

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.454 OF 2020

Ankush s/o Ananda Jarare

... Appellant

Versus

1. The State of Maharashtra

2. Pooja d/o Ganesh Lad

... Respondents

.....
Mr. T. M. Venjane, Advocate for appellant.

Mr. A. M. Phule, APP for respondent – State.

Mr. V. S. Salve, Advocate for respondent No.2 (appointed)

.....
CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 15th October, 2020

PRONOUNCED ON : 5th November, 2020

ORDER :

. Present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act') to challenge the order dated 21-07-2020 passed by learned Special Judge/Additional Sessions Judge-7, Aurangabad in Bail Application No.781 of 2020. The present appellant is apprehending his arrest in connection with Crime No.105 of 2020 registered with Ajintha Police Station, Tq. Sillod, Dist. Aurangabad for the offences punishable under Sections 354, 354-D, 504 of Indian Penal Code, Sections 8 and

12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO' Act) and Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) of the Atrocities Act.

2. It will not be out of place to mention here that during the proceedings, a report has been given by the Investigating Officer that he has added offences under Sections 466, 468 and 471 of Indian Penal Code against the present appellant.

3. Heard learned Advocate Mr. T. M. Venjane for appellant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. V. S. Salve, who is appointed to represent the cause of respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that, in fact, the appellant had love affair with the informant, however, there is opposition from her relatives. The appellant is having his photocopy shop with name Rudra Xerox Center at village Hatti, Tq. Sillod. Respondent No.2 is more than 18 years old and, therefore, offence under POCSO Act is not applicable. In order to support the said fact, the appellant is contending that before the lock-down, the informant had gone to the shop of the appellant for getting her Aadhar card photocopied, however, due to rush, the said Aadhar card was remained in the shop of the appellant. The appellant has provided copy of the said Aadhar card of the informant, in which her birth year has been shown as

2001. The further fact which the appellant intends to harp upon is that the father of the informant has performed second marriage and for that purpose he is not paying attention towards the maintenance of the informant. The dispute is going on between the appellant and the father of the informant on the point of boundaries of the agricultural land. Due to the harassment by stepmother, the informant had tried to commit suicide and the parents of the appellant had given her understanding not to commit suicide and, therefore, the parents of the informant had prevailed upon her to file the present FIR. There is no question of intention to abuse the informant in the name of her caste, as he was loving her.

5. Another fact which will have to be mentioned here is that after it was noticed that the photocopy of the Aadhar card of the informant has been produced by the appellant, this Court has taken note of the same and asked certain questions to the learned Advocate for the appellant regarding the possession of the original Aadhar card. It was submitted that the original Aadhar card is with the appellant and statement to that effect has also been made in his application for anticipatory bail before the learned Special Judge. By order dated 06-10-2020, this Court found that the contentions in the application for pre-arrest bail in respect of possession of Aadhar card appears to be vague. The appellant had not intentionally given the date on which he got the possession of Aadhar card and, therefore, the appellant was directed to file a detailed affidavit in respect of the same. Accordingly, the affidavit was filed stating that the said

Aadhar card was handed over on 22-03-2020 and the lock-down was declared from 23-03-2020, therefore, the appellant says that he could not open his shop. In the affidavit, he has also stated that if the informant desires, he is ready to get married with her. Thereafter, this Court by order dated 08-10-2020 called upon the appellant to hand over the original Aadhar card of the informant to the Court and it was found that only the birth year has been mentioned and not birth date. In the meantime, the Investigating Officer had collected documents and Aadhar card of the informant, which according to the Investigating officer, the original was with the informant herself and he produced the attested copy of the said Aadhar card. He has also produced the school register as well as SSC hall ticket/ admission card giving the birth date. As per these documents, her birth date is 28-10-2002. When these contrary things came before the Court, this Court had asked the Investigating officer to make inquiry and the Aadhar Card which was in possession of the appellant was allowed to be given to the Investigating Officer for inquiry. The report has, thereafter, been given that the said Aadhar card, which was in possession of the appellant, is fake and, therefore, those offences under Section 466, 468, 471 of Indian Penal Code were added.

6. Learned Advocate for the appellant, thereafter, submitted again that the Aadhar card number is same and it might have been possible that the informant would have made changes in the entries of the Aadhar card and then got a new Aadhar card. He wanted to bring that fact on record.

7. The learned APP as well as learned Advocate, who is appointed to represent the cause of respondent No.2 strongly opposed the application on the ground that the appellant had every knowledge that the informant is a member of Scheduled Caste. In her FIR, the informant has stated that she was not loving the appellant, but he was insisting that she should express love for him. He was asking that they should run away and perform marriage. On 01-05-2020, again the appellant met informant, expressed his love for her and gave threat. He had forcibly hugged her, but then when she raised shout for help, her grandparents came and then the appellant ran away from the spot. The informant was a minor on that day and, therefore, a serious offence has been committed. So also, it is definitely with an intention to insult the informant. Therefore, his application for pre-arrest bail was barred under Section 18 of the Atrocities Act, which has been rightly rejected by the learned Special Judge and, therefore, the appeal deserves to be dismissed.

8. At the outset, it is to be noted that the allegations made by respondent No.2 are that she has no feeling of love against the appellant. Whether the FIR is the outcome of some vengeance between her father and the father of the appellant would be a matter of evidence and it cannot be considered at this stage. The appellant cannot force upon her to express love. It is her statement that it was the forcible act on the part of the appellant to maintain love relations with him. In categorical term, she states that she had not

approved those feelings (मला ते प्रेम संबंध मान्य नव्हते). He was insisting for the marriage, which as per the contentions in the FIR were not acceptable to her. Under such circumstance, any such act, which he was doing forcibly cannot be said to be the love affair. He might be having one sided love. Another fact that is required to be considered is that the alleged Aadhar card was given to him as per his contention for photocopy. The *prima facie* opinion of this Court is that when the relationship between the appellant and respondent No.2, at that point of time, was that of shopkeeper and customer, then he could not have used that document. Further, it appears from the inquiry that has been made by the Investigating Officer that the said Aadhar card, which was in possession of the appellant, is fake. Now, whether the birth date appearing in the said Aadhar card has been changed after the order was passed on 06-10-2020 or 08-10-2020, would be the matter of evidence. There are two documents of which photocopy has been given. One is the acknowledgment which is stated to be given on 25-09-2017 and it also bears the date of birth and another is the Aadhar card, which is in two parts. No doubt, it has, at the left hand side, entry in vertical position as “Download Date 06/10/2020 Generation Date 06/10/2020.” Therefore, it is then required to be proved at the time of final hearing whether that earlier alleged entry of birth year of 2001 has been changed. Yet, the fact remains that from the other documents, which show the clear birth date of the girl, that she had not completed age of 18 years on the date of alleged offence.

The use of so called document of Aadhar card by the appellant in such manner is definitely required to be viewed against him.

9. The contents of the FIR definitely do not show that any insulting word was used by the appellant against the informant and, therefore, *prima facie*, no offence appears to be committed under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

10. Section 3(1)(w)(i) of the Atrocities Act, reads thus :-

“(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;”

In this Section, touching a women belonging to a Scheduled Caste or Scheduled Tribe, knowing that she belongs to such caste or tribe and when such act is of sexual nature and it is without her consent, then it is made punishable. Here, definitely, the appellant was knowing the caste of the informant, but the entire FIR is silent about her caste. Knowledge of the accused is then important. Further, as regards Section 3(2)(va) of the Atrocities Act, the same knowledge will have to be there and an offence specified in the Schedule should have been committed against such member. Here, the contents of the FIR would show that as regards the incident that had taken place on 01-05-2020,

part of it was committed in the house of one Mangesh Chandole, but the other part that is forcibly hugging her appears to have taken place outside the house. Therefore, there is room to believe that *Prima facie* offence under the Atrocities Act have been committed. Further, as aforesaid, as the things progressed, the accused has used the documents allegedly kept by the informant with him for his bail purpose without her consent. She is minor as it appears at this stage and, therefore, this is not a fit case where the appellant should be released on anticipatory bail. The learned Special Judge did not commit any mistake. Therefore, the appeal deserves to be dismissed. Hence, the following order :-

ORDER

- I) Appeal stands dismissed.
- II) Fees of appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services Authority Sub-Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

scm