

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1445 OF 2018

- 1 Prakash Shamrao Patil,
Age – 60 years, Occu. : Agriculturist,
- 2 Shrilekha Prakash Patil,
Age – 54 years, Occu. : Social Worker,
- 3 Karan Prakash Patil,
Age : 25 years, Occu. : Business,
R/At : Paniv, Tal.Malshiras,
Dist.Solapur. ... **Appellants**

Versus

- 1 State of Maharashtra,
(P.I. Akluj Police Station)
- 2 Gajjannath Dattu Torane,
Age – 45 years, At Post Paniv,
Taluka Malshiras, Solapur. ... **Respondents**

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Mr.Manoj S. Mohite with Mr.Satyam H. Nimbalkar with
Mr.Abhishek Patil with Mr.Rohan Hogle, Advocate for the
Appellants.

Mr.Vinod Chate, APP for the Respondent No.1/State.

Mr.Devidas J. Jadhav, Advocate for the Respondent No.2.

Mr.Shashikant Shelke, API, Malshiras Police Station is present in
person.

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CORAM : A.M.BADAR J.

DATED : 20th SEPTEMBER 2019.

ORAL JUDGMENT :

1 Heard.

2 Admit.

3 Heard finally by consent of parties.

4 By this appeal, the appellants are challenging the Order dated 27/11/2018 passed by the learned Special Judge and Additional Sessions Judge, Malshiras rejecting the application for anticipatory bail bearing Criminal Miscellaneous Application No.235 of 2018. At the instance of First Informant respondent No.2/Jagannath Torane Crime No.524 of 2018 came to be registered against present appellants with Police Station, Akluj on 23/11/2018 for offences punishable under Sections 3(1)(r) and (s) as well as Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for the sake of brevity), under Section 7(1)(d) of the Protection of Civil Rights, 1955 and under Section 506 read with Section 34 of the Indian Penal Code. Concerned police officer has also invoked provisions of repealed Section 3(1)(x) of the Atrocities Act.

5 The learned Counsel for the appellants/accused argued that the FIR in question is a counter-blast by the First Informant

and his associate Babasaheb Shendage for the reason that on 22/11/2018, employee of appellant No.1/Prakash Patil namely Madhukar Sathe had lodged report against Ramesh Gophane, Police Patil of village Paniv, who happens to be supported by the First Informant in the instant case. It is argued that First Informant respondent No.2/Jagannath Torane and his associate Babasaheb Shendage had lodged complaint to the Police Station as well as Revenue Authority against appellant No.1 Prakash Patil alleging encroachment by appellant No.1 Prakash Patil on funeral ground of the village Paniv and the incident allegedly took place in presence of police party as well as Police Patil of the village. The same is not supported by any independent public witness. Witnesses supporting the alleged incident are Babasaheb Shendage and Ujwala Shinde – sister of First Informant respondent No.2/Jagannath Torane. Therefore, bar of Section 18 or 18A of the Atrocities Act is not made out.

6 The learned Counsel appearing for First Informant respondent No.2/Jagannath Torane submits that the case of atrocities is made out and the charge-sheet has been filed against the appellants/accused.

7 The learned Additional Public Prosecutor supported the impugned Judgment and Order by contending that statements of Babasaheb Shendage and Ujwala Shinde coupled with the FIR

lodged by First Informant respondent No.2/Jagannath Torane make out the case of atrocities and, therefore, the appellants are not entitled for anticipatory bail.

8 I have carefully considered the submissions so advanced and perused the material placed on record.

9 Undisputedly, even according to the prosecution case as reflected in the FIR, First Informant respondent No.2/Jagannath Torane along with his associate Babasaheb Shendage had lodged complaint against appellant No.1 Prakash Patil and his family members regarding their alleged encroachment on funeral ground of village Paniv in Malshiras Taluka of Solapur District. The FIR itself reveals that in inquiry of that complaint, Police Inspector Sanjay Dnyandev Surve along with police team comprising of Police Naik Harishchandra Patil, Home-guard Prasad Devkar and Home-guard Dnyaneshwar Magar came to village Paniv. Police Patil Ramesh Gophane was also summoned by them. The police party also called First Informant respondent No.2/Jagannath Torane, who happened to be the complainant in respect of alleged encroachment made by appellant No.1 Prakash Patil.

10 On the backdrop of these undisputed facts, it is averred by First Informant respondent No.2/Jagannath Torane that when he went to the office of Grampanchayat, Paniv, all three appellants

were already present there. When, as soon as, they saw him, they started giving casteist abuses to him for intentionally insulting him and intimidating him in order to humiliate him as he belongs to the Scheduled Caste. He was threatened by all appellants/accused.

11 Now, on completion of investigation of the crime in question, charge sheet has been filed. The charge-sheet contains statements of Babasaheb Shendage, associate of First Informant respondent No.2/Jagannath Torane and that of Ujwala Shinde, who happens to be sister of First Informant respondent No.2/Jagannath Torane. They are supporting the version of First Informant respondent No.2/Jagannath Torane regarding intentionally insulting as well as casteist abuses with an intention to humiliate the member of the Scheduled Caste. However, both of them cannot be termed as 'independent public witness'. The expression 'public view' is clarified by this Court in the matter of ***Balu s/o Bajirao Galande v. State of Maharashtra***¹. The relevant observations in the said reported rulings reads thus :

“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

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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.”

It is, thus, clear that for making out the offence of atrocities, the casteist abuses, intentional insult or intimidation with an intent to humiliate a member of the Scheduled Caste is required to be witnessed by independent public person in order to bring the same within the purview of term 'public view'. Such is not the case in hand.

12 Independent public witnesses, who were present on the spot namely Sanjay Dnyandev Survey - Police Inspector, Harishchandra Dattatraya Patil - Police Naik, Prasad Devkar and Dnyaneshwar Magar – Home-guards so also Ramesh Gophane – Police Patil have not supported the First Informant respondent No.2/Jagannath Torane on this aspect. On the contrary, statements of these independent public witnesses are to the effect that no such incident of intentional insult, intimidation with an intent to humiliate or casteist abuses took place. Some of them are only stating about wordily dual between the parties.

13 In the light of foregoing discussion, bar of Section 18 or 18A of the Atrocities Act is not applicable to the case in hand. So far as as other offences are concerned, custodial interrogation of the appellants/accused is not at all warranted and, therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) Impugned Order dated 27/11/2018 passed by the learned Special Judge and Additional Sessions Judge, Malshiras, District Solapur rejecting the application for anticipatory bail bearing Criminal Miscellaneous Application No.235 of 2018 is quashed and set aside.
- (iii) The application for anticipatory bail moved by the appellants/accused is allowed.
- (iv) In the event of their arrest in Crime No.524 of 2018 registered with Police Station, Akluj at the instance of First Informant respondent No.2/Jagannath Torane, the appellants/accused shall be released on bail on their executing P.R. bond of Rs.15,000/- and on furnishing surety in the like amount by each of them.
- (v) As a condition of this Order, the appellants/accused shall not indulge in repetition of any offence in future and they would not contact First Informant respondent No.2/Jagannath Torane or his relatives and associates in any manner during pendency of the trial of the offence registered against them.

(vi) 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.

(vii) The Appeal is disposed of accordingly.

(A.M.BADAR, J.)