

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL (ST) NO.203 OF 2019

The State of Maharashtra

...Appellant

V/s.

Mangal Tukaram Patil & Anr.

...Respondents

Mr. S.V. Gavand, APP for the Appellant/State.

Mr. Aniket Nikam, Advocate for the Respondent Nos.1 and 2.

CORAM : A.M.BADAR, J.

DATED : 4th MARCH 2019

ORAL JUDGMENT:

1. Mr. Nikam, the learned Counsel waives notice for respondent Nos.1 and 2.
2. Heard.
3. Admit.
4. Heard forthwith considering the fact that the appeal is challenging the impugned order dated 14th December 2018 passed by the learned Special Judge and Additional Sessions Judge, Sangli in Criminal Misc. Application No.1177 of 2018, thereby

granting pre-arrest bail to the respondents in Crime No.48 of 2018 registered against them at the instance of Seema Dahale for offence punishable under Section 3(1)(r) and (s) 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 Section 7(1)(d) of the Protection of Civil Rights Act, 1955 and under Sections 436 and 506 read with Section 34 of the Indian Penal Code.

5. Heard the learned Additional Public Prosecutor appearing for the Respondent/State. He vehemently argued that in view of bar of Section 18 as well as 18A of the Atrocities Act, the learned Special Judge ought not to have granted anticipatory bail to the Respondent Nos.1 and 2. Offence of atrocity is clearly made out. The learned Additional Public Prosecutor submitted that statements of Tanaji Dahale, Rekha Mane, Arun Dahale, Shital Dahale shows that the offence took place within public view.

6. The learned counsel appearing for the respondents

submitted that there was no public witness to the alleged incident apart from the fact that the FIR as well as papers of investigation are not showing averments that the offence took place in a place within public view.

7. I have considered the submissions so advanced and perused papers of investigation. Intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view is an offence of atrocity. Similarly, abusing any member of a Scheduled Caste or Scheduled Tribe by caste name in any place within public view is also an offence of atrocity. However, such offence is required to be committed in presence of or in the proximity of at least one independent person. Following are the observations of this Court in the matter of ***Balu s/o Bajirao Galande v. State of Maharashtra***¹.

“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

¹ 2006 6 AIR (Bom.)(R) 251

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.”

8. Moreover, it is also required to be stated in the FIR in the light of provisions of Section 3 of the Atrocities Act that the accused/appellants are not members of the scheduled caste or scheduled tribe.

9. Viewed from this angle, averments of First Informant/Seema Dahale is to the effect that on 23rd October 2018 co-accused Pushpa Gavade and others took photograph of the disputed land and then they went in front of house of respondents/accused. Thereafter, respondents gave casteist abuses and insulted them. Averments in the FIR does not show that this incident took place in presence of some independent person. Witnesses whose statements are recorded by the Investigating Officer are near relatives of the first informant. The

FIR is also not containing averment that the respondents are not belonging to either Scheduled Caste or Schedule Tribe.

10. In this view of the matter, it cannot be said that the impugned order passed by the learned Special Judge granting anticipatory bail to the respondents by holding that bar of Section 18 or 18A of the Atrocities Act is not applicable to the case in hand is either perverse or illegal.

11. The appeal is devoid of merit and as such the order:

ORDER

The appeal is dismissed.

(A.M.BADAR J.)