

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 772 OF 2022

Rajashree Prakash Gondhale And Ors. ...Appellants
Versus
The State Of Maharashtra And Anr. ...Respondents

**WITH
CRIMINAL APPEAL NO. 813 OF 2022**

Sandeep Devidas Pawshe And Ors. ...Appellants
Versus
The State Of Maharashtra And Anr. ...Respondents

....

Mr. Rajiv Chavan Senior Advocate a/w Ms. Priyanka Chavan,
Advocate for the Appellants.

Mr. Susmit Phatale, Advocate for Respondent No. 2 in both
Appeals.

Mr. Arfan Sait, APP for the Respondent – State.

....

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date: 2022.10.18
20:01:50 +0530

CORAM : PRAKASH D. NAIK, J.
DATE : 28th SEPTEMBER, 2022.

PER COURT:

1. These appeals are preferred under Section 14-A of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. The appellants are apprehending arrest in connection with C.R. No. 303 of 2022 registered with Kalyan Taluka Police Station District - Thane Rural for offences punishable under Section 506 of the Indian Penal Code and Sections 3((2)(va), 3(1)(m)(r) of Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to Atrocities Act).

2. The case of the prosecution is that the complainant is the Sarpanch of Varap Gram Panchayat from 2021. Monthly village meeting (Gramsabha) was scheduled on 05.05.2022. For want of sufficient quorum, the meeting could not be conducted. It was decided to hold the meeting on 09.05.2022 at 11:30 am. The complainant belongs to Schedule Caste. After she was elected as Sarpanch, Sandeep Devidas Pawshe, Rajashree Prakash Gondhale, Mahesh Eknath Gondhale, Dipika Swapnil Bhoir, Mina Navnath Kurle, Ravina Vijay Bhoir, and Nilesh Suresh Kadu are opposing and troubling the complainant in every meeting. They belongs to Agari Community. On 09.05.2022, the meeting was to be conducted at 11:30 am in the office of Gram Panchayat. The complainant was present at the meeting. Gram Sevak Tanaji Pakhare was also present. The members of Gram Panchayat viz. Rajashree Gondhale, Sandip Pawshe, Mahesh Gondhale, Dipika Bhoir, Bhushan Bhoir, Ankush Bhoir, Mina Kurle, Ravina Bhoir, Sonali Kurle, Hanuman Bhoir and Nilesh Kadu

were present for the meeting. Kalpana Rajesh Bhoir was absent. Before the meeting could start, Sandip Pawshe picked up the file from the table containing important documents relating to the monthly meeting, Government Notifications, relevant applications etc. under coercion. The complainant was told by him to sign on the documents relating to non-agricultural land certificate and she was threatened that unless she signs said documents, he would not allow to conduct the meeting. The other members Rajeshree Gondhale, Mahesh Gondhale, Dipika Bhoir, Mina Kurle, Ravina Bhoir and Nilesh Kadu supported him. All of them had connived with each other to disrupt the meeting. They created raucous in the meeting. The complainant told them that since proceeding relating to no objection certificate are not recorded, she would not sign the document. On account of obstructions created by the aforesaid persons, the meeting could not be conducted. In spite of knowing that the complainant belongs to Schedule Caste, the accused did not allow the meeting to be conducted and obstructed the complainant to proceed with the meeting. The complainant was compelled to leave the meeting hall. On the next day, she called Mr. Tanaji

Pakhare (Gram Sevak) for the CCTV footage. The complainant sent her son to Gram Sevak for collecting CCTV footage. She saw the CCTV footage and noticed that after she left the meeting hall the accused Sandip Pawshe was heard saying that she can take any action against him. She is threatening and does work after receiving money. She ought not to have taken responsibility if it is not possible for her to perform work. Thereby the complainant was insulted. Dipika Bhoir was heard saying that the complainant cannot even sign. Complainant cannot write her name and instructs others to write it. Rajashree Gondhale stated that the complainant does not understand anything but she talks. She can read from cell phone and pretends that she does not understand anything. Mahesh Gondhale had stated that in the past, the complainant had approached police for lodging complaint. Thus, these discussions was insulting complainant.

3. The appellants had preferred application for anticipatory bail before the Sessions Court, Kalyan. The application preferred by appellants Rajashree Prakash

Gondhale, Meena Navnath Kurle, Ravina Vijay Bhoir and Dipika Swapnil Bhoir was rejected by order dated 26.07.2022. While rejecting the said application it was observed that even for a while, if it is considered that Section 3(1)(r) of Atrocities Act is not attracted. Offence under Section 3(1)(m) of the Atrocities Act is made out. In view of Section 18, the Court cannot allow the application for anticipatory bail. The appellant viz. Sandip Pawshe, Mahesh Jondhale and Nilesh Kadu preferred application for anticipatory bail before the Sessions Court, Kalyan which has been rejected by order dated 05.08.2022.

4. Learned Senior Advocate Mr. Rajiv Chavan appearing for the appellants submitted that the offences under the Atrocities Act are not made out. Section 3(1)(r) cannot be invoked. The incident had not occurred within public view. The custodial interrogation of the appellants is not necessary. The incident had occurred inside the Gram Panchayat hall. There was no threat to the complainant. There was no humiliation. The CCTV footage does not support the case of complainant. The FIR was lodged after 47 days. Offences under Atrocities Act are not made out.

Bar under Section 18 of the Atrocities Act would not be attracted for granting anticipatory bail.

5. Learned Advocate Mr. Susmit Phatale, appearing for respondent No.2/complainant has opposed the relief claimed in these appeals. Respondent No.2 has filed affidavit in reply in both the appeals. Learned advocate submitted that the offences under the Atrocities Act are made out. The complainant belongs to Schedule Caste. The accused are continuously harassing the complainant. The complainant is the Sarpanch of the Gram Panchayat. The accused are obstructing her in performing duty. Specific role has been attributed to the appellants. The appellant Sandip Pawshe intimidated the complainant. He forcefully picked up the file from the table and continued to keep it in his position and was forcing the complainant to sign on no objection certificate relating to non-agricultural land. There are eye witness to the incident. Statements of witnesses support the version of complainant. CCTV footage was recovered, it supports the prosecution case. Holding post of Sarpanch is the constitutional right. Offence under Section 3(1)(m) of the

Atrocities Act is made out. The complainant was forced to walk out from the meeting hall. The CCTV footage shows the recording of conversation of accused. Their conversation was insulting and humiliating the complainant. Bar under Section 18 of the Atrocities Act is attracted. The application for anticipatory bail is not maintainable. Contents of FIR indicate that offence is clearly made out against the accused under the Atrocities Act. Hanuman Bhoir and Bhushan Bhoir were eye witness to the incident. Their statements are recorded. The victim is holding post of Sarpanch as the matter of constitutional right. Conduct of the members shows that they were forcing, intimidating and obstructing the complainant from performing her duty. She was supposed to perform as Sarpanch. The acts would amount to offence under Section 3(1)(m) of the Atrocities Act. In view of contents of FIR and statements of witnesses it becomes clear that the accused have committed offence punishable under Section 3(1)(r) of the Atrocities Act by intentionally insulting and intimidating the complainant in the presence of the members of Gram Panchayat. Kalpana Bhoir was absent for the meeting. Her statement was recorded. She has

confirmed that the accused are always humiliating the complainant in all the meetings of Gram Panchayat. The complainant had approached the police on 06.06.2022 for lodging the FIR. Police neglected to register offence immediately. The complainant gave application to Dy.S.P. on 14.06.2022. There was failure to register offence. Victim then approached Superintendent of Police, Thane Rural on 16.06.2022. However, action was not initiated. Victim approached the office of Protection of Civil Rights on 24.06.2022 for registering the offence. On account of their intervention on 25.06.2022 the offence was registered. The police failed to discharge their duty. The constitutional right of the complainant was violated. Compliance of the provisions of Atrocities Act is mandatory. Pressure is built upon the complainant to settle the matter by withdrawing the complaint. Section 18 of the Act is attracted. The appellants are not entitled for relief under Section 438 of Cr.P.C.

6. Learned Advocate placed for consideration the following decisions:-

(a) Shakuntala Devi Vs. Baljinder Singh¹

¹ (2014) 15 SCC 521

- (b) Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Others.²
- (c) Manju Devi Vs. Onkarjit Singh Ahluwalia alias Omkarjeet singh and Others³.
- (d) Prathviraj Chauhan Vs. Union of India and Others⁴.
- (e) National Campaign on Dalit Human Rights and Others Vs. Union of India and Others.⁵
- (f) State of M.P. and Another Vs. Ram Kishna Balothia and Another⁶.
- (g) Mahadev titthal Jagadale Vs. The State of Maharashtra and another⁷.

7. According to the complainant, the meeting was held on 09.05.2022, the FIR was registered on 25.06.2022. The incident had occurred in the meeting hall of Gram Panchayat. It is alleged that the accused created obstructions in conducting the meeting. One of them had picked up the file from the table and allegedly insisted that the complainant should sign certain documents. She refused to do so. The photographs of CCTV footages are annexed to one of the appeal which shows that the Sarpanch (complainant) and the members are present in the meeting hall. The CCTV footage also shows that the

² (2012) 8 SCC 795

³ (2017) 13 SCC 439

⁴ (2020) 4 SCC 727

⁵ (2017) 2 SCC 432

⁶ (1995) 3 SCC 221

⁷ 2017 SCC OnLine Bom 8714

complainant entering in the meeting hall. The CCTV footage is annexed to the appeals also shows that the complainant and the members are discussing on some issues. It is also seen that the complainant is leaving hall of the meeting while other members continue to sit in the meeting hall. The complainant alleged that after she left the meeting hall. She collected the footage of CCTV from Gram Panchayat which shows conversation between the members. The nature of conversation does not indicate that there were abuses against the complainant on the basis of her caste with intention to humiliate her on the basis of caste. The incident had occurred in the meeting hall not in the public view. The member had urged that some certificates to be signed. Prima facie the offences under Atrocities Act are not attracted. The photographs of CCTV footage does not indicate any raucous at meeting. The FIR was registered under Section 506 of the IPC and Sections 3(2) (va) and 3(1)(m)(r) of the Atrocities Act. Section 3(2)(va) relates to commit of any offence specified in the Schedule, against the person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to

such member. Taking the material on record as it is I do not find that such offence is made out in the present case. Section 3(1)(m)(r) relates to forcing, intimidating or obstructing a member of a Scheduled Caste or Scheduled Tribe, who is a member or Chairperson or holder of any other office of Panchayat under Part IX of the Constitution or Municipality under Part IX of the Constitution, from performing their normal duties and functions. There was a meeting to the Gram Panchayat on 09.05.2022. It is alleged that one of the member has insisted that the complainant should sign on no objection certificate and she was intimidated. The complainant has allegedly refused to sign certificate. There is no independent supportive material to the version of complainant and even otherwise it cannot be said that there is violation of Section 3 (1) (m) of the Atrocities Act. Section 3(1)(r) relates to intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. The incident had occurred in the hall of the Gram Panchayat. There is no evidence to the alleged act does not constitute the offence under the said provision.

8. Learned advocate for the complainant has relied upon several decisions. The law is well settled. Although, there is bar under Section 18 of the Act, in the event prima facie offences are not made out under the Atrocities Act, the Court can grant relief under Section 438 of Cr.P.C.

9. During the course of investigation, the statements of various persons are recorded. The CCTV footages its transcript is on record. It refers to conversation between the Sarpanch and other members present from the meeting. The appellant Sandip Pawshe and other persons had conversation with the Sarpanch. She was being informed to sign on certain documents. The conversation also relates to the incident. The CCTV footage also covered the conversation after the Sarpanch leaves the meeting hall. Taking the incident as it is, it would not amount any offence under the Atrocities Act. Considering the factual aspects of the matter, case for grant of relief under Section 438 of Cr.P.C. is made out.

ORDER

- (i) Criminal Appeal Nos. 772 of 2022 & 813 of 2022 are allowed;
- (ii) The impugned orders dated 26.07.2022 &

05.08.2022 passed by the learned Additional Sessions Judge, Kalyan rejecting the applications for anticipatory bail preferred by appellants are set aside;

(iii) In the event of arrest of the appellants in connection with C.R. No. 303 of 2022 registered with Kalyan Taluka Police Station, Thane Rural, the appellants be released on bail on furnishing P. R. Bond in the sum of Rs.15,000/- each with one or more sureties in the like amount;

(iv) The appellants shall appear before the investigating officer as and when called for.

(v) The appellants shall not tamper with the evidence in any manner.

(vi) Both Criminal Appeals are disposed off accordingly.

(PRAKASH D. NAIK, J.)

(P.A. Mr. D. A. Ethape)