

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION***

CRIMINAL APPEAL NO. 690 OF 2017

Akash Rajendra Kadave.

... Appellant.

V/s.

State of Maharashtra.

... Respondent.

Mr. Satyavrat Joshi a/w. Mr. Nitesh Mohite i/b. Jaydeep D. Mane for
the Appellant.

Mr. Ajay Patil, APP for the State.

***CORAM : S.C. Dharmadhikari and
Prakash D. Naik, JJ.***

22 March, 2018.

P.C. :-

We have heard the Advocate for the Appellant. We have perused the copies of the two statements, one which is recorded at the instance of the present Appellant and the other at the instance of the Complainant.

2. The Complainant in his statement to the Police has stated that he had been residing at the address which is mentioned in the statement, along with his mother, father and younger brother. He is working. He says that when he was returning home after a

night shift at about 9.00 p.m. at a place called Bhoite Construction, he was brushed by a scooty by the complainant. The scooty was immediately stopped. The Appellant and the Complainant were acquainted and familiar with each other. There was an assault and by both. It is stated that the incident of assault was really a triggering point. That is why the present Appellant was involved in a false case. The false case according to the present Appellant is that the Complainant was abused in the name of his caste. The complainant narrates that he was riding a motor cycle and was obstructed. First he was assaulted and abused in the name of his caste.

3. From both these incidents, an argument is canvassed before us that this could be a counter-blast as a assault on the Appellant. It is the complainant who has proceeded to frame the present Appellant and the abuses that are attributed to the present Appellant are not in the name of any caste much less a scheduled caste.

4. We are unable to agree with Mr. Joshi for more than one reason as the impugned order only contains tentative and prima facie observations. They do not bind anybody at the Trial. Firstly, this is not the stage to decide as to which of the incident was prior in point of time. That the cross cases are because of some previous enmity or otherwise. Secondly, from the statement of the complainant it

appears that there was a prior episode or incident or a quarrel and the Appellant was angry and knowing that the complainant is Hindu Mahar. He not only assaulted him while he was returning after what is stated to be handing over of tiffin to his grand father who was admitted in the hospital, but at the same time abused him in the name of the caste. The Trial Judge therefore rightly came to the conclusion that this was not a case where the bar under Section 18 would have been overcome by the Appellant. This was also not a case where the ingredients of the offence of atrocity alleged against the present Appellant are not made out. In the circumstances, the learned Judge rightly dismissed the application.

5. We see no merit in the Appeal nor in the argument and the attempt made before us by relying on the judgment of the Hon'ble Supreme Court and delivered on 20 March 2018. That judgment delivered in the case of *Dr. Subhash Kashinath Mahajan v/s. The State of Maharashtra and Anr. (Criminal Appeal No. 416 of 2018)* decided on 20 March 2018 is essentially determining the controversy as to whether the whole enactment can be used to settle scores against the superiors in public service or working privately. Merely because there was an occasion to observe the performance of work of a subordinate Scheduled Caste/Scheduled Tribe Officer and because the work was found to be unsatisfactory that adverse remarks were noted in the confidential reports and as a revenge, the

superior was implicated, that the Hon'ble Supreme Court termed it as a false case. The entire data in relation to the false implications under the Scheduled Castes and Scheduled Tribes Act has been referred in the backdrop of the abuse of the law. We cannot proceed on the footing that the law is abused in every case. The law is found to be constitutional and valid. The prohibition against grant of anticipatory bail is equally legal and valid. In such circumstances, we do not think relying on this judgment we can grant the relief.

6. As a result of the above discussion, the Appeal fails. The interim order stands vacated forthwith.

(Prakash D. Naik, J.)

(S.C. Dharmadhikari, J.)