

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1212 OF 2019

Vikas Uttamrao Ambore,
Age 36 yrs., Occ. Business,
R/o Tadkalas, Tq. Purna,
Dist. Parbhani.

... Appellant.

... **Versus** ...

- 1 The State of Maharashtra
Though Police Station Officer,
Tadkalas Police Station,
Tq. Purna, Dist. Parbhani.
- 2 Dnyanoba Sopan Sonule,
Age 60 yrs., Occ. Hotel Business,
R/o Bhimnagar, Tadkalas,
Tq. Purna, Dist. Parbhani.

... Respondents

...

Mr. S.G. Chapalgaonkar, Advocate for appellant

Mr. A.M. Phule, APP for respondent No.1

Mr. P.M. Hiwale, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 29th OCTOBER, 2020

PRONOUNCED ON : 06th NOVEMBER, 2020

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order dated 26.11.2019 passed by learned Additional Sessions Judge-4/Special Judge, Parbhani in Criminal Bail Application No.921/2019. The present appellant, who is original accused No.1, is apprehending his arrest in connection with Crime No.169/2019 registered with Tadkalas Police Station, Dist. Parbhani for the offence punishable under Section 143, 147, 149, 323 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Heard learned Advocate Mr. S.G. Chapalgaonkar for appellant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. P.M. Hiwale for respondent No.2.

4 It has been vehemently submitted on behalf of the appellant that the learned Special Judge did not consider the background and the fact that the First Information Report is nothing but an act of vengeance by the respondent No.2. The mala fide intention to pressurize the accused persons

was the aim behind lodging the FIR. The present appellant as well as other accused persons are the traders and they were demanding widening of the road. In fact, the informant had encroached on the public property, however, the informant had instituted Regular Civil Suit No.189/2004 for injunction to protect his illegal possession. The said suit came to be dismissed. Thereafter, again Regular Civil Suit No.106/2009 was filed by him and others against Agricultural Produce Market Committee as well as co-accused Gajanan. That suit was also dismissed. Wife of the informant had previously filed a complaint against accused No.3 Gajanan under the Atrocities Act bearing Special (Atrocities) Case No.9/2005. That case was decided in favour of accused Gajanan. The informant was obstructing the work of road widening and was making false accusations against the accused persons. Therefore, a complaint application was filed by the traders to Assistant Police Inspector, Police Station, Tadkalas on 07.11.2019. It was specifically informed that the informant is likely to file false complaint against them. Apprehending some action, the informant appears to have lodged the false report. There was absolutely no intention on the part of the appellant to insult the informant and in fact, he has never uttered those words. The learned Special Judge has failed to consider all these things, and therefore, wrong order has been passed that the application for pre-arrest bail filed by the appellant is barred under Section 18-A(2) of the Atrocities Act. The said order deserves to be set

aside.

5 Per contra, the learned APP as well as the learned Advocate representing the informant strongly opposed the appeal. It was submitted by learned APP that since the registration of the offence the present appellant is absconding. The appellant and respondent No.2 are resident of same village, and therefore, there is every possibility of law and order situation as well as tampering with the evidence. The learned APP also submitted that statements of witnesses have been recorded.

6 Learned Advocate appearing for the respondent No.2 strongly submitted that the utterance of alleged words attributing to the caste were uttered by the present appellant only. He had uttered, “ ये मादर चोदा, धेड़ग्या तु लय माजलास का ”, which definitely amounts to insult. The incident had taken place on the road in front of shop belonging to one Achyutrao Ambore, which is definitely a public place, and therefore, the offence under the Atrocities Act is attracted. When prima facie offence has been made out under the Atrocities Act, the bail application under Section 438 of the Code of Criminal Procedure is barred in view of Section 18-A (2) of the Atrocities Act.

7 The law on the point, whether bail application under Section 438 of Cr.P.C. would be barred in view of Section 18-A(2) of the Atrocities

Act, is well settled now. Reliance can be placed on observations from **Prathvi Raj Chauhan vs. Union of India and others, Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020 -

“10. Concerning the applicability of provisions of section 328 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

Under such circumstance, now it is required to be seen, as to whether the circumstances in the totality make out the offence under Atrocities Act, so also it can be said that if the FIR is tainted with mala fides then definitely it shall not affect the personal liberty enshrined under Article 21 of the Constitution of India. Here, in this case the history has been told by the present appellant and there is no counter affidavit stating that, that history is false. Two civil suits have been decided against the informant, which appeared to be in respect of alleged encroachment made by him. The informant states that since last about 10 years he is running a juice bar by name 'Jai Maharashtra' near Bus Stand in village Tadkalas. He submits, that prior to that he had furniture shop at the same place, since 1985. He gives the incident on 07.11.2019. He says that he along with his son Datta and nephew Vikas Gaikwad was gone to the shop at about 8.00 a.m.. Thereafter

at about 3.00 p.m. there was work of digging nala going on with the help of JCB. He told the JCB driver/operator that why he has changed the line of digging and taken a different line. The driver told him that he is doing the work as told by the Engineer. The JCB machine was put off by him and at that time the present appellant went near informant, caught hold of his neck and uttered, “ये मादर चोदा, धेड़ग्या तु लय माजलास का”. The informant says that thereafter one Ramprasad Ganesh Ambore kicked him and when the quarrel was going on, other accused persons came, abused him and assaulted. According to the informant, about 100-150 people had gathered to watch the quarrel. Informant fell down and when he was proceeding towards Government Hospital, Tadkalas, blood was oozing out of his nose and mouth. He fell down on the road due to giddiness. His son and nephew went near him and shifted him to Takdaldas Hospital first and then to Parbhani Hospital. According to the informant, he had regained the consciousness on third day. He has thereafter lodged the report.

8 Apparently there appears to be delay in lodging FIR. Even if we give concession of three days hospitalization to the informant, yet, the FIR has been lodged on 13.11.2019, whereas date of incident is 07.11.2019.

9 The background is now required to be considered. There appears to be a complaint application filed by about 35 persons, who are

stated to be traders and villagers of Tadkalas. That complaint application was given on 07.11.2019, wherein it is stated that present informant was terrorizing them under the influence of liquor, that he would lodge a false complaint under Atrocities Act against them. The present appellant is one of the signatories to the said application. When such written action was taken against the informant, the substance in the contention of the allegation, that the FIR is outcome of the mala fides, will have to be considered.

10 Perusal of police papers is definitely required to be undertaken. Even for considering, whether prima facie offence under the Atrocities Act has been made out or not, statements of witnesses have been recorded. The statement of the son of the informant would show that he was not present near informant. He says that when he heard the shouts of his father, he found that his father was not able to walk and fell down on the road. His cousin Vikas also came to the spot. Then he specifically says that nobody was present at the spot. Similar statement has been given by the nephew of the informant Vikas Balasaheb Gaikwad. Thereafter, there are many witnesses, who say that people had gathered at the spot, however, they do not know the reason. Statement of one Dalit Dnyanoba Gaikwad would show that he was driver/operator on the Poclain. But he claims ignorance about the dispute. Statement of one Hariom Mihilal Sikriya, who was the Engineer working with

Kalyan Toll Infrastructure Company, who had undertaken that work would show, that when the work of digging nala was going on, a person holding stone came and asking him to close the machine. Therefore, he had asked the driver to close the machine. Some 20-25 people gathered, but he claims that he has no knowledge who were they. Thereafter, he went to the other side. In the nutshell the police papers regarding the investigation, that has been, carried out uptill now would show, that there is absolutely nobody who is supporting the contents of the FIR. Therefore, it cannot be said that any prima facie case under the Atrocities Act has been made out. The learned Special Judge ought to have considered the police papers as well as the background in order to come to a conclusion, as to whether prima facie offence has been made out or not. The appeal deserves to be allowed, as the learned Special Judge has erred. Hence, following order.

ORDER

1 The appeal stands allowed.

2 The order passed by learned Additional Sessions Judge-4/Special Judge, Parbhani in Criminal Bail Application No.921/2019 dated 26.11.2019, is hereby set aside to the extent of accused No.1 i.e. present appellant only. Said application stands allowed.

3 In the event of arrest of the appellant viz. Vikas Uttamrao Ambore, in connection with Crime No.169/2019 registered with Tadkalas Police Station, Dist. Parbhani for the offence punishable under Section 143, 147, 149, 323 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on P.R. and S.B. of Rs.15,000/-.

4 The appellant shall not indulge in any criminal activity and shall not tamper with the evidence of prosecution, in any manner.

5 The appellant shall attend the Tadkalas Police Station on every Monday and Thursday between 10.00 a.m. to 02.00 p.m., till further orders and shall cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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