

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.9 OF 2019

1. Ramchandra Ganpat Mane,
Age : 30 years, Occu. : Labour Contractor,
R/at Room No.1, Balu Mukadam Chawl,
Manpada Road, Near Shankeshwar Mandir,
Sagaon, Nandivli Pada, Dombivli (E).
- 2 Mohan Achalji Choudhary, Age : 36 years,
Occu. : Business, R/at Room No.1,
Sai Shraddha Chawl, Manpada Road,
Near Chera Dev Mandir, Dombivli (E).
- 3 Siddhant Suresh Padwal, Age : 25 years,
Occu. : Service, R/at Room No.109,
Devidas Darshan Building, Manpada Road,
Pawar Nagar, Sagaon, Tilak Nagar,
Dombivli (E).

... Appellants

V/s.

- 1 The State of Maharashtra,
(At the instance of the Police
Inspector, Dombivli Police Station,
Dombivli)
(Vide their CR No.I-283 of 2018).
- 2 Kiran Shrirang Shinde,
Adult, Occupation : Student,
Residing Behind Babasaheb Ambedkar
Statue, Kalyan Road, Indira Nagar,
Dombivli (E), Dist. Thane

... Respondents

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Mr.Mohammed Umar Kazi, Advocate for the Appellants.

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

Mr.Ganesh Bhujbal, Advocate for the Respondent No.2.

Mr.M.T.Kalamkar, PSI Dombivali Police Station is present.

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CORAM : A.M.BADAR J.

DATED : 5th MARCH 2019.

ORAL JUDGMENT :

1 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 'Atrocities Act' for the sake of brevity) by the appellants/accused challenging the Order dated 14/12/2018 passed by the learned Special Judge, under Atrocities Act thereby rejecting claim of the appellants/accused for grant of anticipatory bail in Crime No.I-283 of 2018 registered with Police Station, Dombivali for offences punishable under Sections 324, 341 and 504 read with Section 34 of the Indian Penal Code as well as under Section 3(1)(x) of the Atrocities Act. Subsequently, it appears that provisions of Section 3(1)(r)(s) of the Atrocities Act are added to the case diary of the crime in question.

2 Heard.

3 Admit.

4 Heard finally by consent of parties.

5 The learned Counsel appearing for the appellants/accused contended that no offence under the provision of the Atrocities Act is made out even from the FIR lodged by the First Informant. The incident took place in spur of moment without any intention on the part of the appellants/accused and, as such, the learned Special Judge erred in rejecting the application for anticipatory bail of the appellants/accused.

6 The learned Additional Public Prosecutor opposed the appeal by contending that the FIR itself goes to show that upon coming to know that the respondent No.2 belongs to the Scheduled Caste, they indulged in assaulting him and causing injury to him and, as such, the offence punishable under Section 3(2)(va) of the Atrocities Act is made out.

7 I also heard Shri.Bhujbal, the learned Counsel appearing for respondent No.2, who fairly argued that though there is some problem in holding that *prima facie* case for the offence of Atrocities Act is made out, but there is material to infer commission of the offences punishable under the Indian Penal Code by the appellants/accused.

8 I have considered the submissions so advanced and also perused the case diary of the crime in question.

9 It is seen that appellant/accused No.3 himself belongs to the Schedule Caste. Perusal of the FIR lodged by respondent No.2 does not mention the fact that the appellants/accused are not belonging to either scheduled caste or scheduled tribe. The incident in question occurred on the spur of moment when the respondent No.2/First Informant was passing from the road where the four wheeler vehicle and two wheeler vehicle of the appellants/accused were in stationary condition. In paragraph 6 of its Judgment in the matter of **Gorige Pentaiah v. State of Andhra Pradesh & Ors**¹ the Honourable Apex Court has held thus :

“6.....According 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.”

1 (2008) 12 Supreme Court Case 531.

10 In this view of the matter, I am of the considered opinion that no *prima facie* case for the offences under the Atrocities Act is made out inviting bar of Section 18 or 18A of the Atrocities Act. The offences punishable under the Indian Penal Code appears to be bailable in nature and even otherwise for investigation of those offences, custodial interrogation of the appellants/accused is not warranted. Hence, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order rejecting the claim of anticipatory bail of the appellants/accused by the learned Special Judge is quashed and set aside.
- (iii) The application for anticipatory bail moved by the appellants/accused in the subject crime stands allowed.
- (iv) In the event of their arrest in the subject crime, the appellants/accused be released on bail on their executing P.R.Bond in the sum 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 to cooperate the Investigating Officer for investigation of the crime in question.

(vi) They should 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 appellants/accused should not repeat commission of similar offence in future.

(viii) The Appeal is disposed of accordingly.

(A.M.BADAR J.)