

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1173 OF 2018

1. Sunil Mandevrao Thombre (Bavdhankar)
Age-39 Years, Occ.Social Work,

2. Namdev Saibu Thombre
Age-73, Occ.Nil

3. Chabutai Namdev Thombre
Age-67, Occ.Homemaker

4. Dilip Namdev Thombre
Age-Adult, Occ.Farming

5. Archana Dilip Thombre
Age-Adult, Occ.Homemaker
All R/o. Lonand, Tal.Khandala,
District Satara.

...Appellants

V/s.

1. The State of Maharashtra
(To be served through office of Ld PP
High Court Mumbai)

2. Manda Sahebrao Thombre
Age 26 Years, Occ.Homemaker,
R/o.Khed (Bu), Lonand, Tal.Khandala,
District Satara.

....Respondents

Mr. H.E. Palwe, Advocate for the Appellant.

Mr. P.H. Gaikwad Patil, APP for respondent No.1/State.

Mr. Vikas K. Singh, Appointed Advocate for Respondent No.2.

CORAM : A.M.BADAR, J.

DATED : 31st OCTOBER 2018.

ORAL JUDGMENT:

1. The learned counsel appearing for the appellants/accused at the outset submits that he wants to delete names of appellant Nos.4 and 5 from the array of the appellants/accused as they were not the applicants before the learned Special Judge, Satara in Criminal Miscellaneous Application No. 661/2018.
2. Leave to amend to that effect for deleting names of appellant Nos.4 and 4 is granted. Amendment be effected forthwith.
3. By this appeal, the appellants/accused are challenging the Order dated 05.09.2018 passed by the learned Special Judge, Satara in Criminal Miscellaneous Application No.661/2018, thereby rejecting claim of the appellants/accused for anticipatory bail in Crime No.241/2018 registered with Police Station Lonand at the instance of respondent No.2 Manda Thombre @ Vankhede.
4. Heard.
5. Admit.

6. Heard fourthwith considering the fact that the appeal is arising out of rejection of an application for anticipatory bail.

7. The learned counsel appearing for the appellants/accused submits that the FIR lodged against the accused persons is false and motivated one because of registration of criminal case bearing No.85/2015 against the members of the prosecuting party by virtue of lodgment of the FIR by the appellant No.1/accused Sunil Thombre against them. The learned counsel further argued that on the day of the incident, appellant No.1/accused Sunil Thombre was very much present in the Court at Khandala and had filed an application for cancellation of bail of husband of the respondent No.2/First Informant Manda Thombre. On the day of incident itself, he had moved an application to that effect before the learned Judicial Magistrate First Class, Khandala and had expressed apprehension that he is receiving threats of his false implications in non-bailable offence by the members of the prosecuting party in this case. With this, the learned counsel for the appellants/accused submits that appellant No.1/accused Sunil Thombre was not even present at the village when the incident

allegedly took place. He was present in the premises of the Court of the learned Judicial Magistrate First Class at Khandala at the relevant time and he had even applying for CCTV Footage from the concerned Court to show his presence, but the said application is rejected by the learned Judicial Magistrate First Class, Lonand. The learned counsel for the appellants/accused is placing reliance on the copy of the said application. With this, it is argued that bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act' for the sake of brevity) is not applicable to the case in hand.

8. As against this, the learned Appointed Advocate appearing for the respondent No.2 vehemently argued that the supplementary statement of the First Informant/respondent No.2 is recorded on 21.08.2018. Apart from two interested witnesses, the incident was witnessed by independent witness Shivaji Thombre, who is corroborating the version of the respondent No.2/First Informant Manda Thombre. The incident took place within public view and subsequently Section 354 of the Indian

Penal Code is also added to the case diary of the crime in question. Therefore, bar of Section 18 prohibits the Court for entertaining the application under Section 438 of the Code of Criminal Procedure.

9. The learned APP submitted that there is evidence of commission of the offence of atrocity, and therefore, the application was rightly rejected by the learned Special Court.

10. I have considered the submissions so advanced. In the paperbook of the instant appeal, the appellants/accused have placed on record the copy of the FIR lodged by the appellant No.1/accused Sunil Thombre against the husband of respondent No.2/First Informant Manda Thombre in the year 2015. This FIR has resulted in registration of Crime No.117/2015 against the husband of respondent No.2/First Informant Manda Thombre for the offences punishable under Sections 143, 147, 148, 324, 427 etc. to the Indian Penal Code. The investigation of that crime has resulted in registration of regular Criminal Case No.85/2015 against the husband of respondent No.2/First Informant Manda Thombre and the same is pending in the Court of the learned

Judicial Magistrate First Class, Khandala, District Satara.

11. The subject FIR is filed by respondent No.2/First Informant Manda Thombre on 20.08.2018 and that is how Crime No.241/2018 came to be registered against the appellants/accused and others initially under Sections 3(1)(r)(s) (w) of the Atrocities Act, under Section 7 of the Protection of Civil Rights Act, 1955 as well as Sections 143, 147, 506, 507 of the Indian Penal Code.

12. The FIR dated 20.08.2018 of respondent No.2/First Informant Manda Thombre is to the effect that at about 5.00 p.m. on 20.08.2018 she requested accused Dilip Thombre not to spray the insecticide on the grass. Upon that, co-accused Dilip Thombre alongwith present appellants/accused and other accused persons gave casteist abuses to her. Appellant No.1/accused Sunil Thombre abused and pushed her. In that process, her blouse was torn. The First Informant/respondent No.2 Manda Thombre further averred that appellant No.1/accused Sunil Thombre uttered that she should do whatever she want and her caste is of that type. He threatened her.

13. The subject FIR is not disclosing caste of respondent No.2 Manda Thombre. She has referred to her religion as Boudha. She has not disclosed what where the casteist abuses to her in this FIR. Vague and omnibus evidence are made in this FIR against the accused persons.

14. The paper-book contains the application dated 20.08.2018 moved by appellant No.1/accused Sunil Thombre before the learned Judicial Magistrate First Class, Khandala as well as the Police Inspector of Khandala. It contains an endorsement that the same was filed on 20.08.2018. Appellant No.1/accused Sunil Thombre vide this application had reported to the authorities that on the very same day, he had filed an application for cancellation of bail of husband of respondent No.2/First Informant Manda Thombre namely Sahebrao Thombre. It is averred in this application that therefore husband of respondent No.2/First Informant Manda Thombre had threatened her to lodge report of atrocity and sexual harassment against him through his wife Manda Thombre i.e. respondent No.2 herein.

15. The paper-book of this appeal also contains a separate

application dated 20.08.2018 moved by the appellant No.1/accused Sunil Thombre before the learned Judicial Magistrate First Class, Khandala. In this application moved on the date of registration of the subject FIR, appellant No.1/accused Sunil Thombre alleged that Sahebrao Thombre (husband of respondent No.2/First Informant Manda Thombre) and other accused persons in the said criminal case had threatened him and assaulted him. He averred that they are giving threats of lodging false complaint against him.

16. It is also seen from the paper-book that at 6.54 p.m. of 20.08.2018 i.e. the date of registration of the subject FIR, appellant No.1/accused Sunil Thombre had lodged report against Sahebrao Thombre (husband of respondent No.2/First Informant Manda Thombre) and others to the effect that as he had filed an application for cancellation of their bail before the Court of the learned Judicial Magistrate First Class, Khandala, they had threatened him that they will lodge a FIR through Manda Thombre against him and others. Accordingly, N.C.No.296/2018 came to be registered against husband of respondent No.2/First

Informant Manda Thombre and others.

17. The learned counsel for the appellants/accused has placed on record an application dated 21.08.2018 moved by the appellant No.1/accused Sunil Thombre before the learned Judicial Magistrate First Class, Khandala seeking CCTV Footage as the same reflects that he was present in the premises of the Court for the purpose of pursuing Criminal Case No.85/2015 registered against husband of respondent No.2/First Informant Manda Thombre and others.

18. Despite long pendency of this appeal before this Court, these documents are not controverted by the respondents including the State. It is not seen that despite this stand of the appellants/accused, the investigator has not even collected CCTV Footage from the Court of the learned Judicial Magistrate First Class, Khandala. On this backdrop, if the subject FIR is perused, then it is not mentioning the caste of the respondent No.2/First Informant Manda Thombre. Only her religion has mentioned as Boudha. The subject FIR is not mentioning that what where the casteist abuses. The subject FIR is not containing any allegation

about touching a women belonging to the Scheduled Caste or a Scheduled Tribe in sexual nature. It is seen that subsequently, the case is developed so as to mention caste of respondent No.2/First Informant Manda Thombre by recording her supplementary statement as well as by adding provisions of Section 354 of the Indian Penal Code.

19. In the matter of **Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra**¹, the Hon'ble Apex Court has observed in Paragraph 59 of its judgment.

“There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated.”

20. Viewed from this angle, *prima facie* it is seen that allegations against the appellants/accused are motivated because appellant No.1/accused Sunil Thombre had preferred an application for cancellation of bail of husband of First

¹ 2018 ALL MR (Cri.)1773 (SC)

Informant/respondent No.2 Manda Thombre in the Court of the learned Judicial Magistrate First Class, Khandala on the day of lodging the FIR i.e. 20.08.2018. Thereafter on the very same day, he had lodged his complaint about threatening given to him of his implications for the offence of atrocity and sexual harassment to a women by accused persons in regular Criminal Case No.85/2015, which includes husband of respondent No.2/First Informant Manda Thombre. Even, those applications contain name of the respondent No.2/First Informant Manda Thombre as a party through whom he would be falsely implicated.

21. In the light of these peculiar facts and particularly despite an opportunity, the State has not come up with a material to counter the material placed on record by the appellant No.1/accused Sunil Thombre, the inevitable inference which can be drawn is to the effect that the FIR seems to be motivated and the case seems to be developed with passage of time. The FIR lodged on the day of the incident is not even containing an averment that apart from respondent No.2/First Informant Manda Thombre, other persons had gathered on the spot, leave apart the

public witness.

22. In the light of forgoing discussion, I am of the considered opinion that bar of Section 18 of the Atrocities Act is not applicable to the case in hand in the light of judgment of the Hon'ble Apex Court in the matter of *Dr. Subhash Mahajan (supra)*. Therefore, the order;

- : O R D E R : -

(i) The appeal is allowed.

(ii) The impugned order dated 05.09.2018 passed by the learned Special Judge, Satara in Criminal Miscellaneous Application No.661/2018 is quashed and set aside.

(iii) The application for anticipatory bail moved by the appellants/accused in Crime No.241/2018 registered with Police Station Lonand is allowed.

(iv) In the event of their arrest in the subject crime, the appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount, by each of them.

(v) As a condition of this order, appellants/accused should not

make any inducement, threat or promise to either First Informant/respondent No.2 Manda Thombre or her relatives or to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer.

(vi) The appellants/accused should not repeat commission of similar offence in future.

(vii) The appellants/accused should cooperate the Investigating Officer in investigation of the crime in question.

(viii) The appeal stands disposed off accordingly.

(A.M.BADAR J.)