

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

**CRIMINAL APPEAL NO. 993 OF 2021
WITH
INTERIM APPLICATION NO. 2352 OF 2022**

Dr. Chandrakant Vishwambhar Ambilwade ...Appellant

Versus

State Of Maharashtra And Anr. ...Respondents

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Mr. Ganesh K. Gole i/by Ritesh Ratnam for appellant.

Mr. Ashutosh R. Gole for respondent No.2.

Mr. A. R. Patil, APP for the Respondent – State.

ACP Kailas Avhad, Kharwadi division, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th AUGUST, 2022

PC :

1. This is an appeal under Section 14 (A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”).

2. The applicant is apprehending arrest in connection with C.R. No. 81 of 2021 registered with Nirmalnagar Police Station for the offences punishable under Section 3 (1)(q), (r) and (s) of SC and ST Act.

3. The First Information Report (for short “FIR”) was registered on 01.11.2021. The case of the complainant is

that he is working as Director in MSEDCL, Prakashgad, Bandra. The accused was earlier working in the same concern subsequently, he is retired. On 06.10.2021, the accused had entered into the office of MSEDCL and came outside the passage leading to cabin of complainant. The accused abused the complainant on his caste in presence of Mr. Shailendra Gaikwad.

4. The applicant had preferred an application for anticipatory bail before the Court of Sessions which has been rejected by order dated 27.11.2021. While rejecting the said application, the learned Judge has observed that *prima facie* the offence under Sections 3(1)(q) of SC and ST Act is not made out. However, the offence punishable under Sections 3(1)(r) and 3(1)(s) are attracted.

5. This application was initially heard by this Court and interim relief was granted on 06.12.2021. In paragraph No.5 of the said interim order, it is recorded that the spot panchnama was brought to the notice of the Court, which shows that there is CCTV Camera installed at the spot of incident.

6. Learned APP had submitted that clip of the alleged incident recorded in CCTV footage was not recovered. It was

directed that the said clip be recovered and produced alongwith the panchnama. While granting interim protection, the applicant was directed to join the investigation as and when called.

7. Learned advocate for the appellant submitted that pursuant to grant of interim protection, the applicant was called for by investigating officer and he has appeared before him on two occasions.

8. Learned advocate for the appellant/appellant submitted that the FIR is false and concocted which is evident from the fact that it is lodged belatedly. Although, the alleged incident is dated 06.10.2021, the FIR was lodged on 01.11.2021. There is no explanation for delay. The complainant had grudge against the appellant. The FIR has been lodged with malafide intention. The independent witness referred to in the FIR is subordinate of the complainant and working in the same Department. The applicant was working with MSEDCL in the past and he has retired. The suit was filed by the complainant before the Civil Court. The affidavit in suit was affirmed on 27.11.2021 however, in the said affidavit there is no reference to incident of caste abuses or the incident alleged to have

occurred on 06.10.2021. The applicant co-operated with the investigation. The Bar under Section 18 of the Act would not be attracted.

9. Learned APP submits that the offence is made out under the provision of the SC and ST Act (Protection of Atrocities Act) in the FIR. The complainant has alleged that he was abused on the basis of caste. The incident had occurred in the presence of witness. Statement of the said witness has been recorded. Pursuant to direction of this Court, the CCTV footage was recovered. He has produced two photographs for perusal of the Court. The photographs refer to presence of the appellant in the premises or in the corridor leading to the passage. It is submitted, on instructions, that there is no CCTV footage with regard to any conversation between complainant and the accused. The conversation is not audible. Investigation is completed and charge-sheet is ready.

10. Learned counsel for respondent No.2 submitted that the CCTV footage and statement of the witness establishes the presence of the applicant in the premises. The photographs shown by the prosecution would indicate that the photographs are not relating the spot of incident. The

FIR clearly makes out the offence under the Atrocities Act. Statement of independent person cannot be disbelieved at this stage. There is bar of Section 18 of the Act for grant of anticipatory bail. The bar is attracted in the present case. The plaint in respect to the suit was prepared at the earlier point of time and it was lodged subsequently. Hence, there was no occasion to refer to incident to 06.10.2021.

11. On perusal of these documents it is apparent that, the alleged incident had occurred on 06.10.2021 and FIR was lodged on 01.11.2021. In the FIR it is alleged that the incident had occurred when the complainant was outside his cabin in the passage and the applicant had allegedly abused him on the basis of his caste. He has referred to the presence of Shailendra Gaikwad as the witness to the incident. Statement of Shailendra Gaikwad was recorded on 09.11.2021. The contention of the appellant is that witness is working in the same department and he is subordinate of the complainant. While granting relief this Court has recorded that the panchnama of spot of incident was brought to the notice of this Court which indicate installation of CCTV footage. It is now contended that the photographs of the CCTV footage recording are in respect to the corridor leading to the passage. The applicant has not

denied presence in the premises however he had denied alleged incident of abuses on the caste. It is not clear as to why there is no CCTV of spot of incident. There is no CCTV footage relating to the incident in which the applicant and the accused together abused the complainant on the basis of caste. The occurrence has to be in the presence of independent person. The mala fide registration of FIR could be a ground for overcoming bar under Section 18 of the Atrocities Act. Except Shailendra Gaikwad, there are no other eye witnesses to the incident. Considering all these circumstances, the interim relief granted by this court can be confirmed.

ORDER

- (i) Criminal Appeal No. 993 of 2021 is allowed.
- (ii) Interim order dated 06.12.2021 is confirmed.
- (iii) In the event of arrest of the appellant in connection with C.R. No. 81 of 2021 registered with Nirmalnagar police Station, Mumbai, he shall be released on executing PR bond in the sum of Rs.25,000/- with one of more sureties in the like amount;
- (iv) The appellant shall appear before the Investigating

officer as and when called for.

(v) The appellant shall not tamper with the evidence.

(vi) Order dated 27.11.2021 passed by Sessions Court rejecting application for anticipatory bail is set aside.

(vii) Criminal Appeal No. 993 of 2021 and Interim Application No. 2352 of 2022 are disposed off.

(PRAKASH D. NAIK, J.)