticipatory Bail Application No.34 of 2018, thereby rejecting the said application by holding that the appellant/accused is not entitled for anticipatory bail in view of bar engrafted in Section 18 of the Atrocities Act.

3 Facts, in brief, are thus :

- (a) On the basis of report lodged on 28th December 2017 by respondent no.2 Ujwala Jadhav, Crime No.401 of 2017 came to be registered against the present appellant/accused and others for offences punishable under Sections 420, 506, 509 read with 34 of the Indian Penal Code as well as under Section 3 of the Atrocities Act. The printed First Information Report (FIR) does not contain sub-sections of Section 3 but the Police Report shows that accused persons are involved in

commission of offence punishable under Sections 3(1)(r)(s) (u)(w)(ii) of the said Act.

(b) Averments in the FIR against the accused persons including the present appellant/accused no.1 are to the following effect :

i) First Informant/respondent no.2 Ujwala Jadhav and her husband Bharat Jadhav belong to Schedule Caste (Hindu Mahar). They became acquainted with the appellant/accused no.1 Rajan Raje in the year 2009 and started working with his party “Dharmarajya Paksha” as workers. The FIR reveals that husband of the First Informant /respondent no.2 had contested municipal elections as a candidate of that party, but because of financial constraints, First Informant/respondent no.2 Ujwala Jadhav did not contest such election.

ii) It is averred in the FIR that appellant/accused Rajan Raje advised the First Informant/respondent no.2 and her

husband that in order to strengthen their financial condition, they should purchase a four wheeler vehicle and that vehicle be given on hire to his Company Sulzer Pumps Private Limited (hereinafter referred to as "Sulzer"). Accordingly, appellant/accused no.1 arranged finance from employees of his Company Manoj Berde, Khandu Bhoir, Samir Golatkar, Vinod Mayekar and Vinay Kamble. They all contributed Rs.98,000/- each and that is how, the four wheeler vehicle came to be purchased in the name of the First Informant/respondent no.2. It was given on rent to Sulzer. The First Informant/respondent no.2 used to get some rent after deduction of installment of loan and other expenses from the said Company.

iii) According to the First Informant/respondent no.2 in January 2017, she handed over all original documents regarding ownership of that vehicle to Mahesh Kshirsagar, who is also one of the accused in this case. As per version of the First Informant/respondent no.2, from March 2017 she

was not getting hire charges of her vehicle.

iv) The First Informant/respondent no.2 averred that in June 2017, she and her husband Bharat Jadhav went to the office of Dharmarajya Paksha and asked for hire charges of her vehicle. At that time, appellant/accused Rajan Raje abused them by uttering the words “तुम्ही झाटाचे शिक्षक आहेत का?, झाटू तुम्ही भिकारी कुठले, मादरचोद”. The First Informant further averred that on 17th February 2017 also, when she went to the office of the said Dharmarajya Paksha, appellant/accused uttered the following words “तुमचे खिशे हलवा, खिशात दमडी आहे का?, तुम्ही झाटाचे शिक्षक आहात का?, झाटू तुम्ही भिकारी कुठले, मादरचोद असे म्हणून शिवीगाळ करून तुम्हाला एक ही दमडी व गाडी भेटणार नाही तुम्हाला काय करायचे ते करा” and threatened to kill by pistol.

v) The last incident, according to the First Informant, took place again in the office of Dharmarajya Paksha in last

week of July 2017 in presence of co-accused. As per her version, when she went along with her husband and Mrs.Santoshi Singh at the office of the Sulzer, in presence of co-accused Raju Sawant, Bharat Alpatrao, Manoj Berde and Mahesh Kshirsagar, the appellant/accused gave abuses to them and uttered that reservation should be withdrawn and the Constitution written by Dr.Babasaheb Ambedkar should be burnt. At that time, Gajanan Shirsat and Dilip Gaikwad were also present in that office.

This is the gist of the prosecution case reflected in the FIR lodged on 28th December 2017.

4 Heard the learned counsel appearing for appellant/accused no.1. He argued that there is delay in lodging the FIR which indicates that the averments are after thought. The learned counsel further argued that the incident, if accepted as it is, then also, does not show to have occurred in the public view. Therefore, bar of Section 18 of the Atrocities Act is not applicable

to the case in hand. For this purpose, the learned counsel placed reliance on the judgment of the Honourable Delhi High Court in the matter of **Mukesh Kumar Saini & Ors. vs. State (Delhi Administration)**¹. On the point of delay, reliance is placed on the order dated 20th September 2017 passed by the Division Bench of this court in **Mamta Jitendra Jadhav vs. The State of Maharashtra & Ors.**² Reliance is also placed on the judgment of the Honourable Apex Court in the matter of **Dr.Subhash Kashinath Mahajan vs. The State of Maharashtra and Another.**³

5 I have heard the learned counsel appearing for the First Informant/respondent no.2. She placed reliance on the judgment of the Division Bench of this court in the matter of **Akash Rajendra Kadave vs. State of Maharashtra**⁴ wherein judgment in the matter of **Dr.Subhash Kashinath Mahajan (supra)** was referred to. The learned counsel argued that the incident took place in the office of the party which is accessible to

1 2001 CriLJ 4587

2 Criminal Appeal No.625 of 2017

3 Criminal Appeal No.690 of 2017 decided on 22nd March 2018

4 2018 0 Supreme(Mah) 506

the public and workers of the party and therefore, the bar of Section 18 of the Atrocities Act is squarely applicable. The learned counsel further argued that considering the nature of evidence, the appellant/accused is not entitled for anticipatory bail.

6 The learned APP supported the impugned order by submitting that the offence in question took place within the public view and therefore, bar of Section 18 of the Atrocities Act is squarely applicable.

7 I have carefully considered the rival submissions and also perused the material made available on record. Section 3(1) (r)(s)(u)(w)(ii) of the Atrocities Act reads thus :

“3 Punishment for offences of atrocities -
(1) whoever, not being a member of Scheduled Caste or a Scheduled Tribe -
(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

- (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;
- (u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;”
- (w)(i).....
- (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

It is, thus, clear that intentional insult or intimidation with an intention to humiliate or abuse to the members of the Scheduled Castes or Scheduled Tribes by the caste name must be within public view. Scope of this expression was considered by this court in the matter of **Pradnya Pradeep Kenkare and Another vs. State of Maharashtra**⁵. What is the scope and ambit of the expression “within public view” is explained by this court in

⁵ 2005 (3) Mh.L.J

paragraph 8 of the judgment, which reads thus :

“8 However, the learned Advocate is justified in contending that the complaint nowhere discloses that the said expression was used in public view. In fact, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. It is nowhere stated by the complainant that at the time when the said statement was made by the petitioner No. 2, i.e. on 15th August, 2004 at 9.30 a.m., there was any stranger to witness the said incident. The provisions of [Section 3\(1\)\(x\)](#) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged

offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under [Section 3\(1\)\(x\)](#) of the said Act. In the provision of law comprised under [Section 3\(1\)\(x\)](#) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, 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. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under [Section 3\(1\)\(x\)](#) of the said Act.

This makes it clear that when the incident in question occurs in a place accessible to and in the presence of public, then only it can

be said to have happened “within public view.” It is held that presence of both these ingredients i.e. place accessible to the public and in presence of the public are sine-qua-non for constituting the offence under the provisions of the Atrocities Act. Viewed from this angle, the case in hand reflects that the incident in question took place inside the office of the appellant/accused no.1, and therefore, it is crystal clear that bar of Section 18 of the Atrocities Act is not applicable to the case in hand. Similar is the view found by the Honourable Delhi High Court in **Mukesh Kumar Saini (supra)** wherein the incident took place while the alleged victim was dragged inside the shop and before arrival of the neighbours.

8 FIR of the crime in question came to be lodged on 28th December 2017. Last incident allegedly took place, as per version of the First Informant/respondent no.2, in the last week of July 2017. Perusal of the FIR makes it clear that this delay is not at all explained in the FIR. The Division Bench of this court in **Mamta Jitendra Jadhav (supra)** has considered the issue of delay in

lodging the FIR under the Atrocities Act and held that five months delay reflects that the FIR is after thought and therefore, anticipatory bail was granted in that matter.

9 Recently, the Honourable Apex Court in the matter of **Dr.Subhash Kashinath Mahajan (supra)** has held that exclusion of provisions for anticipatory bail will not apply when no prima facie case is made out or the case is patently false or malafide. In the case in hand, the delay of about five months shows that, no prima facie case for offences punishable under the provisions of Atrocities Act, is made out. It is seen from the judgment in the matter of **Akash Rajendra Kadave (supra)** that the said matter proceeded on its own facts, and as such, the view taken therein has no bearing to the case in hand.

10 So far as offences under the Indian Penal Code are concerned, the First Informant itself disclosed that the vehicle was purchased from money contributed by five persons, one amongst them, namely Manoj Berde, is an accused before this court.

According to the defence, the installment of that loan was not paid. This is not the stage to assess correctness of the defence, but suffice to state that, with such averments, custodial interrogation of the present appellant/accused no.1 is not at all warranted, because the role attributed to him is that of arranging finance for purchase of the vehicle and non-payment of hire charges for that vehicle.

11 In this view of the matter, as bar of Section 18 of the Atrocities Act is not attracted to the case in hand, I hold that the learned Additional Sessions Judge, Thane, erred in rejecting the application for anticipatory bail filed by the present appellant/accused no.1. In this view of the matter, the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 20th January 2018 passed by the learned Additional Sessions Judge, Thane, in Anticipatory Bail Application No.34 of 2018 is quashed and set aside.

- iii) The said Anticipatory Bail Application No.34 of 2018 is allowed.
- iv) In the event of his arrest in Crime No.401 of 2017 registered with Police Station Rabale MIDC, Navi Mumbai, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- v) As a condition of this order, the appellant/accused should not contact the First Informant/respondent no.2 or her husband as well as the prosecution witnesses.
- vi) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vii) The appellant/accused shall attend the Investigating Officer as and when called by him for the purpose of investigation.
- viii) The appeal is accordingly disposed of.

(A. M. BADAR, J.)