

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

CRIMINAL APPEAL NO. 342/2020

- 1 Vinod Bapurao Khedkar,
aged @ 52 years, Occ. Business,
 2. Sau. Mangala Vinod Khedkar,
Age @ 47 years, Occ. Housewife,
 3. Darshan Vinod Khedkar,
Age @ 25 years, Occ. Student,
- All R/o. Mahesh Nagar,
Tq. Anjagaon Surji, Dist. Amravati.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station Anjangaon Surji,
Dist. Amravati.
2. Anita Ramrkushna Solanke
Age @ 45 years, Occ. Not known,
R/o. Mahesh Nagar, Tq. Anjangaon
Surji, Dist. Amravati.

.... RESPONDENTS

Shri S. M. Vaishnav, Advocate for appellants.
Ms. H. N. Jaipurkar, Additional Public Prosecutor for respondent No.1.
Shri Raju Kadu, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.

DATED : 05.01.2021

JUDGMENT

Heard.

2. **Admit.** Considering the issue involved in the matter and by consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. Being dissatisfied with the order of rejection of pre-arrest bail in Miscellaneous Criminal Bail Application No. 438/2020, the accused/appellants have preferred this appeal in terms of Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (short 'SC and ST Act'). The appellants have challenged the impugned order on facts as well as on law. The State as well as original informant resisted the appeal by filing respective reply.

4. At the instance of report dated 28.06.2020, crime was registered against the appellants for the offences punishable under Sections 294, 504, 506, 509 read with Section 34 of the Indian Penal Code, Sections 3(1)(b), 3(1)(c), 3(1)(r), 3(1)(s) and Section 3(1)(w) (ii) of the SC and ST Act. It was informant's case that she was residing at Mahesh Nagar, Anjangaon Surji along with her family members. Her

husband was serving with Nagar Parishad, Anjangaon Surji. The accused were nearby resident. The informant belongs to Scheduled Tribe whilst accused did not. On 28.06.2020, around 10.00 a.m. while the informant was at her house, she heard abuses. Accordingly, she came out of the house and saw that all accused were present. They abused her in the name of caste. The said incident was witnessed by resident namely Raghunath Malawe.

5. The informant stated that earlier she had filed complaint against the accused to the Local Authority for raising illegal structure. In past also (on 04.06.2020), at Nagar Parishad Office, the accused had abused informant's husband as well son in the name of caste. The accused also made inappropriate gestures to humiliate her. She stated that always accused used to throw waste material near her house.

6. On the basis of said report, Crime No. 342/2020 was registered at Anjangaon Surji Police Station for the aforesaid offences. Initially, the appellants approached to the Sessions Court for pre-arrest bail, however they could not succeed. The learned Sessions Judge while refusing to grant protection, has observed that the allegations are of serious nature. Moreover, there is bar under Section 18 of the SC

and ST Act, to grant anticipatory bail.

7. Learned counsel for appellants/accused strongly criticized the impugned order. According to him, the accused have been falsely implicated due to dispute on account of raising compound wall. It is the submission that there is no material to indicate that the occurrence took place within the public view and therefore, the alleged offence would not attract. He would submit that the First Information Report bears earlier incident dated 04.06.2020, however no report has been lodged and therefore that cannot be considered. It is his submission that, the Local Authority granted permission to the appellants to raise compound wall therefore, the informant out of grudge, made false allegations. It is also submitted that the appellants have earlier filed N.C. report which was also a cause for false implication.

8. The learned counsel for the informant would submit that the contents of First Information Report are specific. Particulars of date, time and abusive language has been stated. The incident occurred in presence of witness and therefore, incident was within public view. The informant has also filed certain documents to state that the accused raised illegal construction for which they made

complaint to the Local Authority. Certain photographs regarding illegal construction have been produced. On the same line, learned Additional Public Prosecutor resisted to grant pre-arrest protection. She would submit that due to specific allegations, bar under Section 18 of the SC and ST Act would apply.

9. Precisely, it is alleged that the appellants who are neighbours, have abused informant in the name of caste and one of the appellant has also made indecent gestures. The informant stated about prior occurrence date i.e. 04.06.2020. As regards to the the said past incident, admittedly no Police report was filed. The learned counsel for the appellants canvased that provisions of Sections 3(1)(r) and 3(1)(s) of the SC and ST Act would not attract since the occurrence was not within public view. He would submit that as per First Information Report, incident occurred just out of the house of the accused, therefore, the said place cannot be construed as public place. He would submit that there is strong probability of happening the incident in courtyard and therefore, it is not in public view. In support, he relied on the decision of this Court in case of ***Pradnya Pradeep Kenkare and another Vs. State of Maharashtra, 2005(3) Mh.L.J. 368.*** In the said case, the Division Bench of this Court has considered the

essentials for constituting offence punishable under Sections 3(1)(r) and 3(1)(x) of the SC and ST Act. It is observed that the specific language employed in the Section does not mean that every allegation made in public place that itself would amount to an offence under the said Act. The incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The dual requirement is to be met namely the place should be accessible and the occurrence should be in the presence of the public. Therefore, the applicability of the provisions under Section 3(1)(r) and 3(1)(s) of the SC and ST Act cannot be presumed at this stage. Moreover, though there are allegations of throwing waste material near the the house of informant, however the said contention being vague, has no impact.

10. The appellants' learned counsel in order to impress the case of false implication, has pointed out certain documents. He would submit that initially, appellants applied to the Local Authority for raising construction. However, vide letter dated 26.05.2020, they were directed to stop construction. However, appellants again applied for grant of permission which was conditionally granted vide letter dated 19.03.2020. According to him, the informant was annoyed by such grant of permission which resulted into false implication. The

informant also relied on some correspondence and tried to impress that the construction raised by the appellants was totally illegal. He has also produced certain photographs. However, while deciding bail, it is not required to decide the legality or illegality of construction. It only emerges that there was a trite dispute between the parties at the instance of raising construction of compound wall. The appellants have filed a copy of N. C. report on 23.05.2020 to show that in prior point of time, they have filed complaint against the informant's husband. The said material does not rule out the possibility of false implication.

11. The learned counsel for the appellants submitted that in order to constitute the offence punishable under the provisions of Special Act, there must be adequate *mens rea*. In this regard, he relied on the decision of this Court in case of ***Kiran Madhukar Ingle Vs. State of Maharashtra and another, 2019(3) Mh.L.J. (Cri.) 785***. In said case in para 17, this Court has emphasized that mere calling of person by his caste name, may not amount to insult in absence of clear and adequate *mens rea*. On re-visiting Sections 3(1)(c), 3(1)(r), 3(1)(s) and Section 3(1)(w)(ii) of the SC and ST Act, it reveals that the sole intention of the accused must be to humiliate the person of the

Scheduled Caste or Scheduled Tribe by virtue of their caste. Prima facie, it appears that there was old dispute between the neighbours at the instance of raising compound wall. Therefore, it cannot be said in certain terms that the act of accused was with a view to humiliate person belonging to Scheduled Caste or Scheduled Tribe. In other words existence of adequate *mens rea* appears to be absent behind the act.

12. The respondents also canvassed the statutory bar incorporated under Section 18-A of the SC and ST Act for the applicability of the provisions of Section 438 of the Code of Criminal Procedure. In order to counter the submission about statutory bar under Section 18 of the SC and ST Act, the learned counsel for the appellants relied on the decision of the Supreme Court in case of ***Prathvi Raj Chauhan Vs. Union of India and others, (2020) 4 SCC 727***. In the said case, the Supreme Court after considering the amended provision of Section 18-A of the SC and ST Act, has concluded that there is no absolute bar to the applicability of Section 438 of the Code of Criminal Procedure.

13. As discussed above, prima facie there is no material to indicate that the offence took place within the public view. The submission about implication at the instance of old dispute cannot be ruled out. The essential ingredient of *mens rea* to constitute offence is not evident. This Court has already granted interim protection vide its order dated 07.08.2020 which is prevailing till date. There is no complaint that the appellants have misused the liberty. The appellants have already approached this Court for quashing of First Information Report by way of LD-VC-Criminal Application (APL)No. 978/2020 in which directions were issued for not to file charge-sheet. The reply-affidavit nowhere spells out necessity to have custodial interrogation. Having regard to all above circumstances coupled with the nature of accusation, the appellant have made out a case for grant of pre-arrest protection.

14. In that view of the matter, appeal stands allowed, impugned order dated 20.07.2020 passed by the Additional Sessions Judge, Achalpur in Miscellaneous Criminal Bail Application No. 438/2020 is hereby quashed and set aside. The interim order of this Court dated 07.08.2020 is hereby made absolute on same terms and conditions with modification to follow the condition of attendance for

the period of six months from the date of this order.

15. Appeal stands disposed of in above terms.

JUDGE

Gohane.