

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 504 / 2021

Bassappa Layappa Gadade and Ors. .. Appellants

Versus.

The State of Maharashtra and Anr. .. Respondents

Mr. Kuldeep Nikam a/w Mr. Prasad Avhad, for the Appellant.

Ms. M.R. Tidke, APP for State.

Mr. Shailesh Chavan, appointed Advocate for Respondent No.2.

P.N. Mr. S.A. Vhankhande, S.D.P.O. Office,, Jath.

CORAM : SANDEEP K. SHINDE J.

DATE : 20th DECEMBER, 2021.

P.C. : -

Heard. Mr. Nikam, learned Counsel for the Appellants; Ms. Tidke, learned APP for State and Mr. Chavan, learned Advocated (appointed) for the Respondent No.2 - Complainant.

1. Appellants are seeking pre-arrest bail on the accusations of having committed offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Complainant's case in brief is that on 30th March, 2021 at around 06:00 pm., the Appellant No.1 intentionally insulted and humiliated him being a member of Scheduled Caste by hurling casteist remarks against him at or near the tailoring shop. Further he would alleged that on the same day, at around 09:30 pm., the Appellants and his companions gathered at his house and abused him in his caste name. Complainant filed report on the next date i.e. 31st March, 2021 at 15.23 hrs. whereupon the crime came to be registered against the Appellants and others for the offences, under the IPC and under the Act of 1989.

3. The learned Additional Sessions Judge declined pre-arrest protection on the ground that the application was not maintainable in view of the provision of Section 18 of the Act of 1989.

4. This Court vide order dated 18th June, 2021 by reasoned order granted interim protection to the Appellants on certain terms and conditions and caused notice to the Complainant. Accordingly, Mr. Chavan, has been appointed to represent the Complainant.

5. It may be noted that on 30th March, 2021 at 06:00 pm., Appellant No.1 was thrashed by Subhash Kamble (Complainant in Crime in question) and one Hanmant, for allegedly spreading misinformation that Kamble's father had died due to Corona Virus. Soon thereafter, Appellant reported the incident to Police. Thus, Appellants' complaint against Subhash Kamble was much before the complaint filed by Subhash Kamble against the Appellant and Others.

6. Be that as it may, the questions that arises for the consideration is, whether accusations made in the FIR, disclose the offence under the Act of 1989 and if answer is in the affirmative, whether an application for pre-arrest bail was maintainable.

7. Mr. Nikam, learned Counsel for the Appellants would submit that even assuming but without admitting, that the Appellant made caste based remarks against the Complainant, yet such abuses were not in 'public view' and therefore accusations do not constitute offence under the Act of 1989. Mr. Nikam in support of his submission would rely on the order of this Court passed in Criminal Appeal No. 1030/2018 in the case of Salim Abdul Shaikh v. State of Maharashtra. The learned Judge of this Court relying upon the judgment in the case of **Balu s/o Bajirao Galande vs. State of Maharashtra & anr.** (2006) 6 AIR(Bom)(R) 251; has held that the insult or humiliation must take place in the presence of or in the presence of atleast one independent public witness.

. Mr. Nikam submitted that Hanmant Gadade, who has been projected as a person in whose presence, Appellants made caste based remarks cannot be said to be independent witness. Reason being in the complaint lodged by the Appellant No.1, Hanmant Gadade was arraigned as co-accused. Additionally, Hanmant Gadade's statement as a independent witness has been recorded by

the Prosecution nearly after a month.

8. For that reason and in consideration of the facts of the case, prima facie, the alleged insult or humiliation was not caused to the Complainant, in the public view. In that view of the matter, since offence under the Act of 1989 has not been made out, the application for pre-arrest bail, was maintainable.

9. Learned Prosecutor and Mr. Chavan, learned Counsel appearing for the Complainant, submitted that pending appeal, the Appellants were arraigned as Accused in another crime, registered against them on 12th September, 2021 under Sections 143, 149, 327, 324 and 504 of the IPC. According to them, this conduct of the Appellants, dis-entitles them from seeking pre-arrest protection.

10. It may be noted, that except mentioning, Appellants' complicity in another crime, Prosecution has not elucidated such other particulars like nature of offence and role attributed to the Appellants. In that

view of the matter, in the event of arrest of the Appellants in Crime No. 79/2021 registered with Umadi Police Station, they shall be released on bail on executing PR bond for the sum of Rs. 15000/- each, with one or more sureties in the like amount.

11. The Appellants shall join the investigation as and when called.

12. The Appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

13. The Appeal is allowed and disposed of.

(SANDEEP K. SHINDE, J.)