

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 62 OF 2022

Nischal Ajit Kalantri. ... Appellant.

V/s.

The State Of Maharashtra And Anr. ... Respondents.

Mr Ramnath V. Kini Adv for Appellant.

Mr Satyajeet A. Rajeshirke, Adv for Respondent.

Ms. M.M. Deshmukh, APP for State.

Ms. Sonali Dhale, ACP, Naupada Division, Thane.

**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : APRIL 8, 2022.

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PC.

1 Heard the learned Counsel for the appellant, learned Counsel for the respondent No. 1 and the learned APP for State.

2 This is an appeal under section 14-A of the Schedule Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1981. The facts of the case are as follows :

(a) On 7/7/2021, the complainant i.e. respondent No. 2 lodged FIR with Rabodi Police Station, Thane City alleging therein that she is about 35 years old and working in Share Market; that on social media(facebook) she had met the appellant in January, 2018. Initially, he had disclosed his name as “Virat”, however, after chatting for some days, he had admitted that his name is not “Virat”, but his name is “Nischal”.

(b) On 7/6/2018 it was the birthday of the complainant. The appellant desired to meet her in person to which she had agreed. They had met each other on 7/6/2018 at Mc'Donald, Kapurbawadi, Thane. Overall she was impressed with the appellant. Thereafter, in July, 2018 they both realised that they had become good friends. In August, 2018, he had proposed her for marriage. It is a matter of fact that the appellant is about 6 years younger to the complainant. She had accepted the proposal of the marriage as she trusted him.

(c) In September, 2018, one of her associate was to go to Lonavala with her fiance and she had asked the complainant as to whether she would accompany them alongwith the appellant to which she agreed. Accordingly, they had been to Lonavala and were lodged in

Hotel Arvi. They had sexual intercourse at Lonavala.

(d) On 24/11/2018 in order to celebrate the birthday of the appellant, they both had been to Goa and from 23/11/2018 for 4 days, they stayed at Goa and had sexual intercourse. Thereafter, they have visited several hotels on different occasions and their intimacy had developed. On 7/6/2019 to celebrate her birthday, they had once again gone to Goa. According to the complainant, she had borne all the expenses.

(e) In July, 2019 he had expressed to her that he is passing through a phase of financial stringency. Therefore she had taken personal loan of Rs. 2,00,000/- and had given the said amount to him. In September, 2019, she had lost her job. However, she started working as “sub-broker” with SEBI. They continued to meet each other. In October, 2019 she had suspected that he had made some more female friends. She lost her father on 19/12/2019.

(f) The appellant had introduced the complainant to his parents, especially to his mother and expressed his desire to marry her. It was decided that they would get married on 31/12/2020 or in January or

February, 2021.

(g) On 14/3/2021, there was betrothal ceremony between the appellant and the complainant. It is alleged that they had taken blessings from both the families. That on the next day, the mother of the appellant had called upon the complainant and told her that she does not even deserve to stand before her son. Thereafter, his mother deleted all the chat messages and the photographs of the betrothal ceremony and called off the engagement. It is further alleged that thereafter, on 22/5/2021 she was formally told by the mother of the appellant that the relations between her son and the complainant need to be severed and the marriage was called off. In conclusion, the complainant has alleged that since she belongs to the scheduled caste, the appellant and his family members have taken disadvantage and have cheated her.

3 Today, the learned Counsel for the Respondent No. 2 has placed on record a compilation, which shows that on 5/7/2021 the complainant had approached Senior P.I. of Rabodi Police Station and made specific allegations against the appellant and his mother. It is alleged in paragraph-16 of the complaint that after the couple had taken blessings from both the families, the mother of the appellant had seen her

son taking blessings from the senior members of the family of the complainant and at that time, the mother had said that since they belonged to a lower caste, her son should not take blessings from them, all this after the ceremony was over.

4 It is further alleged in paragraph-17 that on 22/5/2021 the appellant had called upon the complainant telephonically and informed her that since she belonged to a lower caste, he would not marry to her. In conclusion, once again it was reiterated that he has forced her to take loan of Rs. 2,00,000/- and paid to him.

5 The learned Counsel for the complainant has also placed on record the statement of the bank account of the complainant of Kotak Mahindra Bank. The entry dated 20/7/2019 shows that the complainant had taken a loan of Rs. 2,00,000/- and the same was deposited in her savings account. Thereafter, on 22/7/2019 she transferred two amounts of Rs. 50,000/- and Rs. 40,000/- in the account of the appellant. On 30/7/2019 she had transferred a further amount of Rs. 40,000/-. This would show that she had transferred a total amount of Rs. 1,30,000/- in the account of the appellant. It appears that intermittently the appellant has also transferred small amounts back into the account of the

complainant, such as on 13/12/2019 he had returned Rs. 20,000/-. He also paid small amounts of Rs. 1,000/-, 7,000/- on various dates. It is clear that the complainant has been able to show the entries of only Rs. 1,30,000/- made in favour of the appellant, though some small amounts appear to have been transferred back to the complainant.

6 The mother of the appellant had filed Criminal Anticipatory Bail Application No. 796 of 2021 in this Court seeking Anticipatory Bail in respect of FIR No. 151 of 2021 registered with the Rabodi Police Station. This Court by order dated 27/10/2021 had granted anticipatory bail in favour of the mother of the appellant. This Court had observed as follows :

“Though the learned Special Judge while rejecting anticipatory bail has referred to the statement in addition to what is stated above that “you belong to lower caste”, such statement is not found in the FIR.”

7 It is the contention of the learned Counsel Mr. Rajeshirke for the respondent No. 2 that prior to lodging of the complaint on 7/7/2021, the complainant had approached Rabodi Police Station and had lodged report on 5/7/2021 of which no cognizance was taken. There are certain allegations in the complaint dated 5/7/2021. However,

said remarks are not found in the present FIR.

8 Prima facie, we are of the opinion upon reading the FIR that an offence under the Special Act is not carved from the FIR. There is no element of cheating. It cannot be said that the appellant had no intention to marry the complainant right from the inception since betrothal ceremony had taken place on 14/3/2021 in the presence of the elders of both the families. The complainant has categorically stated in the FIR that she was impressed by the nature and personality of the appellant and therefore, reciprocated his advances and thereafter, they had visited Goa on two occasions and many other hotels voluntarily when she had no complaint and all this is prior to 14/3/2021, after which she had got engaged to the present appellant. She has also categorically stated in the FIR that in 2018 itself while introducing her to the appellant's mother, the appellant had categorically stated that he is in love with the complainant and therefore, intends to marry her. The mother i.e. accused No. 2 had also accepted the proposal and had not objected to their marriage, although she was aware of the difference in the caste of both the parties. The marriage proposal was also endorsed by the maternal uncle of the appellant. After the marriage was called off, it

appears that the appellant was to marry another girl and therefore, upon learning about the same, the complainant has lodged the report alleging therein all the offence punishable under section 376, 417, 420 read with 34 of the Indian Penal Code, 1860.

9 Prima facie, we find that there is no iota of evidence to show that there was humiliation of the complainant on account of her caste in public domain nor the FIR spells out any humiliation in reference to any specific caste. The appellant is in custody since 28/7/2021. We have seen the money transfers from the bank statement produced before us and hence, learned Counsel for the appellant upon instructions from the mother of the appellant who is present in the court has agreed to return an amount of Rs. 1,00,000/- to the complainant. The said amount be deposited in the Special Court within 6 weeks, without prejudice to the rights of the parties.

10 In view of this, the appeal deserves to be allowed. The observations made hereinabove are prima facie in nature and the Sessions Court shall not be influenced by the observations made hereinabove.

11 Hence, following order is passed :

ORDER

- (i) The appeal is allowed.
- (ii) The appellant be enlarged on bail in Crime No. 151 of 2021 registered at Rabodi Police Station on furnishing P.R. Bond in the sum of Rs. 20,000/- and one or more solvent sureties in the like amount.
- (iii) The appellant be enlarged on provisional cash bail in the sum of Rs. 20,000/- for a period of 6 weeks within which he shall furnish P.R. Bond and sureties to the satisfaction of the Special Court.
- (iv) The appellant shall deposit an amount of Rs. 1,00,000/- within 6 weeks in Crime No. 151 of 2021 in Special Court at Thane.
- (v) The appeal is disposed of accordingly.

(MILIND N. JADHAV, J)

(SMT. SADHANA S. JADHAV, J)