

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

CRIMINAL APPEAL NO. 257 OF 2018

Mr. Hindurao Vitthal Barge. ..Appellant.
V/s.
The State of Maharashtra & anr. ..Respondents.

Mr. Rajendra Raghuvanshi I/b. Kranti t. Hiwrale, advocate for appellant.
Mr. Santosh P. Sajkar, advocate for respondent No. 2.
Mr. Y.M. Nakhwa, APP for State.
Mr. Baviskar, PSI, Kharghar Police Station.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 4, 2019.

P. C. :

1 This is an appeal under section 14(A) of the Scheduled Castes and Schedule Tribe(Prevention of Atrocities) Act, 1989.

2 At the outset, this Court had requested both the parties to arrive at an amicable settlement since they are resident of the same society. The learned Counsel for the appellant Mr. Raghuvanshi had suggested that he would keep the appellant present before the court and that he would tender apology in the eventuality that he has hurt the feeling of the complainant i.e. respondent No. 2. However, learned

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Counsel for respondent No. 2 upon instructions from respondent No. 2 who is present in the court suggested that the matter be heard on merits. Hence, the appeal is being considered on the merits of the matter.

3 The facts in a nut shell are as follows:

 The appellant as well as respondent No. 2 are the members of Raghunath Vihar Army Co-operative Housing Society. It appears that initially it was registered under the Bombay Public Trust Act. However, subsequently the members of the said Co-operative Housing Society had registered the said society under the provisions of Maharashtra Cooperative Society Act, 1960.

4 It appears that the dispute between the members of society has arisen since September, 2017. The respondent No. 2 by a letter dated 21/9/2017 had informed the Chairman that he is willing to work as treasurer of the society, since he has ability to do so. It was also stated that he has also advantage of being fluently conversant with the Marathi language, which is necessary for correspondence with the State Government agencies. The letter in the words of the respondent is as follows :

 "It was a foregone conclusion that the undersigned (i.e.

respondent No. 2) was the most eligible candidate for this post. Despite this an election was conducted to show lack of confidence and trust in me and therefore, there has been a willful misrepresentation in recording of minutes, which needs to be urgently rectified. Moreover, the undersigned had assured the chair that despite the aforesaid mistrust and lack of confidence in me, I would discharge any duty assigned to me by the chair."

The letter further reads as stated in point No. 4 is as follows :

"Considering point 1, 2 & 3, it appears a deliberate effort is being made to humiliate and force me out of the committee because I belong to the scheduled caste. You are probably not aware that your unmindful actions are aimed in defeating the provisions of the MCS Act, which has specifically reserved seats in the Managing Committee for the caste I belong to. The culmination of the aforesaid entire episode are a classic case of atrocities on the scheduled caste representatives."

5 Thereafter, it appears that on 21/1/2018 the General Body Meeting of the society was held. On 23/1/2018 the Respondent No. 2 had approached the police station and lodged a report alleging therein that there was verbal altercation between the members of the society in the General Body Meeting and thereafter, Birendra Ray and Ramkumar Chaudhary had threatened him with dire consequences and almost attempted to assault him with fists and kick blows and the present

appellant had uttered the words such as “you belong to schedule caste and therefore, you are elected”.

6 Thereafter, on 1st February, 2018 the PSI, Kharghar Police Station had recorded statement of the appellant. He had admitted before the police that in the General Body Meeting of the Society he had only stated that you happens to be a member of the Managing Committee by virtue of belonging to the reserve category. However, he has not paid the arrears of Rs. 1 to 1.5 Lakhs and therefore, his nomination paper ought not to have been accepted. He disclosed to the police that he had no intention to either hurt feelings of the complainant or humiliate him in the meeting. In any case, the respondent No. 2 in his letter dated 21/9/2017 had stated that the appellant and others are not aware that these were unmindful actions on the part of the appellant.

7 The learned Counsel for the respondent No. 2 has filed intervention application alongwith the annexures, which shows that on 25/1/2018, the complainant was constrained to approach Senior P.I. of Kharghar Police Station and apprised of the proceedings in the General Body meeting. It was stated that on the basis of his report, police had filed non-cognisable offence, which is registered as N.C. No. 166 of 208. He had also informed that the proceedings of the General Body Meeting

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has been recorded and he suspects that the said recorded version may be tampered with. On 31/1/2018 the complainant was once again constrained to approach the Sr. P.I. and apprised him of the fact that although he had lodged a report more than a week ago, no coercive action is taken against the appellant, in as much as even under section 154 of the Code of Criminal Procedure, 1973 FIR has not been registered.

8 On 3/2/2018, the complainant had once again approach the Senior PI and informed him that at the relevant time i.e. in the meeting he had requested the members not to refer to his caste. However, the appellant had uttered the words as follows :

"जब तक सोनवणे शेड्यूल कास्ट है, उनको आपने एम सी एस मे लिया ?
(Jab tak Sonawane schedule caste hai, unko apane M C S me liya ?)"

He had reiterated that the said remark passed by appellant had hurt his feeling, since he felt humiliated on the basis of his caste.

9 On 22/2/2018 the complainant had again approached the Sr. P.I. and filed an application that after registration of FIR he apprehends danger at the hands of the appellant and the co-accused who are granted protection/pre-arrest bail by the Special Court.

10 The learned Counsel for the appellant has submitted that in fact, the complainant had filed an application before the Charity Commissioner requesting him to take an action under section 41(E) of the Bombay Public Trust Act since affairs of the society are not being managed properly. The appellant herein had filed an application for intervention under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 and had submitted that by filing an application under section 41E of the Maharashtra Public Trust Act, 1950, the applicant(present complainant) is causing harassment to the members of the society, who are suffering from last 8 to 9 years. It appears that there are 530 members in the said society. Initially, when they were registered under the Maharashtra Public Trust Act, they had deposited their share amount. Subsequently, a cooperative society was formed under the provisions of Maharashtra Cooperative Societies Act, 1960 and that the members of the Society were entitled to withdraw the money, which was deposited before the Charity Commissioner at the initial stage. And that said funds could be utilised for the betterment of the society. Needless to state that the respondent No. 2 had directly filed the application before the Charity Commissioner who in fact, happens to be an Appellate Authority.

11 The above mentioned facts were necessary to consider in

order to ascertain as to whether a prima facie case is made out.

12 It is admitted by the complainant that he happens to be a member of the management committee, since he belongs to the reserved category/scheduled caste and by virtue of rules of the Act, 2 members belonging to the Schedule Caste would be inducted/nominated as the representative of the said society.

13 It appears from the papers of investigation that a discordant note has struck between the members of the society since 2017. Perused the papers of investigation. Some of the members who had attended the said meeting have stated that there was a dispute between the appellant and his associates with the complainant and the basic dispute was that he was only representing a particular sect of the society and that although he was a defaulter, he was being nominated as a member of the managing committee. Some other members, who were present in the meeting, have also stated that it is true that there was a dispute, however, it did not reflect that the appellant herein wanted to humiliate or insult the complainant by referring to his caste. One of the member had stated that Birendra Ray had started with the slogan of "shame, shame" only because the complainant had given false evidence before the Joint Charity Commissioner. The other members who had

raised the said slogans were Birendra Ray, Ramkumar Choudhary, Puranchand Singh, Ved Prakash, B. Krishnamurti and Deepak Saxena and the present appellant. Needless to mention that the co-accused Birendra Ray and Ramkumar Choudhary have been granted protection by the Special Court. The said order is not challenged and hence, the same has attained finality. There are serious allegations against Birendra Ray and Ramkumar Choudhary. Another witness has stated that there was chaos in the General Body Meeting. The appellant herein had questioned the very nomination of the complainant in the Management Committee. The appellant had stated that the complainant continues to be a member of the managing committee from the reserve category although he was defaulter.

14 The learned Counsel for the respondent No. 2 has fairly submitted upon query made by the Court that there is difference between hurling an abuse by reference to caste and simplicitor reference to the caste. According to the learned Counsel, this is a serious offence since the complainant was humiliated in the general body meeting by questioning as to why he continues to be the member of the managing committee, although he is a defaulter. There is no doubt that amongst other members of the society also there are members belonging to scheduled caste in the said society. The challenge was to

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continue as a member of the Managing Committee although he is a defaulter and not because he belongs to the reserved category.

15 Prima facie, it appears that there was a dispute between the members. Most of the members were aggrieved by the fact that the complainant had approached the Charity Commissioner by filing an application under section 41E of the Maharashtra Public Trust Act, although it would cause loss to the managing committee. Upon reading the transcript of the minutes of the meeting it prima facie appears that although there is a reference to the caste, it cannot be said that the remarks were such that they would fall in the category of section 3 (1)(R) and 1(S) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

16 The Hon'ble Apex Court in the case of **Dr. Subhash Kashinath Mahajan v/s . The State of Maharashtra and anr.** has observed thus :

73 On the above reasoning, it is difficult to hold that the legislature wanted exclusion of judicial function of going into correctness or otherwise of the allegation in a criminal case before liberty of a person is taken away. The legislature could not have intended that any unilateral version should be treated as conclusive and the person making such allegation should be the sole judge of its correctness to the exclusion of

judicial function of courts of assessing the truth or otherwise of the rival contentions before personal liberty of a person is adversely affected.

74. It is thus patent that in cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to bona fide and that prima facie it falls under the Atrocities Act and not otherwise.

It is true that after the said Judgment, there was amendment by the legislature in the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. It is true that a Review Petition is also filed challenging the very amendment.

17 Be that as it may, as far as the present case is concerned, it depends upon the facts of the present case. Moreover, this Court cannot be oblivious of the fact that the other co-accused who had threatened the complainant with dire consequences and had attempted to assault him with fists and kick blows by referring to the caste have been protected by the Special Court and the said order is not under challenge. Upon perusal of the papers of investigation, it appears that the present appellant cannot be singled out as the witnesses have given more than 8 to 10 names who had indulged into similar activities or rather severe activities.

18 In view of the above discussion, interim relief granted vide Order dated 14th March, 2018 by the Hon'ble Division Bench of this Court (Coram : S.C. Dharmadhikari and Prakash D. Naik, JJ) needs to be confirmed. Hence, following order is passed :

ORDER

- (i) Criminal Appeal is allowed.
 - (ii) In the event of arrest of the appellant, he be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- with one or more sureties in the like amount .
 - (iii) (Deleted as per Order dated 11/2/2019.)
 - (iv) The appellant shall co-operate with the investigating agency by attending the police station as and when called.
- 19 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]