

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 720 OF 2022

ANANT BABRUWAN MANE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Gade Akash D.

APP for Respondent No.1/State : Mr. S. W. Mundhe

Advocate for Respondent No.2 : Mr. Gaikwad Rahul M.

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CORAM : KISHORE C. SANT, J.

DATE : 13th DECEMBER 2022.

Per Court :

Heard the parties at length.

1. It is the submission of the learned Advocate for appellant that there was previous history to the lodging of this FIR dated 28.08.2022. He has produced on record the prescription given to him by the Primary Health Centre, Kaij to show that he was not well and he has no reason to be at spot. The second submission is that when making allegation, it needs to be seen that whether there was intention to humiliate the

complainant in the name of caste. In this case, no intention appears on the face of it. The complainant had not seen that the utterances in the name of caste were made with a view to cause humiliation of the complainant/informant. He has taken this Court through the observations made by this Court, while granting interim relief vide order dated 06.10.2022, wherein, this Court prima facie has, observed that FIR is silent about the intention on the part of the accused to insult or to humiliate the complainant within a public view. He further submitted that in the school record, the caste of uncle of the informant is shown 'Mahadev Koli' and thus the informant does not belong to schedule caste. He has further submitted the information about the caste of informant and his uncle, is solicited from the principal of Janvikas College, but the same has not been yet received.

2. Learned Advocate relied upon the judgment in the case of **Prathavi Raj Chauhan Vs. Union of India** reported in (2020) 4 SCC 727. He read paragraph no.32 of the said judgment to submit that, where no prima facie material exists warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail. However, from the

said judgment, it is seen that Section 18 and 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 operates as a bar, when offence is made out under the Atrocities Act. He further relied upon the judgment in the case of **Dada alias Anil Murkute Vs. State of Maharashtra**, reported in 2020(3) ABR (Cri.) 110. He pointed out from paragraph no.24 of the said judgment that there is no whisper in the first information report that the appellant had knowledge that the first informant belongs to Scheduled Caste or Scheduled Tribes Community. Secondly, there is no reference to the caste of the appellant. Thirdly, the appellant alleged to have hurled abuses to the first informant on caste by saying “Maharde”. It would not be sufficient to draw inference that appellant had knowledge or he was aware about the caste of the first informant, and therefore, he abused the first informant in the name of his caste to humiliate him within public view. The possibility of uttering word “Maharde” during the course of hot exchange of words may be only to abuse him. All these circumstances being main and basic ingredients of Section 3(1)(r) and (s) of the Atrocities Act and the absence of the same will have a serious impact as to the allegations to constitute offence under Act of

1989. From the facts of that case, the Court has considered that there was no possibility of uttering the word naming the caste of a person and anticipatory bail was granted. The last judgment relied upon by the learned Advocate, in the case of **Masumsha Hasanasha Musalman Vs. State of Maharashtra**, reported in (2000) 3 SCC 557. He pointed out from the paragraph no.9 of the said judgment that the Hon'ble Apex Court had considered the facts of the matter and concluded that after trial the accused was acquitted by the Court. Considering the above position, this Court has to consider this appeal.

3. The learned Advocate appointed for Respondent No.2 submitted that a prima facie case is made out and therefore there is no question of considering the case for anticipatory bail in view of Section 18 of the Atrocities Act.

4. Learned APP submitted that there are specific averments recorded, wherein the allegations are made out. He has also submitted that in the police papers, it is found that the caste certificate of respondent no.2 is there and by which, it is shown that he belongs to

‘Mang’ community. Thus, the certificate of the uncle showing the caste as ‘Koli Mahadev’ need not be seen, when there is a caste certificate issued by the competent authority, showing the caste of informant. He submitted that there are statements recorded under Section 164. He further submitted that at this stage, it is sufficient to hold that the offence is made out and prays for rejection.

5. Considering the above position, in the light of the judgment of the Hon’ble Apex Court in the case of **Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra** reported in (2012) 8 SCC 795 and considering the bar under Section 18 of the act, this Court cannot go into the merits and has only to see that whether prima facie case is made out. On reading of the FIR and in view of the police papers, it is clear that the offence is made out and this Court therefore finds that the appeal cannot be entertained. Hence, the appeal is dismissed.

6. Needless to say that these observations are prima facie for the purpose of deciding the appeal.

7. Learned Advocate for Respondent No.2 is appointed through Legal-Aid. He is entitled to fees as per Rules.

8. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

Najeeb.