

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.119 OF 2020

Anant s/o Prabhakar Deshpande

Age: 50 Yrs., occu. Trade

& Priest, r/o Jafrabad,

Tq.Jafrabad, Dist. Jalna.

= **APPELLANT**
(orig.Accused)

VERSUS

1) The State of Maharashtra
through the Incharge Police
Officer, Jafrabad Police
Station, Jafrabad,
Tq. Jafrabad, Dist,. Jalna.

2) The Superintendent of Police
Jalna.

3) Mangal w/o Vilas Sonawane
Age: 41 Yrs., occu. Labourer,
R/o Village Chowka,
Tq.Phulambri, Dist. Aurangabad = **RESPONDENTS**
(Resp.No.3 is orig.
Informant)

Mr.RS Deshmukh, Sr.Counsel for Appellant;
Mr.PG Borade, APP for Respondent Nos. 1 & 2;
Mr.VY Patil, Adv. For Resp.No. 3.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 4th March ,2020

PRONOUNCED ON : 8th May, 2020

JUDGMENT

1. Heard Learned Sr. Counsel Shri RS
Deshmukh for appellant; learned APP Shri PG Borade
for Respondent Nos.1 and 2; and learned Advocate

Shri Y.V.Patil, Advocate for Respondent No.3.

2. Admit. With consent of learned Advocates for the respective parties, taken up for final disposal.

3. Present appeal has been filed under Section 14(A)(2) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for challenging the order of rejection of bail application under Section 438 of the Code of Criminal Procedure in Criminal Misc. Application (Bail) No.46/2020 on 21.1.2020 by learned Additional Sessions Judge-3, Jalna.

4. Present appellant is apprehending his arrest by Jafrabad police Station, Dist. Jalna in CR No.9/2020 dated 8.1.2020 lodged by present Respondent No.3 (original informant) after order under Section 156(3) of Cr.P.C., which came to be passed by learned Judicial Magistrate, First class (2nd Court), Jalna for the offences punishable under Section 3 of The Maharashtra Prevention of ? Eradication of Human Sacrifice and Other Inhuman,

Evil and Aghori Practices and Black Magic Act, 2013 and under Sections 420, 354, 504, 506 of IPC and under Section 3(1)(w)(i) and 3(1)(w)(ii) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as The Atrocities Act).

5. It has been vehemently submitted on behalf of the appellant that, earlier, Respondent No.3 had approached the police station with a written complaint, which was received by the police station on 27.9.2019. It was stated in the said complaint that it relates to the offence that was committed in May 2019. While the police were making enquiry, statement was given by the informant to the police that, when the complaint application, which she had given on 27.9.2019, should not be further enquired into as there is no necessity to take action on the basis of the said complaint.

6. It appears that, pursuant to the said statement given by the informant, that file was closed. However, thereafter, Respondent No.3 has

lodged a private complaint with JMFC, Jafrabad even thereafter by adding sections 354, 504, 506 of IPC and Section 3(1)(w)(i) of the Atrocities Act. However, further facts show that even after observing that, prima facie offences, under the provisions of the Atrocities Act, have not been made out, the learned Magistrate has sent the complaint for investigation under Section 156(3) of Cr.P.C. and on the basis of the said order, the FIR has been registered.

7. It has been further submitted on behalf of the appellant that the learned Sessions Judge, who was dealing with the application under Section 438 of Cr.P.C., has failed to consider the observations made by the learned Magistrate that the offence under the provisions of the Atrocities Act has not been made out; yet it was held that there is bar under Section 18 of the Atrocities Act. The informant has intentionally suppressed her own statement made before the police that there is no necessity to take any action against the appellant.

8. In fact, the appellant is an astrologist. He helps the people on the basis of that astrology science to mitigate their sorrows and griefs. The informant in the present case has stated that as her husband's health was not well and she was fed up with the treatment given; yet when no improvement was seen with that treatment, she believed in the words of the appellant.

9. The informant was not knowing the appellant earlier as it appears that she believed on the alleged visiting card of the appellant. There are many persons who believed in the science of the appellant and, therefore, there is no question of cheating. In fact, there was no reason for the appellant to know caste of the informant. All these factors have not been considered by the learned Sessions Judge and only on the alleged apparent reading, which appears to be a concocted story, taking into consideration the written complaint which was given by the informant herself to the police. In fact, no case was made out to attract the bar under the Atrocities Act and anticipatory bail ought to have been granted to the

appellant.

10. Per contra, learned APP as well as learned Advocate for Respondent No.3 vehemently submitted that the way in which the appellant has acted and has taken disadvantage of the situation of oppressed people, it requires thorough investigation as possibility cannot be ruled out that he would have cheated other persons also. He is doing black-magic. Even on his visiting card, it is stated that, he is helping the people in giving guidance on politics, Government, Science of Architecture (*Vastu Shastra*), face reading, promotion, marriage, physical illness, health, peace and pleasure, service, business etc. When the informant had seen that her husband was not getting cured from the illness due to the treatment, obviously her mental condition was such that he would have done nothing to help her husband out of the said problem and recover health. It was told by the informant that she would be required to spend about Rs.25,000/- to 30,000/- and accordingly, in spite of her poor financial condition, she collected, initially Rs.10,000/- and

gave it to appellant in May-2019. As per the instructions given by the appellant, she had thrown four cut-lemons in four directions, which according to the appellant were chanted with *mantras* and one lemon was returned to him after a week. Thereafter, she was asked to bring remaining amount of Rs.20,000/-. In fact, there was no progress in the health of her husband; yet she collected the amount and gave it to the appellant. The appellant gave medicines for her husband, lucky coin as well as one symbol (*Yantra*) were also given to the informant and he assured that her husband's health would improve immediately. Accordingly, everything was done by the informant. However, since there was no progress, rather health of husband of the informant was deteriorating, she again went to the appellant. At that time, he demanded Rs.5,000/-, which she gave, which was the price of herbs (*Jadi Buti*) which was given by the appellant. When she opened the sealed packets given by the appellant, it was transpired that it contained no medicines, but only grinded turmeric, ash and red powder (*Kumkum*). Lucky coin and symbol (*Yantra*) were nothing but toys of kids. Thereafter, she went to

ask the appellant about the alleged cheating, at that time, he abused her and uttered by saying, -
“भिल्लाची बाई तुला तर मि नागडी करुल तुझे गावातुन वरात काढीन .”

11. In fact, the informant had stated that she went to the police station on the same day and narrated the entire incident, however, no action was taken by the police. Thereafter again, when she had gone to the police station on 29.11.2019 and was waiting at the bus-stand at about 3.00 to 4.00 pm, two unknown persons came and told her that she should take back the said complaint and should not come to Jafrabad again. They also abused her in the name of caste. But, then when she raised hue and cry, those persons fled away. Under those circumstances, it appears that, she had taken back that complaint or such statement might have been made; yet, in fact, no action was taken by the police, hence she had no alternative, but to lodge the private complaint.

12. When all those facts have been noted by the learned Additional Sessions Judge, it has been rightly held that the application under Section 438

of Cr.P.C. is barred under Section 18 of the Atrocities Act when *prima facie* case is made out.

13. At the outset, it is to be noted that the private complaint, i.e. Misc. Criminal Application No.274/2019, is filed with JMFC, Jafrabad, wherein it is stated that the offences under the Atrocities Act, have been made out. In the said complaint, it was prayed for investigation under Section 156(3) of Cr.P.C. The learned Magistrate, in clear terms, has observed that, *prima facie*, the allegations leveled therein do not make out a case that the accused has committed the offences under the Atrocities Act. However, it was further observed that the allegations show that the accused has committed some cognizable offence. Therefore, a question, that crops up in the instant case is, if the informant wanted to insist that the offence under Section 3(1)(w)(i) and (ii) of the Atrocities Act has been also committed by the appellant, which is exclusively triable by the Special Court established under the Atrocities Act, which also confers powers to the Special Court to take cognizance of the offence; then as to how the

complaint could have been filed and was maintainable before the JMFC?

14. The Special Court under the Atrocities Act has every power of a Magistrate under the Code. Therefore, the next question, that arises is, whether, by observing that prima facie the complaint does not attract the offences under the Atrocities Act; yet cognizable offence has been made out, the Magistrate had power to give directions to the police to carry out investigation under Section 156(3) of Cr.P.C.? This aspect has not been considered at all by the learned Additional Sessions Judge. In fact, it can further be observed that the Criminal Misc. Bail Application No.46/2020 was not only under Section 438 of Cr.P.C., but it was coupled with/involving the offence under the Atrocities Act and, therefore, such application can be dealt with by the Special Court only. Since all the Additional Sessions Judges have also been conferred with the powers to deal with the matters under the Atrocities Act (they are also the Special Courts under the Atrocities Act), the learned Additional

Sessions Judge-4, Jalna was justified in entertaining the application. However, being the Special Court, he was required to see as to whether the learned Magistrate was justified in passing such order? If the private complaint itself was not maintainable before the learned Magistrate, then the Magistrate could not have passed the order under Section 156(3) of Cr.P.C. Taking into consideration this aspect, it ought to have been stated by the learned Additional Sessions Judge/Special Court that, no prima facie case has been made out and there is no bar. It appears that the learned Additional Sessions Judge has considered the application only on its apparent face and he has not gone further deep into the aspect.

15. It further appears that the informant has intentionally suppressed her own statement dated 15.11.2019 which she had given before the police. As stated above, she had filed a written complaint which was received by the police on 27.9.2019. There is absolutely no mention about the offences involving Sections 354,504 of IPC and Section 3(1)

(w)(i) & (ii) of the Atrocities Act. If we consider that the written complaint given by the informant to the police station with her private complaint lodged before the JMFC, it can be said that the alleged utterances, attracting the Atrocities Act, were said to have been made by the appellant on 24.9.2019; yet her said complaint, which was received by the police on 27.9.2019, is silent about it. Her statement was recorded on 15.11.2019, wherein she states that she has no intention to go ahead with the allegations made against the appellant and, therefore, without any condition and voluntarily, she is withdrawing her complaint application. She has signed the statement (as it appears at that stage). In spite of this fact, she has stated in her private complaint that she had gone to the police station on 29.11.2019 as no action was taken by the police and thereafter when she was standing at the bus-stand, some unknown persons came to her and threatened her. Thus, it appears that there is very much suppression of the material facts by the informant in her private complaint. The statement dated 15.11.2019 ought to have been in her

knowledge; yet there is no explanation in respect of the said statement in her private complaint. She has also stated that she has lodged the complaint with the police on 25.9.2019 by speed post, which was then received by the police station, Jafrabad on 27.9.2019; yet when no cognizance was taken by the police, she had forwarded a detailed complaint to Superintendent of Police, Jalna on 26.9.2019. However, it appears that she filed the private complaint on 30.12.2019, which appears to be a delayed act. The police papers, which have been made available for perusal, do not contain the said detailed complaint of the informant dated 26.9.2019. In her supplementary statement, she has stated that she went to the accused on 24.9.2019 along with one of her friends viz. Kalpana Raghunath Neve, resident of Bhoiwada, Aurangabad. Till her supplementary statement dated 17.1.2020, there is no whisper in the complaint that such a lady was also in picture and was an eye-witness to the alleged incident.

16. The another aspect that is required to be considered is, that the entire police papers as

well as the earlier complaint filed by the informant with the police as well as her private complaint, do not disclose that the informant had disclosed her caste to the appellant at any earlier point of time. Unless it would have been made known to the appellant, he would not have come to know about it. We cannot presume caste of a person on the basis of his/her name, surname etc. Therefore, the basic ingredient about *mens rea* is missing. All these are the prima facie observations by this Court and, therefore, in fact, the learned JMFC though had not assigned any reasons; yet he appears to have observed that the allegations prima facie do not show that the accused has committed the offence under the Atrocities Act. When the offences of said section, under the Atrocities Act, are not prima facie made out, then definitely in view of the decision in the case of Prithvi Raj Chauhan vs Union Of India (Writ Petition No.1015/2018 decided on 10 February, 2020), the application for anticipatory bail is maintainable and there is absolutely no bar for it under Section 18 of the Atrocities Act.

17. Now, as regards to the other offences are concerned, at this stage, we are also required to consider the evidence that has been collected up till now. Though in affidavit in reply filed before this court also the informant has reiterated the same contentions; yet she has not given as to from whom she had collected the amount and when that amount was given to the appellant. In her supplementary statement, she has stated that she is unable to give the dates and has stated that since the appellant had told that the amount should not be given in presence of anybody, she had given that amount to the appellant only in presence of her friend Kalpana Neve. Said Kalpana Neve supports the said statement. However, the statements of many witnesses show that the appellant is only acting as an astrologist, priest. Nobody else is supporting the statement of the informant and her friend. Therefore, taking into consideration this aspect, no case was made out to refuse the anticipatory bail application to the appellant. In fact, it's very purpose, with which such bail application is filed, is that it should protect personal life and liberty of a person in case

either false allegation are made or those allegations which are not supported by any evidence. The learned Additional Sessions Judge ought to have exercised his jurisdiction by taking into consideration all these aspects in the matter.

18. It will not be out of place to mention here that, this Court, by order dated 3rd February, 2020 had granted interim protection to the appellant and it is continued till today. Taking into consideration the above observations, the said interim protection deserves to be confirmed.

19. In the result, following order, -

ORDER

i. The impugned order dated 21.1.2020 passed in Criminal Misc. Application (Bail) No.46/2020 by learned Additional Sessions Judge-3, Jalna, is hereby set aside. The said bail application stands allowed.

ii. The interim protection granted earlier by this court is made absolute, with slight modification on the

background of lock-down that the condition of attendance given earlier stands cancelled. However, the Investigating Officer is at liberty to call the appellant in case of his presence for investigation at any time, with condition to give prior intimation of 48 hours to the appellant. The appellant to co-operate in investigation.

iii. The Criminal Appeal stands allowed in the aforesaid terms.

(SMT. VIBHA KANKANWADI,J.)

BDV