

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.837 OF 2017

1. Gajanan Ganpat Kalamkar,
Aged 58 years, Occ.Service,

2. Sachin Gajanan Kalamkar,
Aged 26 years, Occ.Business & Agri.

3. Satyawan Gajanan Kalamkar,
Aged 33 years, Occ.Service,
All residents of Ashirwad Niwas,
Ramindu Park, Baner, Pune-45.

....Appellants

V/s.

1. The State of Maharashtra
(At the instance of Talegaon Dabhade Police
Station, Pune)

2. Ankush Ramling Lohkare,
R/of Adarshnagar, Besides Kotewane,
Petrol Pump, Survey No.801,
Kalewadi Main Road,
Pune – 17.

...Respondents

Mr. Ganesh Bhujbal, Advocate for the Appellants.

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

Mr. Vilas K. Singh, appointed Advocate for respondent No.2.

Mr. K.K. Bhosale, PSI, Talegaon Police Station.

CORAM : A.M.BADAR, J.

DATED : 28th NOVEMBER 2018.

ORAL JUDGMENT :

1. By this appeal, appellant No.1 Gajanan Kalamkar and his two sons viz. appellant No.2 Sachin and appellant No.3 Satyawan are challenging the order dated 27.09.2017 passed by the learned Special Judge, Pune in Criminal Appeal No.3313/2017 thereby rejecting their claim for grant of anticipatory bail in Crime No.293/2017 registered with Police Station Talegaon-Dabhade, Pune for offences punishable under Sections 3(1)(r), (s), (g), 3(2) (va) 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 504 and 506 read with Section 34 of the Indian Penal Code.

2. Facts in brief leading to the registration of crime in question as reflected from the FIR are thus:-

(A) Respondent No.2/First Informant Ankush Lohakare belongs to “Chambhar” caste, which falls under the scheduled caste. He had purchased 24R land from Gat No.159 at Village Adale (Bk) in

Maval Taluka, District Pune. Respondent No.2/First Informant Ankush averred in his FIR that on 24.09.2016 when the work of raising compound wall of that field was going on, appellant Nos.1 and 2 with others came and asked him his occupation. He informed that he is cobbler by occupation. They asked respondent No.2 to stop the work. Respondent No.2 further averred that on 30.09.2016 appellant Nos.2 and 3 came on the spot and threatened him to demolish his compound. They humiliated and threatened him by uttering that he will be buried in the ditch dug for erection of compound and abused him in the name of caste. It is further averred that on 16.02.2017 when the work of erection of compound wall was going on, all appellants came, took bamboos and spade kept at the construction site and rushed on the person of respondent No.2/First Informant. Then, two of them along with two others demolished the compound and demanded an amount of Rs.5 Lacs for enabling him to raise construction of the compound wall. It is averred that on 08.07.2017 when respondent No.2 and his wife Subhadra were sowing “tur” in the field, appellant/accused No.1 Gajanan Kamalkar told them not to

cultivate the field.

3. Heard.

4. Admit.

5. Heard finally considering the fact that the appeal is pertaining to rejection of the claim of the appellants/accused for anticipatory bail.

6. Mr. Bhujbal, the learned counsel appearing for the appellants/accused argued that the learned Special Judge erred in holding that bar of Section 18 is applicable to the case in hand. He argued that the FIR is false on the face of record. Appellant/accused No.1 is working in the Maharashtra State Electricity Distribution Company Limited and he was very much present at the place of his employment on the dates alleged by respondent No.2/First Informant. It is further argued that the incident, as alleged, did not take place in any place within public view and therefore, bar of Section 18 is not applicable. It is further argued that civil dispute between the parties is pending and at the instance of wife of appellant No.1 Gajanan, the area is being measured.

7. As against this, the learned APP argued that the incident

was witnessed by Mr. Vinod Bansode, who happens to be friend of the respondent No.2. The learned APP further argued that the appellant/accused had restrained the first informant from peaceful enjoyment of his field property and therefore, bar of Section 18 is applicable.

8. Mr. Singh, the learned advocate appointed to represent respondent No.2 argued that the entire incident of demolition of the compound wall was photographed and respondent No.2 had requested that those photographs be placed alongwith the case diary of the crime in question. By showing some photographs to this Court, Mr. Singh, the learned counsel submitted that these photographs are reflecting the fact that appellant Nos.2 and 3 namely Sachin and Satyawar are demolishing the compound wall sought to be erected at the field purchased by respondent No.2.

9. I have carefully considered the submissions so advanced and also perused the case diary including the spot panchanama. The FIR itself reveals that at the time of happening of the incident, no independent public witness was present. As such, it cannot be said that the incident in question took place in any place within

public view (Refer : *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*¹ and *Daya Bhatnagar & Ors. v. State*²). As such, bar of Section 18 of the Atrocities Act so far as the offences punishable under Section 3(1)(r) and (s) of the said Act is not applicable to the case in hand.

10. Section 3(1)(g) prescribes the offence of Atrocity and interfering with a member of the Scheduled Caste or a Scheduled Tribe from enjoyment of his rights, at his land and premises is covered by the provisions of this Section. It is averred by the First Informant that the compound wall which he sought to erect on the land purchased by him was attempted to be demolished by the appellants/accused. Perusal of the spot panchanama shows that few cement poles were lying on the spot of the incident. Foundation was seen to be dug. Prima facie, it is seen from the recitals of the FIR that the construction of the compound wall was partly made and few poles were seen lying on the spot. This indicates uprooting the poles of the compound.

11. Even as per submissions of the learned counsel appearing

1 2005(3) Mh.L.J. 368

2 2004 (109) Dlt 915

for the respondent No.2, the persons who are seen in the photographs taken on 16.02.2017 are appellant Nos.2 and 3 namely Sachin and Satyawan. On this backdrop, it is seen that appellant No.1 Gajanan Kalamkar is in employment of the Maharashtra State Electricity Distribution Company Limited and the paper-book shows copy of muster roll, which indicates that he was present at the place of his employment at the time of the alleged incident. Prima facie, it is seen that case sought to be made out against him and allegations made against him are false and motivated. This is reflected from the FIR also, because the First Informant has deliberately kept the averments regarding demolition of the compound totally vague. Who has demolished that compound is not mentioned in the FIR. It is not averred that appellant No.1 Gajanan Kalamkar had demolished the compound sought to be erected by the First Informant. In this view of the matter so far as case against the appellant No.1 Gajanan Kalamkar is concerned, bar of Section 18 of the Atrocities Act is not applicable. However, it is seen that case and offence of Atrocities against rest of the appellants is made out.

12. In this view of the matter, the following order;

- : ORDER : -

- i) The appeal is partly allowed.
- ii) The impugned order dated 27.09.2017/2018 passed by the learned Special Judge, Pune rejecting the application so far as it relates to rejection of anticipatory bail moved by the appellant No.1 Gajanan Kalamkar is quashed and set aside.
- iii) The application so far as it relates to the claim of Gajanan Kalamkar for grant of anticipatory bail is allowed.
- iv) In the event of arrest of appellant No.1/accused Gajanan Kalamkar in Crime No.293 of 2017 registered with Talegaon-Dabhade Police Station, Pune, at the instance of respondent no.2, he 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) The impugned order so far as it relates to rejection of anticipatory bail of appellant Nos.2 and 3 namely Sachin and Satyawan is maintained.
- vi) The appeal is accordingly disposed off.

(A.M.BADAR J.)