

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 41 OF 2019

Pramod Laxmanrao Mahajan,
Age : 35 years, Occu : Service Assistant Engineer,
Maharashtra State Electricity Distribution Company,
Limited, at Waluj,
R/o. : Plot No. 15, New Gajanan Colony,
Garkheda, Aurangabad. .. **Appellant**

Versus

1. The State of Maharashtra,
Through Investigating Officer/Police Inspector,
Jafrabad Police Station,
Tq. Jafrabad, District Jalna.
2. The Superintendent of Police, Jalna,
S. P. Office, Jalna District Jalna.
3. Shalikram Rangnath Avahad,
Age : 48 years, Occu. Labour,
R/o. Wadala, Tq. Jafrabad,
District Jalna. .. **Respondents**

...
Shri. S. V. Mundhe, learned Counsel for Appellant.
Shri. K. D. Mundhe, learned APP for the Respondent No.1 & 2-State
Shri. S. M. Pandit, learned Counsel for Respondent No.3
...

CORAM : K.K. SONAWANE,J.

DATE : 1ST MARCH, 2019.

JUDGMENT

Heard. Admit. Matter is taken up for final hearing on
merit with the consent of both sides.

2] This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as “ the Act of 1989” for the sake of brevity) on behalf of appellant, for the relief of his pre-arrest bail, in Crime No. 3013 of 2015 registered under Section 3(1)(x) of the Act of 1989 and Sections 323, 504 and 506 of Indian Penal Code at Police Station, Jafrabad, District Jalna.

3] The factual matrix of the matter in brief is that the respondent No.2 Shalikram preferred a private complaint bearing M.A. No. 127 of 2015 for penal action against the applicant under Section 3(1)(x) of the Act of 1989 as well as Section 506 and 353 of IPC. The learned Magistrate entertained the private complaint and was pleased to pass an order, “Call report under Section 156(3) of Cr.P.C. from the concerned P.S.”, on 26-10-2015.

4] Pursuant to the impugned order, police of Jafrabad P.S. registered the crime No. 3013 of 2015 and set the penal law in motion against accused-appellant herein. The appellant – proposed accused in the private complaint, preferred the revision petition bearing Criminal Revision Application No. 117 of 2015 and agitated the validity and propriety of the impugned order of learned Magistrate for calling the report under Section 156(3) of Cr.P.C.

5] It has been contended that the revisional court considered the factual aspect of the matter and on 30-11-2015 granted interim relief and kept the impugned order in abeyance till final adjudication of the revision petition on merit. But, concerned police did not pay any attention to the interim relief and registered the crime No. 3013 of 2019 on 3/12/2015. The action of registration of crime by the Police of Jafrabad Police Station was in contravention of the interim order granted by the revisional court. However, the Criminal Revision petition filed before the learned Sessions Court at Jalna on behalf of appellant, came to be dismissed on merit in the month of October-2018.

6] Being aggrieved by the dismissal of revision petition the appellant approached to this court and filed the proceeding of Criminal Application No. 3339 of 2018, for the relief to quash and set aside the proceeding of Criminal Misc. Application No. 127 of 2015, filed before the learned Magistrate, *inter-alia*, sought stay to the order of dismissal passed by the learned Revisional Court. Pending Criminal Application, bearing No. 3339 of 2018, before this court filed under Section 482 of Cr.P.C. read with Article 227 of the Constitution of India, the appellant apprehending his arrest in this crime by the police for investigation, he rushed to the Court of concerned Additional Sessions Judge, Jalna, and preferred the application bearing Cri. Misc. Petition (Bail) No. 1192 of 2018 for

the relief of his pre-arrest bail under Section 438 of Cr.P.C. But, the learned Sessions Judge, found reluctant to entertain the application in view of statutory bar under Section 18 of the Act of 1989. In the result, the learned Sessions Judge rejected the application and passed the impugned order which is the subject matter of present appeal

7] Heard the learned counsel for the appellant at length. The learned APP and the learned counsel for respondent No.3/ original complainant, vociferously opposed the contentions put forth on behalf of the appellant and submits that the provisions of Section 18-A of the Act of 1989 put an embargo on the court for exercise of powers under Section 438 of Cr.P.C. The appellant abused the complainant on his caste within public view. Therefore, the application for anticipatory bail may not be entertained.

8] It is to be noted that this Court in the decision of Criminal Appeal No. 787 of 2018 (***Kiran Madhukar Ingle Versus State of Maharashtra and another***), elaborately dealt with the issue of applicability of Section 18 of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C. and made observations in paragraph Nos. 13 and 15 as under :-

13. It is explicitly made clear that the Court of Sessions or High Court can entertain the application for pre-arrest bail to ascertain its maintainability. The law does not permit to reject the application for anticipatory

bail merely because the case has been registered under section 3 of the Act of 1989. But, it is incumbent on the part of the Court to examine as to whether the applicant at all is a fit person to be treated as accused of the crime registered under the Act of 1989. Section 18 of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint. When the Court is held competent to enter into scrutiny of the allegations to determine whether the person can be treated as accused of commission of offence under the Act of 1989, then question would arise as to what extent the Court would be justified to examine material to determine the *prima facie* case against him.

14. xx xx xx xx xx xx xx

15. The exposition of law as referred above unequivocally pointer to the inference that the application for anticipatory bail can be entertained only on the ground of inapplicability of the provisions of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law.

9] In the instant appeal, the prosecution applied the provisions of Section 3(1)(x) of the Act of 1989, which reads thus :

“3. Punishments for offences of atrocities. -

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(i) to (ix)

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view.”

10] After perusal of the FIR lodged against the present appellant, *prima facie* it reveals that the ingredients of aforesaid penal provisions do not match with factual score of the present case. The basic ingredients of section 3(1)(x) are that there must be “intentional insults” or “intimidates” with “intent” to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within “public view”. It is abundantly clear that *mens rea* is the decisive factor in the offence under Act of 1989. There must be “intentional insults” or “intimidation” with “intent” to humiliate member of Scheduled Caste and Scheduled Tribes in any place within “public view”. In the case of ***Shantabai Vs. State of Maharashtra*** reported in ***1982 Cr.L.J. 872***, it has been held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

11] In the matter in hand, it has been alleged that the respondent, on the day of incident, had been to the office of the appellant for pursuing the proposal to install the electric meter at his house. But, the respondent disclosed the complainant that he would not get the new meter as there were arrears of Rs. 2470/- towards him on account of previous electric bill. The complainant told the appellant that he is ready to pay the arrears of electricity bill but new meter be installed at his residence. However, the

appellant hurled the castiest abuses to the complainant saying “मांगटया” and given threats to his life. But, other persons present in the office intervened in the fight. Thereafter the complainant approached to the police but they did not take any action. At last, he preferred a private complaint for direction under Section 156(3). Pursuant to directions, the police registered the crime and set the penal law in motion.

12] If the word “मांगटया” is taken out from the complaint for a moment, then the other utterances perceived from the complaint though indicate threat for intimidation, but it is not pointer to the inference that there was any intent or mens-rea to humiliate the complainant on his caste in public view. The allegations in the complaint in regard to intimidation or threat, taking the name of caste of the complainant would be at the most fall under the provisions of IPC.

13] Moreover, it is to be noted that as per Section 3 of the Act of 1989 it must be prima facie shown that accused is not a member of Scheduled Caste or Scheduled Tribes and alleged humiliation by way of intentional insult or intimidation was committed in a place within public view. The opening sentence of section 3(1) and 3(2) of the Act of 1989 itself shows “whoever not being a member of Scheduled Caste or Scheduled Tribe”. It means

that there must be *prima facie* affirmation or say in the FIR/ complaint that the accused is not the member of Scheduled Caste or Scheduled Tribe. In the present complaint, absolutely there is no averment to the effect that appellant-applicant is belonging to higher caste or atleast that he is not a member of Scheduled Caste. This being main and basic ingredient of Section 3(1)(x) of the Act of 1989 and the absence of the same will have an serious impact as to the allegations to constitute offence under the Act of 1989.

14] The learned APP during the course of arguments filed the report of the concerned I.O. on record, which is marked as "X" for identification. In the report, it has been mentioned that the I.O. carried out the entire investigation of the crime, but, he did not succeed to collect the evidence to prove that the appellant committed crime. It transpired during investigation that there is no cogent and concrete evidence on record to prefer a report under Section 173 of Cr.P.C. against the appellant. The I.O. arrived at the conclusion that the impugned complaint is fake and frivolous, therefore, he forwarded "B" summary report to the higher authority for approval in this crime. In such backdrop also, the conclusion can be drawn that there are no circumstances *prima facie* on record to constitute the offence under Act of 1989 as alleged against appellant.

15] Taking into consideration all aspects of the matter and in spite of bar under Section 18 of the Act, 1989, for invocation of power under Section 438 of the Cr.P.C., it is still open to the Court to find out looking to the FIR of the case itself as to whether *prima facie* case is made out by the complainant against the appellant. The circumstances on record are not sufficient to arrive at the conclusion that there are material *prima facie* on record to draw adverse inference against the appellant. Therefore, there is no impediment to entertain the application of appellant for the relief of his pre-arrest bail under Section 438 of the Cr.P.C.

16] In regard to the charges punishable under Sections 323, 504 and 506 of the IPC, it is to be noted that all these offences are bailable in nature. Moreover, most of the part of investigation has already been completed. It is also significant to note that as referred above the I.O. also shown inability to file charge-sheet in this matter for want of cogent, dependable and credible evidence. He forwarded the 'B' summary report against the appellant for approval to his superior. In such circumstances, the conclusion can be drawn that there are no circumstances on record *prima facie* sufficient to constitute the offence against the appellant as alleged in the FIR. Hence, there is no impediment to allow the appeal.

17] In sequel, the appeal stands allowed. The impugned

order dated 28-12-2018 passed by learned Additional Sessions Judge, Jalna, in Criminal Misc. Petition (Bail) No. 1192 of 2018, is hereby quashed and set-aside. The application of the appellant-applicant filed under Section 438 of the Cr.P.C. for his pre-arrest bail before the learned trial Court is hereby allowed. The appellant-Pramod Laxmanrao Mahajan be released on bail in the event of his arrest in connection with Crime No. I-3013 of 2015 registered at Jafrabad Police Station under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [i.e. Section 3(1)(x) of the Act, 1989 prior to amendment], on furnishing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety of like amount. It is stipulated that appellant-applicant shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

18] The present Criminal Appeal stands disposed of in above terms. No order as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-