

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.1113 OF 2018
WITH
CRIMINAL APPLICATION NO.1541 OF 2018
IN
CRIMINAL APPEAL NO.1113 OF 2018**

Mr. Vishwanath Chandrasho Birajdar
Age-44 Yrs. Occu-Reporter,
R/at-Rohini Nagar Part-I, Saiful,
Vijapur Road, Solapur.

...Appellant

V/s.

1. The State of Maharashtra
(Police Inspector Sadar Bazar
Police Station, Solapur)
(Copy for Respondent No.1 to
be served on P.P.High Court
(AS) Bombay).

2. Subhash Khanderao Gaikwad
Age-45 Yrs. Occu-Service (Private)/
Social Service, R/at House No.88B,
Aditya Nagar, Near New RTO Office,
Vijapur Road, Solapur.

...Respondents

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Mr. A.B. Tajane, Advocate for the Appellant.

Mr. Ritesh Thobde, Advocate for respondent No.2.

Mrs. M.R. Tidke, APP for respondent No.1/State.

CORAM : A.M.BADAR, J.

DATED : 23rd OCTOBER 2018.

ORAL JUDGMENT:

1. Heard. Admit. Heard finally.
2. The appellant is an accused in Crime No.348/2018 registered with Sadar Bazar Police Station Solapur for the offence punishable under Section 504, 506 of the Indian Penal Code as well as under Section 13 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 this appeal, he is challenging the order passed below Exhibit-1 in Criminal Bail Application No.771/2018 by the learned Special Judge-5, Solapur on 28th June 2018.
3. Heard the learned Counsel appearing for the appellant/accused. He took me through the FIR lodged by respondent No.2 Subhash Gaikwad and argued that the First Informant and the appellant/accused are friends. However, by concocting, a false case is registered against the appellant/accused. The learned Counsel drew my attention to the

FIR lodged by the appellant/accused on 16th May 2018 in respect of the same incident and submitted that infact respondent No.2/First Informant Subhash Gaikwad and his associates had assaulted the appellant/accused and he was robbed of his valuables. It is further argued that several social organisations have made representation against the respondent No.2 in respect of the incident. The learned Counsel further argued that intention is lacking from the material gathered by the prosecution and therefore, Bar of Section 18 of the Atrocities Act is not applicable.

4. The learned APP opposed the appeal by submitting that the incident took place within public view. Similar is the submission of the learned Counsel appearing for the respondent No.2. He further added that the appellant/accused is having criminal antecedents and he has threatened the witness in the instant crime. He further argued that it was the respondent No.2 who had approached the appellant/accused when he was passing from the public road.

5. I have considered the submissions so advanced and perused the case diary.

6. Respondent No.2 Subhash Gaikwad had lodged complaint with the Sadar Bazar Police Station Solapur and ultimately, his statement was recorded on 12th May 2018, which was treated as the FIR. Respondent No.2 Subhash Gaikwad alleged that as the appellant/accused failed to paying installments, Shriram Finance Company took over his two wheeler vehicle. Therefore, the appellant/accused demanded some amount as a handloan and he provided the same by taking an amount of Rs.5,000/- from one Sham Kattimani. Respondent No.2/First Informant further averred that at about 6.00 p.m. to 6.30 p.m. of 10th May 2018, he saw the appellant/accused proceeding from the public road in front of Om Xerox Centre. Therefore, he requested the appellant/accused to refund the amount advanced as a handloan. Respondent No.2/First Informant Subhash Gaikwad further alleged that thereupon the appellant/accused gave casteist abuses to him by addressing him as “Mahardya”. He further alleged that the appellant/accused threatened him. It is further averred that Sangmeshwar Nilange and Saraswati Borkar were present when this incident took place.

7. It is seen from the paper-book that in respect of the same incident, the appellant/accused had lodged report on 16th May 2018 alleging that respondent No.2 Subhash Gaikwad alongwith his associates Sangmeshwar Nilange and Saraswati Borkar, on the point of knife took away his gold chain and cash amounting to Rs.10,000/- after abusing and assaulting him. The paper-book contains some representations by the political party and social organisation.

8. Intentional insult or intimidation with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe, so also giving abuses in the caste name to a member of the Scheduled Caste is made punishable under the Atrocities Act provided such incident took place within public view. If such offence is prima facie made out, then Section 18 of the said Act creates a bar from entertaining an application for anticipatory bail.

9. In the case in hand, averments in the FIR goes to show that the incident took place in and within public view. The case diary contains statement of witnesses, who have spoken about the incident, which took place on a public road. Statement of Sham

Kattimani shows that infact he had lent an amount of Rs.5,000/- on intervention by respondent No.2 Subhash Gaikwad to the appellant/accused.

10. It is thus seen that within public view a member of the Scheduled Caste was insulted and intimidated apart from hurling castiest abuses in the caste name to him. At this stage, it cannot be said that this was totally unintentional.

11. In this view of the matter, it cannot be said that the learned trial Court has erred in concluding that in view of Bar of Section 18 of the Atrocities Act, claim for anticipatory bail made by the appellant/accused cannot be entertained. No infirmity as such can be found in the impugned order.

12. In the result, the appeal is dismissed.

Consequently, the Criminal Bail Application No.1541/2018 is also rejected.

(A.M.BADAR J.)