

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 211 OF 2020

Sudhir s/o Narayanrao Shende
Aged about 64 years, Occ. Service,
R/o Vishwanath Nagar,
Amravati, Tq. and Distt. Amravati.

.... APPELLANT

// VERSUS //

1. State of Maharashtra, through Police
Station Officer, Police Station Loni,
Tahsil Nandgaon Khandeshwar,
Distt. Amravati.

2. Guddue s/o Prabhakar Dhoke,
Aged 41 years, Occ. Agriculturist,
R/o Loni Takli, Tq. Nandgaon Khandeshwar,
Distt. Amravati.

.... RESPONDENTS

Shri A.A. Naik, Advocate for Appellant.
Shri H.D. Dubey, A.P.P. for respondent no. 1.
Respondent no. 2 is served.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 04/02/2021.

JUDGMENT :

Heard. ADMIT. By consent Appeal is taken up for final disposal.

2. This appeal under Section 14-A(1) of the Scheduled Caste

and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the SC and ST Act”) has been filed by the Appellant being aggrieved by the order dated 16.03.2020 whereby the learned Judge has rejected the pre-arrest bail in Crime No.60 of 2020 registered at Loni Police Station, District Amravati.

3. The Appellant is the President of the Ashok Education Society at Ashok Nagar. The said Society runs and administer several schools in the Amravati district. The Respondent no.2 is appointed as Vice President of school management committee of one as such schools at the village Loni Takli, Amravati. On 06.03.2020, the Respondent no.2 lodged a report alleging that on 05.03.2020, he along with other villagers went to the school to question the Appellant about transfer of one of the peons in the said school. Respondent no.2 alleged that the Appellant abused him by his caste, gave threats and intimidated him. Accordingly Crime No. 60 of 2020 has been registered against the Appellant for offences punishable under Sections 504, 506 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the SC and ST Act.

4. Apprehending his arrest in the said crime, the Appellant applied for pre-arrest bail before the Special Court, Amravati. The

learned Judge held that the offence under SC and ST Act is *prima facie* made out and hence, by the impugned order dismissed the application in view of the bar under Section 18 of the SC and ST Act. This order is under challenge in this Appeal.

5. Shri A.A. Naik, learned Counsel for the Appellant has relied upon the decision of the Division Bench of this Court in ***Pradnya Pradeep Kenkare and anr vs. State of Maharashtra [2005(3)Mh.L.J] 368 and V.P. Shetty vs. Sr. Inspector of Police and anr. [2005(3) Mh.L.J] 1006*** to contend that the constitute offence under Section 3(1)(r) and 3(1)(s) of the SC and ST Act, the incident as mentioned in the Section has to occur within 'public view'. Learned Counsel for the Appellant submits that the F.I.R. indicates that the alleged incident had occurred in the school premises. He submits that the alleged derogatory words were not uttered in the presence of any member of the public as to constitute an offence within the meaning of Section 3(1)(x) of the SC and ST Act. He has relied upon the decision of Delhi High Court in the case of ***Daya Bhatnagar and ors. vs. State 2004 SCC OnLine Del 33*** to contend that the expression 'public view' wotjom the ,eamomg pf the Section has to be interpreted to mean that the incident had occurred in presence of member or public who was not a friend or acquaintance or a participating member. He contends that in the instant case, *prima*

facie the offence under Section 3(1)(r) and 3(1)(s) is not made out and consequently bar under Section 18 of the SC and ST Act is not applicable.

6. Per contra, learned A.P.P. contends that the Appellant had insulted humiliated and hurled abuses at Respondent no.2 by means derogatory remarks about his caste in presence of the villagers who had accompanied him to the school. He submits that the offence was committed within the public view and that the act constitutes offence under Section 3(1)(r) and 3(1)(s) of the SC and ST Act. Hence, the bar under Section 18 of the SC and ST Act is attracted and consequently, the application is not maintainable. Learned A.P.P. further submits that the Appellant is not entitled for bail in view of his criminal antecedents.

7. I have perused the records and considered the submission advanced by the learned Counsel for respective parties. At the outset it may be mentioned that in the case of ***Prathvi Raj Chauhan vs. Union of India and ors. (2020) 4 SCC 727*** the Apex Court has reiterated that the bar created under Section 18 and 18-A(i) of the SC and ST Act shall not apply if the complainant does not made out a *prima facie* case. Hence, the question which falls for consideration is whether the

allegation leveled against the Appellant *prima facie* constitute offence under Section 3(1)(r) and 3(1)(s) of the SC and ST Act.

8. It is pertinent to note that the First Information Report reveals that the Respondent no.2 is a member of the scheduled caste. The allegations against the Appellant are that the Appellant and other villagers had gone to the School premises to question about the transfer of a peon. It is alleged that the Appellant had abused Respondent no.2 and insulted with intention of humiliating Respondent no. 2 being the member of scheduled caste.

9. It is well settled that to constitute offence under Section 3(1)(r) and 3(1)(s) the abuses, accusation or humiliation as stipulated in the Section should be within the 'public view'. In the case of *Daya Bhatnagar (supra)* there was a difference of opinion on the interpretation of the expression 'public view' in the Division Bench of the Hon'ble Delhi High Court. One of the views was that the expression 'public view' does not necessarily mean that large number of persons should be present to constitute public; and that even when one or two members of the public hear and view the offending words, the offence would be made out. Whereas, the other learned Judge while interpreting the expression 'public view' in Section 3(1)(x) of the SC

and ST Act held that the associates, friends and other participating members who are not independent persons would not constitute 'public view' within the meaning of the Section 3(1)(x) of the SC and ST Act. In view of the said difference of opinion the matter was referred to the third Judge and one as the question was :

“What is the correct and real meaning of expression “public view” occurring in Section 3(1)(x) of SC/ST (POA) Act, 1989 ?

While answering the reference, learned third Judge considered the following question :

“10.What is the true meaning and scope of the expression "public view" used in [Section 3\(i\)\(x\)](#) of the Act? Is it necessary that the derogatory or humiliating words to constitute an offence, should be uttered in the presence of the independent persons? Or would it be sufficient, if these are used, in the presence of any one or two members of the public, whether they are relatives, friends, associates or otherwise connected with the complainant? These are questions which require determination.

10. The learned Judge after considering the aims and objects of the Act held thus :

“19.the expression "public view" in [Section 3\(1\)\(x\)](#) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be

independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in [Section 3\(1\)\(x\)](#) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

11. Section 3(1)(x) has thus been interpreted to mean that the person present should be independent and impartial and not interested in any of the parties or not connected with the matter. In the instant case, the incident had occurred in the school premises. The alleged incident took place only in presence of the villagers who had accompanied the Appellant. These persons had gone to the school premises for the same reason and with the same cause. Hence, *prima facie* they cannot be said to be independent or impartial persons or that they were not associated with the Appellant in any manner. Considering the above facts and circumstances, *prima facie* it cannot be

said that the offence was committed within 'public view'. Hence *prima facie* the requisite ingredients of the Section 3(1)(r) and 3(i)(s) are not made out and consequently bar under Section 18 of the SC and ST Act, in my considered view is not applicable.

12. It is also to be noted that the Appellant was granted interim bail on 26.03.2020 with direction to attend concerned Police Station on 1st, 2nd and 3rd April, 2020. It is stated that the Appellant has complied with the said directions. The presence of the Appellant is therefore not necessary for the purpose of interrogation. There is nothing on record to indicate that the Appellant has violated the terms and conditions of the interim bail. Considering the facts and circumstances of the case, the following order is passed

- (a) the Criminal Appeal is allowed.
- (b) In the event of arrest, the Applicant/Appellant Sudhir s/o Narayanrao Shende be released on bail on his furnishing P.R. bond of Rs.20,000/- with one surety in the like amount.
- (c) The Appellant shall not interfered with the first informant or the witnesses and shall not make any attempt to influence the witnesses in any manner.

(d) He shall co-operate with the investigating agency.

13. The Criminal Appeal stands disposed of accordingly.

JUDGE

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