

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.127 OF 2018

Mr. Ramji Harakhchand Shah Appellant

Vs.

1. The State of Maharashtra
2. Mr. Gajanan Sahadev Kamble Respondents

Mr. Niranjan Mundargi a/w Mr. Onkar Mulekar i/by Agastya Desai for Appellant

Mr. S.B. Talekar, Special P.P. a/w Madhvi Ayyappan i/by Talekar and Associates for respondent no.1.

Mr. Sakolkar i/by Mr. Vinod P. Sangvikar a/w Mr. Yogesh Morbale for Respondent no.2.

Coram : NITIN W. SAMBRE, J.

Date : 9th December 2019

P.C.:

1. The appellant is seeking pre-arrest bail in Crime No.736 of 2017, registered with Dindoshi Police Station, for offences punishable under Sections 141, 504, 506 and 34 of the Indian Penal Code and also for offences under Sections 3(1)(g)(l)(r)(x)(z) and (u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act” for the sake of brevity).

2. Mr. Talekar, Special P.P. and Mr. Sakolkar for respondent no.2- complainant has raised a preliminary objection pursuant to the bar of entertaining the present appeal, prescribed under Section 18-A of the aforesaid Act. According to them, since the provisions of Atrocities Act are invoked against the appellant, the appeal has to be rejected as not maintainable as remedy of bail (pre-arrest) is not available. Both these counsel would draw their support from the language of the above Section and the allegation in the copy of the complaint, which is produced at page 27. According to them, complaint dated 14th November, 2017 is a bunch of various criminal events which has taken place on the given dates, which prima facie satisfies the very requirement of the above Section, under which the appellant is booked, as such prayer for rejection of present application.

3. Per contra, learned counsel for the appellant submits that bar will not operate as the Apex Court in the matter of Vilas Pawar Vs. State of Maharashtra, reported in A.I.R. 2012, Supreme Court, page 3316, had held that the Court is duty bound to appreciate the wordings

in the complaint, so as to satisfy as to the justification of invoking of the provisions of the Atrocities Act. Learned counsel would then urge that the party i.e. the appellant and the respondent-complainant are litigating in the Civil Court and also in this Court in the matter of alleged encroached portion of land owned by the respondent no.2. There is interse disputes between the respondent no.2 and his son Vilas, inclusion of the name of the respondent no. 2 / his wife and son into schedule-II of the Slums Act to be the beneficiary, the amount of rent paid. According to him, there is sufficient material to infer that the provisions of Atrocities Act are wrongly invoked and are misused.

4. With the assistance of respective learned counsel, I have perused the material available on record including various orders passed by this court.

5. Perusal of the complaint would reveal that the alleged offences, which prompted to invoke the provisions of Atrocities Act had taken place on 9th November, 2016. For the said offences, a complaint came to be lodged by respondent no.2 on 14th November, 2017 i.e. almost after a period of more than one year.

6. Apart from above, on 9th November, 2016, son of the complainant/respondent no.2 had lodged a N.C. case for an offence punishable under Sections 504 and 506 of Indian Penal Code, in which there is no reference to the alleged utterances of humiliating words based on the caste of the complainant. There is one more complaint, which was preferred by the respondent no.2 on 11th November, 2016. A perusal of the said complaint also does not speak of the utterances of alleged words as are referred to, so also direct involvement of the appellant in the crime.

7. In view of aforesaid, there is reason to believe that provisions of Atrocities Act are prompted to be invoked based on the alleged spate of event dated 9th November, 2016, which prima facie appears to be a concocted story of the prosecution. As such, it is held that application is maintainable. The objection raised is overruled.

8. Apart from above, this Court had occasion to refer to various complaints, which are lodged by the complainant viz. 11th

November, 2016, 18th November, 2016, 29th November, 2016, 3rd June, 2017, 4th July, 2017, 5th July, 2017 which are produced for a perusal before this Court by the Special PP. In all these complaints, there is absence of reference to alleged event of 9th November, 2016 as is mentioned in the complainit dtd. 14th November, 2017.

9. Complainant/Respondent no.2 has in categorical terms admitted in the F.I.R. that there is civil suit going on between the appellant and himself being S.C. Suit No. 2958 of 2016, which is subjudice, so also the son of respondent no.2 has initiated a suit for partition being Suit No. 2587 of 2016.

10. On 4th January, 2014, the Deputy Collector (Encroachment) has already included the names of Kalpana, Mangesh and Vikas at Serial number 103 and 104 as the beneficiaries in Annexure II. As far as Mangesh, son of the complainant is concerned, he has claimed to have occupied the first floor of the area identified at Serial no. 103 in the name of wife of the complainant and there is no specific mention of he being qualified in Annexure II. Similar is the case of Mangesh in

regard to Serial No. 104 in Annexure-II. From the above and language used in the various complaints preferred by respondent no.2 and his family members, it can be noticed that respondent no.2/complainant is seeking entitlement for in all four structures instead of two i.e. 103 and 104 as are noticed in Annexure-II.

11. For the perusal of this Court, the parties have produced copies of the orders passed in litigation between the appellant and the complainant so also the Slum Authority, viz., Writ Petition No. 1852 of 2019, Appeal from Order (ST) No. 23237 of 2018 alongwith Civil Application (ST.) No. 23238 of 2018 and Writ Petition No. 1850 of 2019 arising out of Appeal No. 1300 of 2018. The cumulative effect of all the observations in all these three appeals filed in this Court is that, there is a genuine civil dispute between the parties. Respondent no.2 in the aforesaid orders have acknowledged the receipt of payment of rent for the aforesaid structures in relation to which he has received compensation in the form of rent. Though at certain point of time, the complainant has tried to dispute receiving of rent by referring the same to be certain business transactions between the son of the complainant

and/ or complainant and the appellant. However, the same is clarified in the order of dated 8th February 2019 passed in Writ Petition No. 1850 of 2019. It is also not in dispute that as on date, the said structure was already removed and the redevelopment of the property in question was already in progress undertaken by the applicant. The entitlement of complainant in lieu of the alleged structures is an issue between him and Slum authority.

12. In the aforesaid background, ad-interim relief, which is granted in favour of the appellant by the Division Bench of this Court on 24th February 2018 i.e. almost for a period of 18 months needs to be confirmed.

13. The various orders referred supra, passed by the Division Bench and the learned Single Judge in the proceedings under the Slum Act and the above referred notable conduct of the complainant of belatedly filing of complaints, based on concocted material, the existence of a civil dispute, the pendency of claim of the complainant about additional land, has prima facie prompted this Court to believe

that the applicant is sought to be falsely implicated in the crime in question.

14. Before parting, this Court would also like to note that Advocate, Mr. Talekar was replaced by the earlier PP in the wake of undeserved conduct of the earlier PP, who was acting at the behest of the complainant, as is reflected in the Division Bench order dated 24th February, 2018. The conduct of respondent no.2/complainant recorded in the said order speaks volumes about the very approach and conduct of respondent no.2- complainant.

15. As such, it is ordered as follows :

ORDER

i) In the event of arrest of the appellant, in Crime No. 736 of 2017 for offences punishable under Sections 141, 504, 506 and 34 of the Indian Penal Code and 3(1)(g)(l)(r)(x)(z) and (u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered with Dindoshi Police Station, the appellant be released on bail on his executing PR. bond of Rs.1,00,000/- (Rupees One lac Only) with one or more sureties in the like amount;

- ii) The appellant shall attend Dindoshi Police Station, on every alternate day from 16th to 21st December, 2019 between 10.00 am. to 12.00 noon and thereafter as and when called by the I.O.
- iii) The appellant shall co-operate with the Investigating Officer in the investigation of the offences in question.
- iv) The appellant shall not influence the prosecution witnesses or tamper with the evidence, or misuse his bail conditions in any manner, so as to hamper the investigation in the case in hand.
- v) The appeal is disposed of accordingly.

(NITIN W. SAMBRE, J.)