

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 CRIMINAL APPEAL NO.351 OF 2021

TRYAMBAK SAKHARAM SONAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.K.P. Rodge, Advocate for the appellant.
Mr.R.B. Bagul, APP for the respondent/State.
Mr.Shaikh Tarek Mobin H., Advocate for respondent No.2.

CORAM : SURENDRA P. TAVADE, J.
DATED : 06.09.2021

PC :-

01. Being aggrieved by and dissatisfied with the order passed by the Additional Sessions Judge, Ambad in Criminal Bail Application No.150 of 2021, present appellant has preferred this appeal.

02. Facts giving rise to the present appeal can be summarized as under :-

03. The appellant along with one person are prosecuted by respondent No.2 for the offences punishable under sections 354A, 323, 506, 34 of the Indian Penal

Code and section 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

04. It is alleged by the informant-respondent No.2 that on 26.05.2021 at about 09.30 a.m. she along with her son Prasad and husband Sanjay went to their field. It is contended that her husband, son and father-in-law stayed in the farm house situated in the field and she was collecting fire-wood. On that day at about 4.30 p.m. when she was working in the field, the appellant along with Digambar entered into her field. The appellant asked her to come along with him as he had some work, but the informant-respondent No.2 asked the appellant to disclose the said work then and there, but appellant and Digambar – co-accused held hand of the informant and pulled her. It is contended that the informant raised shouts. On hearing shouts, son and husband of the informant rushed to the spot and they stopped the appellant and Digambar – co-accused and asked them why

they held hand of the informant. Over this, the appellant held hand of the husband of the informant and also assaulted him by fist and kick blows. It is also alleged that the appellant while leaving the spot threatened the informant and her family members with dire consequences. Accordingly the informant came to Ghansawangi Police Station and lodged report. On the basis of said report crime bearing No.171 of 2021 came to be registered.

05. On the basis of contents of the FIR, learned Counsel for the appellant submits that the informant lodged false FIR to take revenge of their arrest at the hands of appellant. He also contended that on 27.03.2021 the appellant had lodged complaint against the informant and her husband with Kadim Police Station for the offences punishable under sections 324, 327, 364, 34 of the Indian Penal Code. On the basis of the FIR, crime bearing No.135 of 2021 was registered against the informant and her husband. Both of them were arrested and they were in custody for about three weeks. It is

contended that after release from jail to take revenge of their arrest, the informant lodged false and bogus complaint. There are no allegations against the appellant that he hurled any abuses to the informant or her family members. It is contended that the informant is sister-in-law of the appellant, but said fact is conspicuously missing in the FIR. It is contended that the informant simply alleged that the land of the appellant is nearby her land and he entered in her land and pulled her hand. It is contended that no cause for appellant to enter in the land is shown in the FIR. It is simply mentioned in the FIR that the appellant along with Digambar entered in the field of the informant and pulled her. It is also submitted that the informant should have given some cause for the incident. In absence of said cause, it can be said that to take revenge of arrest, appellant was falsely prosecuted.

06. On the other hand, learned APP and Counsel for respondent No.2 submit that there are specific

allegations against the appellant that he pulled the informant and outraged her modesty. Therefore, prima facie, offence under section 3(1)(w)(i)(ii) of the Atrocities Act is made out against the appellant. Therefore, there is bar of section 18-A of the Atrocities Act to entertain the present appeal. Thus, it is prayed that the appeal be dismissed.

07. Heard Counsel for the appellant, APP for the State and Counsel for respondent No.2. Perused the FIR. It is mentioned in the FIR that the land of Digamber - co-accused is adjacent to the land of informant and land of appellant is adjacent to the land of Digamber. There is no mention in the FIR that either Digambar or appellant are having any land dispute with the informant. The informant has alleged that on 26.05.2021 at about 4=30 p.m. appellant entered into her land and asked her to accompany him which she refused. Therefore, the appellant and his associate held her hand. Even if said allegations are taken as it is, it can be said that the

appellant did not give any cause for the incident.

08. On the other hand, the appellant came with story that on 27.03.2021, he had lodged complaint against the informant and her husband. On the basis of said complaint, crime was registered against the informant and her husband. Both of them were arrested and they were in custody for about three weeks. It is also contended that the appellant had sustained injuries and he was hospitalized. If these facts are taken into account, it can be said that there is substance in the submission of the appellant that in order to take revenge of arrest, informant had filed complaint against them. It also appears that the informant is sister-in-law of the appellant, but no-where in the FIR there is mention of their relation. The informant simply alleged that the appellant is her adjacent land-holder and he entered into her field and outraged her modesty. It was expected from the informant to at-least give some plausible explanation or cause for alleged incident, which is completely

missing from the FIR. The fact of arrest of the informant and her husband is not denied. Similarly, their detention in the jail is also not denied. So, there is possibility that out of vengeance, the appellant could have been prosecuted by the informant.

09. Learned Counsel on behalf of respondent No.2 submits that the Court should not evaluate evidence of the case. He relied upon ratio in the case of Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra, (2012) 8 SCC 795, wherein it is held as under :-

"9) Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10) The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical

analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

10. Looking to the nature of allegation, it can be said that there are no allegations that the appellant abused or humiliated the informant on her caste. In-fact, the appellant knew the caste of the informant. So, it was easy for the informant to allege that her modesty was outraged because of her caste. But such allegations are not mentioned in the FIR. Therefore, if allegations made in the FIR are read as it is, it can not be said that the appellant outraged the modesty of the informant. It appears that the contents of FIR do not establish the intention of the appellant to humiliate the informant over her caste. Therefore, prima facie, offence punishable under section 3(1)(w)(i)(ii) of the Atrocities Act is not made out against the appellant. On going through both the FIRs and statements of the parties, I am of the opinion that prima facie the offence punishable

under section 3(1)(w)(i)(ii) of the Atrocities Act is not made out against the appellant. The alleged incident had taken place in the month of May, 2021. Investigation might have been over. But at the same time attendance of the appellant is just required for completion of investigation. Therefore, attendance of the appellant would suffice purpose of the investigation. Hence, I pass following order :-

O R D E R

i) The appeal is allowed.

ii) In the event of arrest, the appellant is ordered to be released on bail on his executing PR and SB of Rs.15,000/- (Rupees Fifteen Thousand) with directions to attend police station everyday from 07.09.2021 till 21.09.2021 between 10=00 a.m. to 12=00 noon. The appellant is directed to co-operate the Investigating Officer. He is also directed not to tamper with prosecution witnesses, in any manner, whatsoever.

[SURENDRA P. TAVADE,J.]