

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1527/2018

Smt.Praveena Parshuram Hetkale

Age 40 years, Occupation :Advocate
residing at Miraj,Taluka-Miraj,
District-Sangli

..... Appellant.

V/s.

1.The State of Maharashtra

2.Dipali Suresh Kamble

Age 29 years, Occupation:Nil
residing at Old Haripur road,
Ganganagar, Sangharsh Colony
Miraj, District-Sangli.

..... Respondents.

Mr.A.B.Vagyani i/b Pankaj K. Kandhari,Advocate for
appellant.

Ms Monali Patil, Advocate for Respondent No.2.

Mr.Vinod Chate, APP for State.

CORAM : A. M. BADAR, J.

DATE : 27th SEPTEMBER 2019.

ORAL JUDGMENT:

1. By this Appeal, the appellant/accused in Crime

No.499/2018, registered against her with Miraj City Police Station, Miraj at the instance of Respondent No.2 Dipali Suresh Kamble, for offences punishable under Sections 504, 506 of the Indian Penal Code as well as under Sections 3(1)(r)(s) and 3(2)(va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989' is challenging Order passed below Criminal Bail Application No.1160/2018 by the learned Special Judge, Sangli on 10.12.2018 thereby, rejecting her claim for pre-arrest bail.

2. Heard. Admit. Heard finally by consent of the parties.

3. Learned Counsel appearing for the Appellant/accused drew my attention to two complaints lodged by the respondent No.2/first informant with the Superintendent of Police, Sangli, first one being dated 26.09.2018 and second being dated 03.10.2018. It is argued that, in the first complaint, no allegations of offence of atrocity were made. It

was reported by the respondent no.2/first informant to the Superintendent of Police that the Appellant/accused who is an Advocate by profession is not attending a Civil Suit, for which she is engaged. Learned Counsel for appellant/accused argued that, in second complaint, i.e. complaint dated 3.10.2018, the respondent No.2/first informant magnified her allegations against the appellant/accused by illustrating several types of work which she as well as her husband were compelled to do by the appellant/accused. Learned Counsel for appellant/accused specifically drew my attention to the averments in the said complaint to the effect that, the appellant/accused by making telephonic call to her, called her on 27.9.2018. In submission of the learned Counsel for the appellant/accused, respondent No.2/first informant, specifically averred that in response to that call, she herself, her husband and father had been to the house of the appellant/accused and then casteist abuses and intentional insult with intent to humiliate her were made. Learned Counsel then drew my

attention to the belated FIR dated 3.11.2018, lodged by the Respondent No.2/First Informant against the Appellant/accused and argued that the Respondent No.2/First Informant has totally modulated her version in respect of alleged incident dated 27.9.2018, in order to bring it in a place within public view by stating that, the said incident took place outside the house of the Appellant/accused. Learned Counsel argued that, this was done by the Respondent No.2/First Informant only because the appellant/accused had lodged complaint of extortion against the Respondent No.2/First Informant on 31.10.2018 with the Superintendent of Police, Sangli, which ultimately, culminated into registration of FIR, vide Crime No.596/2018 against Respondent No.2/First Informant on 28.12.2018. Thus, according to the learned Counsel for the Appellant, no offence of atrocity can be made out as the incident alleged took place inside the house of the Appellant/accused and false complaint is made by way of counterblast to the complaint dated 31.10.2018.

4. Learned Counsel for the appellant/accused further argued that the incident alleged by the Respondent No.2/First Informant was not witnessed by any independent public witness and therefore, alleged incident did not take place 'within public view'. To buttress this contention, he drew my attention to several complaints lodged by the appellant/accused against Rahamtullah Hotel and its owner as well as employees before various authorities including the Chief Minister of the State, the Deputy Chief Minister of the State, as well as the Collector and the Superintendent of Police etc., which are found from page No.60 to page no.90 of the Paper Book. It is argued that, at the instance of the appellant/accused, Chapter proceedings were initiated against owner of Rahamtullah Hotel and he was also convicted for offences punishable under the then Bombay Police Act. With this, it is argued that, persons related to this Rahamtullah Hotel, can not be independent public witnesses, and as such, bar of Section 18 of The Scheduled Castes and the Scheduled

Tribes (Prevention of Atrocities) Act,1989 is not applicable to the case in hand. The Judgment dated 24/10/2018 passed by this Court in Criminal Appeal No.73/2018 is relied to buttress those contentions.

5. The learned APP opposed the appeal by contending that, Farooq Bagwan and Dipak Jakate are independent public witnesses, who have witnessed the incident and casteist abuses and intentional insult for humiliating Respondent No.2/ First Informant who belongs to Scheduled Caste-Mahar. He argued that, the Appellant/accused had even threatened the Police Officer and several Reports of non-cognizable cases are filed against her.

6. Learned Counsel for the respondent No.2/first informant argued that communication dated 3.10.2018 of respondent No.2/first informant, can not be construed to mean that the incident took place inside the house of the appellant/accused.

7. In reply, the learned Counsel for appellant/accused argued that the Caste Certificate is obtained by the respondent No.2/first informant by forging documents.

8. I have considered the submissions so advanced and also perused the case diary.

9. Janardan Kamble is the father-in-law of the Respondent No.2/First Informant. He has filed Civil Suit against the husband of the respondent No.2/first informant, in respect of land from Gat No.791(A) of Sangharsh Colony of Miraj. The appellant/accused, being an Advocate, was undisputedly engaged by the respondent No.2/first informant to defend that civil suit bearing No.255/2010 before the Civil Court at Miraj. It is not in dispute that, the Caste Certificate showing that the respondent No.2/first informant belongs to Scheduled Cast-Mahar is still holding the field and the same is yet cancelled.

10. It is averred by the respondent No.2/first informant that, despite acceptance of legal fees, the appellant/accused was not defending the civil suit by appearing before the Court and she was insisting for more money and was compelling the respondent No.2/first informant and her husband to do various household work at the house of the appellant/accused. Undisputedly, on 26.9.2018, the Respondent No.2/First Informant had lodged complaint with the Superintendent of Police, Sangli informing that, the appellant/accused is compelling her as well as her husband to do household work for defending the civil suit, though she had paid legal fees amounting to Rs.13,000/-.

11. Thereafter, the respondent No.2/first Informant lodged another complaint dated 3.10.2018, with the Superintendent of Police, Sangli. In the said complaint, she complained that, the appellant/accused is compelling her as well as her husband to do household work including painting of the

house as well as massage. In addition, the respondent No.2/first informant, alleged that, as the appellant/accused got knowledge of the complaint dated 26.9.2018 lodged by her, she was called at the house of the appellant/accused on 27.9.2018. The respondent No.2/first informant further alleged in this complaint dated 3.10.2018 that, then she as well as her husband and her father had been to the house of the appellant/accused. At that time, the appellant/accused abused her by referring to her Caste and by saying that she became insolent. Casteist abuses were given by referring to her Caste as 'Maharadi'. It is further averred that the appellant/accused uttered that she will not give anything and why the respondent No.2/first Informant is demanding money. She threatened that, she will not conduct her case and the respondent No.2/first informant, may do anything.

12. Ultimately, on 3.11.2018, respondent No.2/first informant approached the Miraj City Police Station, Miraj and

reported the incident which resulted in registration of subject Crime No.499/2018. So far as incident dated 27.9.2018 is concerned, it is averred by the respondent No.2/first informant that, she alongwith her husband Suresh and father Gautam had been to the house of the appellant/accused in pursuant to her phone call. It is further averred that, the appellant/accused was standing outside the house and when she demanded back money and withdrawal of Vakalatnama, the Appellant/accused in presence of several persons, gave casteist abuses, by referring to her Caste 'Mahar' and also insulted her for humiliating her in public by making general allegations in respect of character of females belonging to Scheduled Caste.

13. Now, let us examine whether offence of atrocity is made out invoking bar of Section 18 of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,1989, in case in hand, by assuming that averments made by the

prosecution against the Appellant/accused are correct. The incident of atrocity reported in F.I.R. dated 3.11.2018 by respondent No.2/first informant is to the effect that, she was intentionally insulted for humiliating her and casteist abuses were given to her by the appellant/accused in front of her house. Even if this allegation of place of incident is accepted to be outside the house of the appellant/accused, then question will be whether the incident was witnessed by an independent public witness. Expression, “in any place within public view” can be understood in context with Judgment of the learned Division Bench of this Court, in the matter of ***Pradnya Pradeep Kenkare and Ors. vs. State of Maharashtra***¹. The relevant observations reads thus;

“8.The 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 mean that every

¹ 2005(3)Mh.L.J.368

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.”

14. These observations make it clear that, incident of intentional insult or intimidation or casteist abuses has to occur in a place accessible to and in presence of public. Presence of both these ingredients is sine-qua-non for making out the offence punishable under ‘The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989’.

15. The expression “public view” is clarified by this Court in the matter of **Balu s/o Bajirao Galande vs. State of Maharashtra and Another.**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

² 2006 6 AIR (BOM)(R)251

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 occurrences while the incident is still in progress.”

Thus, the incident is required to be witnessed by an independent public person in order to bring it within a public view.”

16. Let us revert back to the F.I.R. of the subject crime. In the said F.I.R. itself, the respondent No.2/first informant has categorically stated that, the incident was witnessed by the employees of Rahamatullah Hotel and other persons. She stated that the incident is also witnessed by Farooq Bagwan who is known to her. This fact assumes importance because as respondent No.2/first informant herself states in her FIR that Farooq Bagwan is known to her. Hence, said Farooq

Bagwan, can not be an independent public witness. Perusal of the case diary shows that Farooq Bagwan claimed that, he alongwith his friend Dipak Jakate, had come to Rahamatullah Hotel for having lunch and then the incident took place. Farooq Bagwan and Dipak Jakate claim to be friends of each other and respondent No.2/first informant claims that Farooq Bagwan is acquainted with her. In this view of the matter, neither Farooq Bagwan nor Dipak Jakate can be said to be an independent public witness, in order to hold that the incident took place “in a place within public view”. Only remaining eye witness according to the prosecution case is Jamir Sayed. Jamir Sayed is a Parcel Boy working at Rahamatullah Hotel. Documents from page nos.60 to 82 of the Paper Book contains several complaints lodged by the Appellant/accused against the owner and employees of Rahamatullah Hotel. These complaints resulted in initiation of Chapter proceedings against them as per provisions of the Criminal Procedure Code as well as their prosecution for offences under the

Bombay Police Act. In this view of the matter, even Jamir Sayed can not be said to be an independent public witness in order to hold that the incident took place “in any place within public view”.

17. The complaint dated 3.10.2018, made to the Superintendent of Police, by the respondent No.2/first informant shows that, the incident took place when the respondent No.2/first informant, her husband and father had been to the house of the appellant/accused. This first version about the incident dated 27.9.2018 is not disclosing the fact that the incident of casteist abuses and intentional insult took place in presence of any independent public witness. Rather this complaint dated 3.10.2018 does not contain any whisper about presence of any other person at the spot of incident, be it inside the house or outside the house.

18. On this factual backdrop, it is not in dispute that, on 31.10.2018, the appellant/accused had lodged the complaint

alleging extortion by the Respondent No.2/First Informant with the police and ultimately that complaint then culminated into lodgement of F.I.R. against the respondent no.2/first informant vide Crime No.596/2018.

19. For the foregoing reasons, I hold that, the papers of investigation do not show that the incident alleged by the respondent No.2/first informant took place “in any place within public view”. As such, bar of Section 18 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act,1989’, is not applicable to the case in hand. Therefore, the impugned order of the learned Special Judge, can not be sustained. Custodial interrogation of the appellant/accused is not warranted in the case in hand. Therefore, following order.

:ORDER:

- i) The Appeal is allowed.
- ii) Impugned Order dated 10.12.2018 passed by the learned

Special Judge, Sangli, in Criminal Bail Application No.1160/2018 filed by the Appellant/accused is quashed and set aside.

- iii) Application for anticipatory bail, moved by the Appellant/accused in Crime No.499/2018 registered by Miraj City Police Station is allowed.
- iv) In the event of arrest of the Appellant/accused in Crime No.499/2018, registered with Miraj City Police Station, Miraj, at the instance of respondent no.2/first informant Dipali Kamble, she be released on bail, on her executing P.R.Bond in the sum of Rs.50,000/- and furnishing one or two sureties in the like amount.
- v) As a condition of this order, appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against her so as to dissuade him from disclosing such facts to the Court or to any Police Officer.
- vi) As a condition of this order, the Appellant/accused

should report Miraj City Police Station, on every first Monday of the week in between 9.00 a.m. to 11. a.m. and she shall assist the Investigating Officer in investigation of crime in question. In addition to this she should attend the Police Station for the purpose of investigation of the subject crime as and when directed by the Police. Needless to state that such directions should be in consonance with the provisions of law and particularly the provisions of the Criminal Procedure Code, the appellant/accused being a woman.

- vii) Failure to comply the directions given in this order will entail cancellation of anticipatory bail granted to the appellant.
- viii) The Appeal is disposed of accordingly.

(A. M. BADAR, J.)