

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.329 OF 2020

Devidas s/o Pandurang Ghuge
Age: 38 years, Occu.: Private Teacher,
R/o. Ambarwadi, Tq. Jintur, Dist. Parbhani

... Appellant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Bamni,
Tal. Jintur, Dist. Parbhani.
2. Bhanudas s/o Kishan Bodake,
Age: 21 years, Occu.: Agri.
R/o. Ambarwadi, Tal. Jintur,
Dist. Parbhani.

... Respondent

.....
Mr. S. S. Thombre, Advocate for appellant.
Mr. S. B. Pulkundwar, Advocate for respondent No.1-State.
Mr. R. T. Deshmukh, Advocate for respondent No.2.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th September, 2020.

JUDGMENT :

. **Admit.**

2. Present appeal has been filed under Section 14-A of the Scheduled Caste Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred

to as the 'Atrocities Act') to challenge the order dated 16-03-2020 passed by the learned Special Judge / Additional Sessions Judge-3, Parbhani in Criminal Miscellaneous Application (Bail) No.171 of 2020 thereby rejecting the application for pre-arrest bail by the present appellant. The appellant is apprehending his arrest in Crime No.17 of 2020 registered with Bamni Police Station, Tq. Jintoor, Dist. Parbhani for the offences punishable under Sections 323, 195-A, 504 and 506 of Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Atrocities Act.

3. Heard learned Advocate Mr. S.S. Thombre for the appellant, learned APP Mr. S.B. Pulkundwar for respondent No.1-State and learned Advocate Mr. R.T. Deshmukh for respondent No.2 - informant.

4. It has been vehemently submitted on behalf of the appellant that perusal of the FIR lodged by respondent No.2 would show that it is based on a concocted story. In fact, initially, the wife of respondent No.2 had lodged the FIR No.122 of 2019 on 28-12-2019 for the offences punishable under Sections 354-B, 323 of Indian Penal Code and under Section 3(1)(wi) of the Atrocities Act. The wife of the informant had also lodged the said false FIR on imaginary story. In fact, the appellant and the father of the informant - respondent No.2 are doing business of cotton in partnership. Huge amount was due to the present appellant from the father of the informant and in order to dupe the present appellant, the father of the informant had asked the daughter-in-law to lodge the said report.

Now, in the present FIR, the informant says that the appellant had forced him that he should insist his wife to take back the FIR and in that process, he abused in the name of caste to respondent No.2. When the initial complaint itself is false, the present FIR based on that false complaint, will have to be stated, was with *mala fide* intention. The learned Special Judge failed to consider this aspect and rejected the application. In fact, no offence under the Atrocities Act is transpiring.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the appeal and submitted that already the appellant is facing trial in respect of the FIR lodged by the wife of the informant. After the investigation was over in that matter, charge sheet has been filed before the learned Special Judge in Sessions Case No.25 of 2020. In connection with the said case, the present appellant was arrested on 28-12-2019 at about 21:27 hours and thereafter, he was released on bail. Now, when he is on bail, he has committed the present offence. Perusal of the FIR would show that he had abused respondent No.2 in the name of caste and it has been done to pressurize respondent No.2, so that he can insist his wife to take back the prosecution. Possibility of commission of similar offence again cannot be ruled out, if he is released on pre-arrest bail. In fact, when offence under the Atrocities Act is transpiring *prima facie* on the basis of the FIR, there is total bar under Section 18 of the Atrocities Act to the said application which the appellant had filed under

Section 438 of the Code of Criminal Procedure before the learned Special Judge.

6. At the outset, it is to be noted that the wife of the present informant i.e. respondent No.2 had lodged report on 28-12-2019 regarding the incident dated 27-12-2019. Perusal of the said FIR would show that since the FIR i.e. Crime No.122 of 2019 came to be registered at about 00.25 hours which is on the next day i.e. 28-12-2019, it appears that the said offence was investigated and charge sheet has been filed against the present appellant. He was arrested in that matter and it appears that he was released on bail. This aspect will have to be borne in mind and that offence was also under the Atrocities Act. There is no material produced by the present appellant to indicate that there is any falsity in the said FIR or case, though it cannot be gone into at this stage. Now, in the present FIR i.e. Crime No.17 of 2020, the informant has clearly stated that he was abused by the present appellant in the name of caste and the said incident had taken place on the road i.e. public view and the specific abuses have been stated. It is also alleged that the present appellant had thrown chilli powder on the face of the informant and thereafter, he had assaulted the informant.

7. Learned Advocate for the appellant has vehemently submitted that the contents of the FIR would show that at the place of alleged incident dated 14-02-2020, except the present appellant and respondent No.2, there was nobody else and therefore, ingredients of Section 3(1)(r), 3(1)(s) of the Atrocities Act are

not at all attracted. He submitted that in order to prove the ingredients of the said offence under the Atrocities Act, prosecution should prove that the said place was 'within public view'. He also submitted that the FIR shows that after respondent No.2 was assaulted, when it was found by the appellant that some unknown person was coming on motorcycle towards them, appellant fled away. Therefore, when the FIR is silent on the point that any person was present at the said place, the ingredients of offence under Section 3(1)(r), 3(1)(s) of the Atrocities Act are not at all attracted. He relied on the decision of this Court in ***Balu s/o Bajirao Galande Vs. State of Maharashtra and another [2006 BCI 312 :: 2006 ALL M.R. (Cri.)3197]***, wherein after taking note of various pronouncements, it has been held :-

“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.”

8. The ratio laid down in the above said decision by this Court cannot be disputed. However, it can be seen that those observations were made in a criminal

application which was for quashing of FIR and it appears that, by that time, the entire investigation was over and all the papers i.e. the entire charge sheet was before this Court. Note of the statements of witnesses has also been taken and thereafter, the meaning of the word 'within public view' has been interpreted. However, as regards the present case is concerned, it is in respect of challenge to the bail application, for which the considerations are different than the considerations those are required to be considered where in a matter there is quashing of FIR. Here in this case the investigation is still in progress. No doubt, statements of certain witnesses have been recorded and those witnesses i.e., wife and parents of respondent No.2, were not present where the incident had taken place. There might be some other witness, though the FIR may not be containing the name of that witness. So also when the FIR is not an encyclopedia, we cannot restrict to the contents of the same. In order to arrive at a conclusion nobody else than the appellant and respondent No.2 were present at the place when the alleged incident, especially the abuse in the name of caste, taken place. Therefore, at this stage, the appellant cannot make use of the above said pronouncements.

9. When, at this stage, the material shows, especially the FIR, that the ingredients of offence under the Atrocities Act are *prima facie* made out, the application for pre-arrest bail would be barred under Section 18 of the said Act. The learned Special Judge has, therefore, taken a correct view. No interference is

required for the said decision. There is no merit in the appeal. It deserves to be dismissed. Accordingly, it is dismissed.

[SMT. VIBHA KANKANWADI, J.]

SCM