

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.861 OF 2017**

Santu @ Shantaram Sadhu Rakshe & Ors. ... **Appellants**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.K.S.Patil i/b. Mr.Prashant S. Hagare, Advocate for the Appellants.

Mrs.M.R.Tidke, APP for the Respondent/State.

None for the Respondent No.2.

....

**CORAM : A.M.BADAR J.**

**DATED : 26<sup>th</sup> NOVEMBER 2018.**

**ORAL JUDGMENT :**

1 By this appeal, the appellants/accused persons are challenging the Order dated 05/10/2017 passed by the learned Special Judge, Pune in Criminal Miscellaneous Application No.3422 of 2017 thereby rejecting the claim of the appellants/accused for anticipatory bail in Crime No.684 of 2017 registered against them at Police Station, Shirur, District Pune at the instance of respondent No.2 Lata Vanshive.

2           The learned Advocate appearing for the respondent No.2 is absent. He was also absent on several occasions in past.

3           Heard the learned Counsel appearing for the appellants/accused and the learned Additional Public Prosecutor for the respondent/State.

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           The learned Counsel appearing for the appellants/accused argued that perusal of the FIR lodged by Lata Vanshive goes to show that the incident alleged by her did not take place within public view and, therefore, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity) is not applicable to the case in hand. It took place in the field owned by the appellants/accused and the FIR does not disclose that the same was witnessed by any public witness.

7           As against this, the learned Additional Public Prosecutor supported the impugned Order submitting that Section

18 of the Atrocities Act prohibits grant of anticipatory bail and, therefore, in view of bar of Section 18, the appeal needs to be dismissed.

8 I have carefully considered the submissions so advanced and perused the material placed on record. Respondent No.2 First Informant Lata Vanshive averred in the FIR that she and her family members own field Gat No.88, whereas her father-in-law Govind Vanshive was owning field Gat No.87. The FIR itself makes it clear that 50 years prior to the incident in question, Govind Vanshive had sold entire field Gat No.87 to appellant/accused No.1 Santu Rakshe and since then it was in possession of Santu Rakshe. It is averred in the FIR that two years prior to the incident in question, it was found that the appellant/accused No.1 Santu Rakshe is possessing 21 gunthas of land in excess and, therefore, it was decided to keep that land fallow. It is averred that on 26/09/2017, the appellants/accused started ploughing that fallow land. First Informant/Respondent No.2 Lata Vanshive and her sister-in-law Aruna objected for this act of the appellants/accused. It is further contended that then appellant No.9 Ramesh Rakshe and appellant No.8 Yogesh Rakshe slapped First Informant Lata Vanshive and her sister-in-law Aruna and removed them from that disputed land. Respondent No.2 Lata Vanshive further averred that at that time both of them uttered that these persons from *mahar* caste become insolent and

they need to be beaten. She disclosed the incident to her husband. When her husband arrived on the spot, again same utterances were made. Respondent No.2 Lata Vanshive then lodged the FIR on the very same day which resulted in registration of Crime No.684 of 2017 for offences punishable under Section 323, 143, 149, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(r) and (s), 3(2)(va) and Section 6 of the Atrocities Act and Section 7(1)(d) of the Protection of Civil Rights Act, 1955. As per provisions of Section 3(1)(r) of the Atrocities Act, intentional insult or intimidation with intent to humiliate a member of the Scheduled Castes if committed in any place within public view makes the offence of atrocities. Similarly, as per provisions of Section 3(1)(s) of the Atrocities Act, abusing any member of the Scheduled Caste by caste name in any public place within public view makes out the offence of atrocities. Section 3(2)(va) of the Atrocities Act, deals with scheduled offence and provides that if any person commits the offence specified in the Schedule knowing that the victim is a member of scheduled caste, against said person or the property belonging to such person then the accused is liable for punishment as specified in the Indian Penal Code for said offence and shall also liable for fine.

9           Perusal of the FIR shows that the incident in question took place in the field, which according to the First Informant is a disputed area of 21 gunthas of land which needs to be kept fallow.

The FIR does not disclose that the incident of casteist abuses and intentional insult for humiliating the member of scheduled caste took place within public place.

10 For attracting the penal provisions of Sections 3(1)(r) and 3(1)(s), intentional insult or intimidation with an intent to humiliate the member of the scheduled caste or scheduled tribe needs to take place in any place within public view. Similarly, casteist abuses are required to be hurled in any place within public view. The words 'in any place within public view' came to be interpreted by the learned Division Bench of this Court in the matter of *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*<sup>1</sup>. Relevant portion of paragraph 8 of that Judgment reads thus :

“8.....The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being

---

1 MANU/MH/0359/2005.

"within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act."

11           It is thus clear that the incident or insult or intimidation as well as hurling casteist abuses to a member of scheduled caste or scheduled tribe has to occur in a place accessible to and in presence of the public. The presence of both these ingredients are *sine qua non* for invoking provisions of the Atrocities Act. Keeping in mind this aspect, it becomes clear that the FIR do not show that the alleged incident took place in

presence of any public person. At this juncture, it is apposite to quote the observations of the Honourable Delhi High Court in the matter of *Daya Bhatnagar & Ors. v. State*<sup>1</sup>, wherein in paragraph 19 it is held thus :

“19.....Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, person having any kind of close relationship or association with the complainant would necessarily get excluded.”

12           The FIR do not show that the alleged incident took place in presence of any public person. As such, bar of Section 18 of the Atrocities Act is not applicable against any of the appellants/accused so far as the offence punishable under Sections 3(1)(r) and (s) of the Atrocities Act is concerned. However, averment in the FIR makes out the offence punishable under Section 3(2)(va) of the Atrocities Act against appellant No.9 Ramesh Rakshe @ Kadam and appellant No.8 Yogesh Rakshe as allegations against them are to the effect that knowing very well that the First Informant and her sister-in-law belong to schedule caste

---

<sup>1</sup> MANU/DE/0085/2004.

'mahar' they had slapped both of them and they driven them out of the disputed field. Hence, bar of Section 18 of the Atrocities act is certainly applicable so far as case against these appellants is concerned limited to extent of the offence punishable under Section 3(2)(va) of the Atrocities Act. So far as offences punishable under the provisions of Indian Penal Code are concerned, I am of the considered opinion that custodial interrogation of the concerned accused is not necessary. Therefore, the Order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned Order dated 05/10/2017 passed by the Special Judge, Pune rejecting the application for anticipatory bail so far as appellant Nos.1 to 7 and 10 to 16 is concerned, is quashed and set aside.
- (iii) Their application for anticipatory bail in Crime No.684 of 2017 is allowed.
- (iv) In the event of their arrest in the subject crime, they be released on P. R. Bond of Rs.15,000/- each and on furnishing surety in the like amount by each of them.
- (v) As a condition of this Order, the appellants/accused shall not extend any threat inducement or promise 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 impugned Order so far it relates to appellant No.8 Yogesh Rakshe and appellant No.9 Ramesh Rakshe @ Kadam is confirmed.

(vii) The appeal is disposed of accordingly.

**(A.M.BADAR J.)**