

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.300 OF 2018

1) HIRALAL CHEDILAL GUPTA)
)
2) NAGINDEVI HIRALAL GUPTA)
)
3) DILIP HIRALAL GUPTA)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Sandeep Mishra a/w. Mr.Prakash Mishra, Advocate for the Appellants.

Mr.P.H.Gaikwad-Patil, APP for the Respondent – State.

None for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 15th OCTOBER 2018

ORAL JUDGMENT :

1 None for respondent no.2, despite service.

2 Heard. Admit. Heard forthwith considering the fact that this is an appeal challenging rejection of the application for anticipatory bail filed by the appellants/accused, by the learned Additional Sessions Judge, Greater Mumbai, on 16th March 2018.

3 The learned counsel for the appellants/accused argued that the application is by in-laws of the First Informant and perusal of the First Information Report (FIR) lodged by respondent no.2 Sangeeta is not reflecting commission of any offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the appellants/accused.

4 The learned APP argues that specific allegations are made against the appellants/accused by the First Informant.

5 I have perused the FIR lodged by Sangeeta M. Gupta. On the basis of that FIR, Police Station Shahunagar, Mumbai, has registered offence punishable under Sections 498A, 406, 354, 504,

323 read with 34 of the Indian Penal Code as well as under 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6 Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is no more in statute book after amendment which came into effect from 26th January 2016. The learned APP is not in a position to explain how Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made applicable in the instant case, when the First Information Report (FIR) is lodged on 28th February 2018.

7 After amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) thereof becomes relevant and it corresponds to erstwhile Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(1)(r) deals with punishment for intentional insulting or intimidation with intent to

humiliate a member of the Scheduled Caste or a Scheduled Tribe (Prevention of Atrocities) Act, 1989, in any place within public view. The FIR lodged by the respondent no.2 does not attract the offence of atrocity even prescribed by Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8 In this view of the matter, the learned trial court erred in rejecting the application for anticipatory bail moved by the appellants/accused relying on statutory bar engrafted by Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The impugned order, as such, cannot be sustained. Therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 16th March 2018 passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Anticipatory Bail Application No.459 of 2018 is quashed and set aside.

- iii) The application for anticipatory bail in Crime No.58 of 2018 registered with Shahu Nagar Police Station moved by the appellants/accused is allowed.
- iv) In the event of arrest of the appellants/accused in Crime No.58 of 2018 registered with Shahu Nagar Police Station, the appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each, and on furnishing surety in like amount, by each of them.
- v) The appellants/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.
- vi) The application is disposed off.

(A. M. BADAR, J.)