

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1330/2018

Sopan Krushan Wahanmane)
Age 51, Occupation:Government)
servant, residing at Israyal Nagar,)
Miraj, District-Sangli.).... **Appellant.**

V/s.

1. The State of Maharashtra)
Through Investigation Officer)
on C.R.No.406/2018 registered)
with Miraj Police Station,)
District-Sangli)
)
2. Rajendra Shivaji Kamble)
Age 33 years, Occupation:Journalist)
residing at Lokmanya Tilak Nagar,)
Miraj, District-Sangli)..... **Respondents.**

Miss Rati S. Sinhasane i/b V.R. Mankapure, Advocate for Appellant.

Ms Leena Patil for Respondent No.2.

Mr.Vinod Chate, APP for State.

CORAM : A. M. BADAR, J.

DATE : 27TH SEPTEMBER, 2019.

ORAL JUDGMENT :

1. Heard.
2. Admit.
3. Heard finally considering the fact that this Appeal is challenging Order passed by the Learned Special Judge and Additional Sessions Judge, Sangli, on 23.10.2018, thereby rejecting the application for Anticipatory Bail, moved by the Appellant/accused bearing Criminal Miscellaneous Application No.973/2018.
4. The Appellant is an accused in Crime No.406/2018 registered with Miraj City Police Station, on 05.10.2018 at the instance of Respondent No.2 Rajendra Kamble for offences punishable under Section 3(1)(r)(s) of the 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.'
5. Heard learned Counsel appearing for the Appellant/accused. She drew my attention to paragraph 10 of the impugned Order dated 23.10.2018 and argued that observations made in paragraph 10 of the said Order, are sufficient to conclude that the said Order is per-se illegal and the Appellant/accused is entitled for

Anticipatory Bail. In submission of learned Counsel for Appellant, even if, case of the prosecution is accepted as it is, then also it can not be said that, the offence of atrocity took place “in any place within public view”.

7. Learned APP opposed the application by contending that, the incident in question took place in presence of witnesses named Imran Mehboob Shaikh and Rohit Kamble. Both of them have spoken of casteist abuses and intentional insult to humiliate member of Scheduled Caste. Therefore, the Appellant is not entitled for any relief. Similar are arguments of the learned Counsel for Respondent No.2/ First Informant. She argued that the incident took place in the vicinity of the Court at Miraj, on public road and therefore, the Appellant is not entitled for any relief.

8. For better understanding of the matter, it is apposite to quote the provisions of Section 3(1)(r) and (s) of ‘The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989’. Those reads thus;

3. Punishments for offences of atrocities-

3 (1)(r) *Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.*

3 (1)(s) *Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.*

9. It is thus clear that, intentional insult or intimidation or so also casteist abuses, to any member of the Scheduled Castes or Scheduled Tribes, in order to constitute an offence under Atrocity must be made “in any place within public view”.

10. Expression “in any place within public view” is explained by the Division Bench of this Court, in the matter of ***Pradnya Pradeep Kenkare and Ors. vs. State of Maharashtra***¹. Paragraph 8 reads thus;

“8The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the Scheduled Caste in any place within a public view. The expression “in any place within public view” has specific meaning. It does not

¹ 2005(3)Mh.L.J.368

mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression “public view” has been prefixed by the preposition “within” which in fact follows the expression “in any place”. In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being “within public view”. The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word “view” refers to that of “public” but prefixed by the expression “in any place within”. Being so, the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of Scheduled Caste or Tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those

ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.”

11. These observations make it clear that intentional insult or intimidation, so also, casteist abuses has to occur in a place accessible to and in presence of public.

12. Expression “public view” is clarified by this Court in the matter of *Balu s/o Bajirao Galande vs. State of Maharashtra and Anr.*² The relevant observations are 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 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.”

Thus, the incident is required to be witnessed by independent

² 2006 6 AIR(BOM)(R)251

public person in order to bring it within a public view.

13. Learned counsel for the Appellant has rightly relied on the Judgment of this Court, in the matter of ***Mahesh Sakharam Patole Vs. The State of Maharashtra***³ reiterating similar position.

14. Now let us examine whether in case in hand, the incident took place “in any place within public view”. Two eye witnesses named Rohit Kamble and Imran Shaikh have vouched about the incident by stating that when the Appellant/accused was being taken to the Court at Miraj and when Respondent No.2/First Informant was videographing that scene, the Appellant/accused spit and gave casteist abuses to him. However, both these witnesses are not independent public witnesses. Rohit Kamble, as stated by him, is a friend of Respondent No.2/First Informant Rajendra Kamble. Imran Shakh is the Cameraman of Respondent No.2 Rajendra Kamble.

15. The Appellant/accused was in custody of Mithun Shisode-Police Naik. It is seen that Prakash Jadhav-Police Naik,

3 2009 SCC Online Bom 616

Chandrakant Gaikwad-Police Naik, Subhash Patil-Police Head Constable were also present at the spot of incident. Satish Mule-Head Constable was also with police party for taking the Appellant/accused to the Court. All these police witnesses in unison have stated that, in their presence, none of the accused in their custody made casteist abuses or intentional insult to anybody to humiliate him. Thus, police personnel in whose custody the Appellant/accused was there and who were taking him to the Court have denied happening of offence of atrocity. Satish Mule-Police Head Constable stated that when the Appellant/accused alighted from the police van, he spat. Similar is the statement of Mithun Shisode-Police Naik. Except this, nothing else is stated by the members of the police party. It is thus, clear that, the prosecution has not collected any evidence to demonstrate that, evidence in question took place in presence of any independent public person in order to bring it “within public view”.

16. In fact, the learned Special Judge has specifically noted these aspects in paragraph 10 of the impugned Order by stating that, the eye witnesses who have supported the prosecution are

related with the First Informant but, still rejected the application for anticipatory bail with erroneous observations. The impugned Order, as such, can not be sustained. Bar of Section 18 of the 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989' is not applicable to the case in hand. Therefore, the order.

ORDER:

- i) The Appeal is allowed.
- ii) Impugned Order dated 23.10.2018 passed by the learned Special Judge, on application for Anticipatory Bail, bearing Criminal Miscellaneous Application No.973/2018, filed by the Appellant/accused is quashed and set aside.
- iii) Application for Anticipatory bail, moved by the Appellant/accused in Crime No.406/2018 registered by Miraj City Police Station is allowed.
- iv) In the event of his arrest, in the said crime, the Appellant/accused be released on same terms and conditions

as incorporated in Order dated 1.11.2018 passed by this Court.

- v) The Appeal stands disposed of accordingly.

(A. M. BADAR, J.)