

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.329 OF 2017

SUREKHA SUHAS JOG AND ORS.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

WITH

CRIMINAL APPEAL NO.330 OF 2017

VINITA JITENDRA PURI AND ANR.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

WITH

CRIMINAL APPEAL NO.426 OF 2017

DR.SNEHA SANDEEP JOGLEKAR)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.A.P.Mundargi, Senior Counsel a/w. Mr.Niranjan Mundargi i/b.
Mr.Satyavrat Joshi, Advocate for the Appellants.

Mr.Kuldeep Nikam, Advocate for the Respondent No.2.

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

Mr.Narendra A. Mundhe, Police Sub-Inspector, Kothrud Police Station, present in court.

CORAM : A. M. BADAR, J.

DATE : 4th MARCH 2019

ORAL JUDGMENT :

1 Criminal Appeal bearing no.329 of 2017 is filed by appellants/accused Surekha Jog, Amol Jog, Shubhada Jog and Pushkar Jog, who claim to be Managing Trustees of the Trust running an educational institution named Jog High School at Pune. Criminal Appeal No.330 of 2017 is filed by Mrs.Vinita Puri, Ex-Head Mistress of the said school along with Mrs.Smita Salve – employee of the Managing Trust. Criminal Appeal No.426 of 2017 is filed by Dr.Sneha Joglekar, parent of pupil named Nishka Joglekar, taking education in Jog High School, Pune. It is not in dispute that the Jog High School at Pune is an unaided educational institute, receiving no financial aid, whatsoever, from the State.

2 Heard. Admit. Heard forthwith, considering the fact that the appeals are challenging the impugned order dated 22nd March 2017 passed by the learned Special Judge, Pune, thereby rejecting the application for grant of anticipatory bail to the appellants/accused with a reason that on perusal of the complaint it cannot be prima facie said that no case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out, and therefore, in view of bar for granting anticipatory bail, the application deserves to be dismissed.

3 Heard the learned senior counsel Mr.Mundargi as well as the learned counsel Mr.Satyavrat Joshi appearing for the appellants/accused. The learned senior counsel argued that perusal of the First Information Report (FIR) itself shows that no case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out, so as to make bar of Section 18 or 18A of the said Act applicable to the case in hand.

4 The learned counsel appearing for the respondent no.2 vehemently argued and supported the impugned judgment and order by contending that averments in the FIR show that the respondent no.2 belongs to the Scheduled Castes and he is deprived of service benefits as well as financial benefits by the Management of the school as well as the Head Mistress. It is further argued that without following procedure as prescribed by the relevant Act and Rules, hasty action was taken against the respondent no.2 merely because he belongs to the Scheduled Castes, and therefore, the learned Special Judge has rightly rejected the application for grant of anticipatory bail.

5 The learned APP opposed the application by contending that the Inquiry Committee during the course of inquiry has hastily recorded evidence without granting due opportunity of defending himself to the respondent no.2, and therefore, provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are applicable to be case in hand.

6 I have carefully considered the submissions so advanced and also perused the material placed on record, including the FIR and other documents.

7 Crime No.31 of 2017 came to be registered with Police Station Kothrud at the instance of respondent no.2 Naresh Chavan on 23rd January 2017 for offences punishable under Sections 3(1)(8), 3(1)(9) and 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned APP submitted that during the course of investigation, provisions of Section 3(1)(p)(q)(r)(u)(v)(za)(D) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are also invoked against the appellants/accused. Averments in the FIR lodged by Naresh Chavan, who was working as Assistant Teacher with the school are to the following effect :

First Informant Naresh Chavan belongs to Mehter Caste which is falling under the Scheduled Castes. Head Mistress as well as Management of the school had not given him

prescribed pay scale as well as salary and allowances. The Management has not followed 100% roaster in effecting appointment as well as promotions. Seniority list was not maintained by the Management and juniors were promoted ignoring seniority of the First Informant. It is further averred that in the year 2014, pupils of 10th Standard had arranged a “trek” and as it was a holiday, he as well as another employee named Bhosale joined the pupils in that picnic. However, he was suspended by the Management on 31st July 2014 for this reasons. It is further averred by the First Informant that on 16th October 2015, a corporal punishment was imposed by Assistant Teacher named Bhosale on the pupil named Nishka Joglekar – daughter of appellant Dr.Sneha Joglekar. He supported Assistant Teacher Bhosale and therefore, by acting in league, a report of non-cognizable case was lodged against the First Informant and he is suspended from 20th October 2015. The First Informant further averred that he went to school along with Expansion Officer of the Education Department named

Shri Bendre. However, Head Mistress Vina Pandit had insulted him and sent him out of school by stating that decision in respect of suspension shall be taken subsequently. The First Informant further contended that the Management had sent false information to the Central Government that he belongs to Open Category and thereby prevented him from securing financial benefits so also service benefits. According to the First Informant, by faulty constitution of the Inquiry Committee, he was dismissed from service and despite favourable order from the School Tribunal, he is not permitted to join the service.

8 Undoubtedly, the First Informant/respondent no.2 is an employee of the private school and his condition of services are governed by statute. Maharashtra Employees of Private Schools, (Conditions of Service) Regulation Act, 1977, as well as the Rules framed thereunder, takes care of all complaints made by the First Informant in his FIR. Denial of promotion so also wrongful or otherwise termination of the employee of the private school gives

such employee a right to appeal under Section 9 of the said Act before such School Tribunal. Rule 28 of the Maharashtra Employees of Private Schools Rules deal with procedure for removal of employees of private schools. Grounds for removal of employees of the private school are enumerated in the said Rules. Rule 36 deals with constitution of Inquiry Committee for disciplinary proceedings against the employee of the private school. Rule 34 of the Maharashtra Employees of Private Schools Rules deals with suspension and consequence thereof. Section 13 of the Maharashtra Employees of Private Schools Act deals with enforcement of orders of the School Tribunal by providing penal consequences against the person or Management responsible for failure to comply the orders of the School Tribunal. Infact, the First Informant has resorted to the beneficial provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules framed thereunder by approaching the School Tribunal by filing a appeal under Section 9 of the Maharashtra Employees of Private Schools Act. It is reported that his appeal is allowed but the said order is subject matter of writ

petition at the instance of the Management and in that writ petition oral undertaking is given that the First Informant/Teacher shall not execute the order of the School Tribunal till the next date.

9 So far as communication of wrong information regarding caste of respondent no.2 to the State is concerned, the same is for the purpose of collection of data under Uniform District Information System for Education and that mistake was corrected way back in the year 2015 itself. The Management of the School had to gain nothing by such inadvertent mistake as the school is an unaided school.

10 In the light of this discussion, prima facie bar of Section 18 or 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. The learned trial court has failed to appreciate this matter which is infact a service matter, in proper perspective.

11 Resultantly, the impugned order cannot be sustained and as such, the following order :

ORDER

- i) The appeals are allowed.
- ii) The impugned order dated 22nd March 2017 passed by the learned Special Judge, Pune, below Exhibit 4 in Criminal Bail Application No.927 of 2017 is quashed and set aside.
- iii) The application for grant of anticipatory bail moved by the appellants/accused is allowed.
- iv) In the event of arrest of the appellants/accused in Crime No.31 of 2017 registered with Kothrud Police Station, at the instance of respondent no.2/First Informant Naresh Chavan 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 like amount by each of them.

- v) Appellants/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellants/accused should co-operate the Investigating Officer in the investigation of the said crime.
- vii) The appeals are accordingly disposed off.

(A. M. BADAR, J.)