

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.485 OF 2021***

Mr. Indrajit Dilip Patil

& Ors.

... Appellants

Vs

The State of Maharashtra

& Anr.

... Respondents

...

Mr. M.S.Mohite, Sr. Advocate i/by Ms. Saili Dhuru for the Appellants.

Mr. A.R.Patil , APP for the Respondent-State.

Mr. Arvind D. Aswani appointed advocate for the Responden No.2.

IO Dy. SP Mr. K.M.Pingle, Islampur Division, Sangli present.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 12, 2021.

P.C. :

In this appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("Act of 1989" for short), appellants are seeking pre-

arrest protection in connection with the Crime No.391 of 2021 registered with Islampur Police Station, District: Sangli for the offences punishable under Sections 406, 420, 188, 297 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s) of the Act of 1989.

Background facts:

2 Appellants are employees of Prakash Hospital situated at Islampur, District: Sangli. This hospital was dedicated to Covid facilities having treated more than 1500 covid patients. Appellants are front-line workers, who were working round the clock, for providing medical treatment to the Covid patients. The Appellant No.1 was in-charge of Oxygen management in the hospital; Appellant No.2 was supervising medical treatment and facilities to covid patients; Appellant No.3 was clerk working in the administration of the hospital and Appellant No.4 was social worker, extending help to the patients and their relatives.

Prosecution case:

3 Prosecution's case is that, maternal uncle of the complainant, was suffering from Covid-19 and was shifted to the Prakash Hospital on 2nd May, 2021 from Manav Covid Centre at Kolhapur, against advance, deposit of Rs.50,000/- and Rs.3,00,000/- for booking bed with ventilator facility. Complainant claims, although he deposited Rs.3,50,000/-, he did not receive receipt from the hospital administration. On 18th May, 2021, complainant's uncle succumbed to the disease in early hours at 3.25 a.m. Complainant was asked to complete formalities and clear the pending bills in order to take away the dead-body of his uncle. Complainant would allege that although he had deposited Rs.3,50,000/-, the appellants further demanded, amount of Rs.2,17,512/- and refused to hand over the dead-body unless payment was made . Thereafter complainant and his brothers approached Tehsildar of Taluka: Walwa, who, sent his

persons alongwith the complainant to the hospital. It is further alleged that heated arguments took place between the appellants and the complainant, wherein the appellants abused and humiliated the complainant, knowing well that the complainant belonged to scheduled caste. It is further alleged that the appellants declined to give dead-body in the custody of the complainant unless additional amount was paid. It is further alleged that upon intervention by Tehsildar himself, dead-body was handed over in the evening at 3 p.m. and thereafter last rites were performed in the crematorium of Islampur. According to the complainant, undue demand of additional fees by the appellants and detaining the dead-body without first paying additional fees/charges, the appellants caused humiliation to the complainant and his family. According to the complainant, appellants intentionally insulted them, as they were, members of scheduled caste. On this set of allegations, First Information Report was filed on 25th May, 2021 against the appellants and another person, Mr.

Vishwajeet Suresh Giri Gosavi, employee of the hospital.

4 Apprehending the arrest, the appellants sought pre-arrest bail, however, the Special Judge (Atrocity Act) declined to grant relief. Whereafter they have approached this Court.

5 On 4th June, 2021, this Court by reasoned order, and by relying on the judgment of the Apex Court **Prathaviraj Chauhan v. Union of India, AIR 2020 SC 2036** granted interim protection to the appellants and directed notice to the complainant.

6 Heard Mr. Mohite, learned Senior Counsel for the appellants, Mr. A.D.Aswani for the complainant and Mr. A.R.Patil, the learned prosecutor for the State.

7 Mr. Mohite, the learned Senior Counsel for the appellants vehemently submitted that the primary

evaluation of the allegations do not constitute an offence under the Act of 1989. Mr. Mohite submitted that the hospital administration was unaware about the patient belonging to scheduled caste. It is submitted that only when differences arose in respect of the cost of the treatment, complainant disclosed that he belongs to scheduled caste. It is submitted, essentially the dispute that arose between the complainant and the hospital administration, was concerning the hospital bill and for the reason that family members were insisting to take the dead-body to Kolhapur against the protocol and the SOP issued by the Ministry of Health and Family Welfare. Mr. Mohite relied on Covid-19 guide-lines on dead-body management. Mr. Mohite, submitted that the complaint itself shows that the appellants were unaware and/or had knowledge that the complainant was belonging to scheduled caste. Mr. Mohite submitted that even assuming but without admitting that the dead-body was detained by the hospital administration, the material on record does not

lead to belief, it was, detained only because deceased belonged to scheduled caste. It is argued that neither the complaint nor the attendant circumstances imply that the dead-body of the complainant was intentionally detained to cause humiliation to the complainant and his family members only because they belonged to the scheduled caste. Reliance has been placed on the judgment of the Apex Court in **Hitesh Verma v. State of Uttarakhand & Anr. (2020) 10 SCC 710**. In the cited judgment, the First Information Report was lodged for the offences punishable under Sections 452, 504, 506 of the Indian Penal Code, 1860 and Section 3(1)(x) and 3(1)(e) of the Act of 1989. Therein, there was dispute relating to the property pending before the Civil Court. The appellants therein were not permitting the respondents to cultivate the land. In the context of these facts, in paragraph 16, it was observed that *'since the matter is regarding possession of the property pending before the Civil Court, any dispute arising on account of possession of the said property would not*

disclose offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to scheduled caste or scheduled tribe'. Relying on these observations, Mr. Mohite submitted that dispute and differences arose between the hospital administration and the complainant on alleged over charging of hospital bill and, therefore, the alleged abuses or intimidation was not only for the reason that the complainant belonged to scheduled caste or scheduled tribe. It is, therefore, argued allegations do not disclose commission of offence under Section 3(1)(r) or 3(1)(s) of the Act of 1989. On these grounds, pre-arrest protection is sought.

8 Per contra, learned counsel for the complainant and the learned Prosecutor for the State, argued that complainant's uncle expired at 3 a.m. in the morning and the dead-body was handed over nearly after ten hours, that too, after intervention of the revenue officer. It is argued that detaining the body for not settling undue, hospital bill,

itself was, insult and intimidation to the complainant and his helpless family members, who were waiting nearly for ten hours to receive dead-body. It is argued, hospital administration, although had received Rs.3,50,000/- in advance, demand of additional amount of Rs.2,17,512/- without furnishing details/particulars, had added to the insult of the complainant and his relatives. The learned counsel for the complainant would submit that detaining dead-body itself caused humiliation and insult not only to the complainant but also to the deceased. He would rely on the judgment of this Court in the case of **Pradeep Gandhi & Ors. v. State of Maharashtra & Ors.** in **LD-VC- 46 of 2020** wherein the Division Bench of this Court in paragraph 38 has observed that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. Right to a decent burial, commensurate with the dignity of the individual is recognised as a facet of the right to life guaranteed by Article 21 of the Constitution of India.

It is argued, the appellants were aware, that deceased and relatives, were belonging to 'Scheduled Caste'. Thus, argued, plain reading of First Information Report, in no uncertain terms, discloses commission of offence under the Act of 1989 and Section 18 of the Act bars, remedy, of pre-arrest protection.

9 In the case in hand, even assuming that the hospital administration had detained the body for unreasonable period, which caused insult and the humiliation to the complainant and his family members, the fact remains that detention of the body itself would not constitute offence under the Act of 1989 unless it is shown or borne out from the First Information Report that firstly, the appellants knew that the complainant belonged to scheduled caste and secondly, body was detained only because deceased belonged to scheduled caste. Apparently, these two important ingredients of offence alleged were are absent in the complaint or in the material

produced by the prosecution for my perusal. The offence under Section 3(1)(r) of the Act of 1989 would signify that, all insults and intimidations to a person will not be an offence under the Act, unless such insult or intimidation is on account or referable to caste or tribe of a person, who was insulted. In the case in hand, the dispute arose between the hospital administration and the complainant over the hospital bill. From the material, it cannot be inferred that dead-body was detained by the hospital administration only because complainant belonged to scheduled caste. Besides, First Information Report, does not imply that appellants or hospital administration knew, that deceased was belonging to 'Scheduled Caste'. Undoubtedly, facts of the case reveal that dead-body was handed over to the relatives of the deceased only after intervention of the revenue officer and from the circumstances, it can be reasonably inferred that body was not handed owing to the fact that, the hospital bill was not settled. Although the circumstances caused humiliation to

the complainant and his family members but by that itself would not constitute an offence either under clause (r) or (s) of the Act of 1989.

10 In consideration of the facts, and for the reason stated above, in my view, complaint does not disclose commission of offence under the Act of 1989. Consequently, appellants are granted pre-arrest bail. Hence, the following order:

ORDER

(i) In the event of arrest of the appellants in Crime No.391 of 2021 registered with Islampur Police Station, District: Sangli, they shall be released on executing PR bond for the sum of Rs.25,000/- each with one or more sureties in like sum.

(ii) The appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the

case

11 The appeal is accordingly allowed and disposed
of.

12 It is made clear that observations made here-in-
above be construed as expression of opinion for the
purpose of bail only and the same shall not in any way
influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)