

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.902 OF 2017

TUSHAR ASHOK GAIKWAD

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Aniket Nikam i/b. Mr.Aashish Satpute, Advocate for the Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

Mr.Suhas Garud, Deputy Superintendent

CORAM : A. M. BADAR, J.

DATE : 22nd NOVEMBER 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the order dated 9th October 2017 passed by the learned Special Judge, Pune, in Criminal Miscellaneous Application No.2726 of 2017, thereby rejecting the claim of the appellant/accused for

anticipatory bail in Crime No.312 of 2017, registered with Lonikand Police Station, District Pune, for offences punishable under Section 323, 324, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(r)(s), 3(a)(r)(i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard. Admit. Heard finally, considering the fact that the appeal is challenging rejection of the application for anticipatory bail.

3 The learned counsel appearing for the appellant/accused argued that the First Information Report (FIR) lodged by respondent no.2/First Informant Vinayak Gaikwad is not disclosing the fact that any independent public witness was present at the time of commission of the alleged offence. It is further argued that the offence alleged against the appellant/accused did not take place within a public view, and therefore, bar of Section 18 of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable.

4 The learned APP opposed the appeal by contending that the incident in question was witnessed by Shivaji Gaikwad, Vishal Abnave and Sagar Tingare and it was committed at the shop which is a public place. Therefore, the appeal is liable to be rejected.

5 Despite service and granting sufficient opportunity, the respondent no.2/ First Informant failed to appear before this court and as such, there is no alternative but to proceed with the matter in his absence. The learned APP even drew my attention to the intimation letter dated 21st November 2018 served on the respondent no.2/ First Informant Vinayak Gaikwad. This intimation letter issued by the Sub-Divisional Police Officer found with the papers of investigation shows that the respondent no.2/ First Informant was intimated by the Investigating Officer that the instant appeal is fixed for hearing on 22nd November 2018. The

respondent no.2 was informed by this letter to appear before this court for defending his case.

6 Facts, in brief, reflecting allegations against the present appellant/accused, are thus :

Respondent no.2/ First Informant Vinayak Gaikwad is owner of a mobile shop. On 5th May 2017, the appellant/accused went to his shop for ascertaining as to how balance in his mobile phone is reduced. Respondent no.2/ First Informant Vinayak Gaikwad asked him to come back after 1 hour. Upon that, it is averred by respondent no.2/ First Informant that the appellant/accused abused him and assaulted him. It is further averred that the appellant/accused intentionally insulted the respondent no.2/ First Informant by giving casteist abuses with an intention to humiliate him.

7 Perusal of the FIR lodged by respondent no.2/ First Informant Vinayak Gaikwad shows that the incident was not

witnessed by any independent public person. Rather, in the detailed FIR lodged by respondent no.2/ First Informant Vinayak Gaikwad it is not averred that at the time of commission of the alleged offence, some other persons were present on the scene of occurrence. Perusal of the case diary shows that the Investigating Officer has recorded statement of Shivaji Gaikwad, Vishal Abnave and Sagar Tingare. All these persons, as seen from their statements, are closely related to the respondent no.2/ First Informant.

8 It is also seen from the FIR lodged by respondent no.2/ First Informant Vinayak Gaikwad that caste of the appellant/accused is not mentioned therein. Papers of investigation are also not reflecting the caste of the appellant/accused. At this juncture, it is apposite to quote paragraph 6 of the judgment of the Honourable Apex Court in the matter of **Gorige Pentaiah vs. State of Andhra Pradesh and Others**¹ read thus :

1 (2008) 12 SCC 531

“6According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

In view of these observations of the Honourable Apex Court, mentioning of the fact that the accused is not a member of the Scheduled Castes or Scheduled Tribes is essential.

9 At this juncture, it is apposite to quote observations of the learned Division Bench of this court in the matter of **Pradnya**

Pradeep Kenkare and Ors. vs. State of Maharashtra². They read thus :

“8The 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 "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

² 2005 (3) MH.L.J. 368

"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."

10 These observations make it clear that incident of insult or intimidation has to occur in a place accessible to and in presence of public. Presence of both these ingredients is sine-qua-non for making out the offence punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11 The expression "public view" is clarified by this court in the matter of Balu s/o. Bajirao Galande vs. State of Maharashtra and Another³. The relevant observations are thus :

³ 2006 6 AIR (BOM) (R) 251

“19 Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress.”

Thus, the incident is required to be witnessed by independent public person in order to bring it within a public view.

12 In this view of the matter, it is not seen that the incident was witnessed by an independent public witness. It is not seen from the papers of investigation that the appellant/accused is not belonging to either Scheduled Castes or Scheduled Tribes. So far as offences punishable under the Indian Penal Code are concerned, considering the nature of offence, custodial interrogation of appellant/accused is not warranted. The learned Special Judge erred in holding that bar of Section 18 of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is applicable to the case in hand. The appeal, therefore, deserves to be allowed, and as such the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 9th October 2017 passed by the learned Special Judge, Pune, below Exhibit 1 in Criminal Miscellaneous Application No.2726 of 2017 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.312 of 2017, registered with Lonikand Police Station, District Pune, for offences punishable under Section 323, 324, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(r)(s), 3(a)(r)(i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at the instance of respondent no.2/First Informant Vinayak Gaikwad, the appellant/accused 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 appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused should not contact respondent no.2 or his relatives in any manner.
- vii) The appellant/accused should attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)