

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

264

CRA-S-1265-2022

Decided on : 13.09.2022

Mohinder Singh Gaur

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Pankaj Bali, Advocate
for the appellant(s).

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate
for the complainant.

SANJAY VASHISTH, J. (Oral)

On the last date of hearing i.e. 07.09.2022, matter was adjourned for today, by granting an opportunity to the learned counsel for the appellant to assist the Court about maintainability of the present appeal.

In response to the said query, learned counsel for the appellant has relied upon the judgment of Kerala High Court rendered in **K.M. Basheer vs. Rajani K.T. & Others and connected cases, 2022 LiveLaw(Ker) 472** and the judgment of this High Court rendered in **CRM-M-27873-2022**, titled as, “**Sukhdeep Singh Vs. State of Punjab**”, decided on **01.07.2022**.

After going through the observations made in the aforesaid judgments and the interpretation of Section 14-A of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity ‘SC/ST Act’), this Court is satisfied about the maintainability of present appeal.

In the present appeal, appellant has impugned the order dated

11.07.2022, whereby, learned Addl. Sessions Judge-I, Karnal, has dismissed the anticipatory bail application of the appellant on the ground of maintainability as well as on the factual aspects alleged by the complainant against the appellant.

Learned counsel for the appellant refers the allegations mentioned in FIR in question, wherein, broadly, it is alleged that appellant was talking telephonically with one Bhagwat Dyal Sharma and during his talks with said Bhagwat Dyal Sharma, he used certain objectionable words against a particular community and subsequent thereto, on 28th June 2022, an audio recording was made viral in the whatsapp group, and thus, FIR No.581, dated 29.06.2022, was got lodged at the instance of “Roadways S.C. Employees Sangharsh Samiti of Haryana Reg. No. 351, Karnal, Depot Head Office, Rohtak”, under Sections 3(1)(r), 3(1)(s) of SC/ST Act.

Broadly speaking, allegations levelled are that appellant while talking with one Bhagwat Dyal Sharma, used some objectionable/abusive words in the name of a particular caste/community.

In that regard, learned counsel for the appellant submits that even if allegations are taken to be true on its face value, no offence is made out under the SC/ST Act, because;

- i. Said words are conveyed to only one Bhagwat Dyal Sharma, who also used some objectionable words during talks, but has not been made an accused in the present case;
- ii. It is almost admitted case of the complainant Association that appellant himself has not spoken anything in public, and;
- iii. It is not the case of the prosecution that it is the appellant only, who has made the comments in the alleged audio and he himself has made the same viral in the public through whatsapp group.

- iv. There is nothing to allege that directly petitioner made the objectionable comments in the public view.

Learned counsel for the appellant further submits that the present case has been planted against the appellant purposely as appellant himself is an employee in the Haryana Roadways and is also a member in the association, which belongs to the rival group. Therefore, as a result of political enmity within the association, name of the appellant has been dragged, most likely at the instance of said Bhagwat Dyal Sharma, who has deliberately not been implicated in the case as an accused. While substantiating his submissions, learned counsel for the appellant refers that as per the alleged talks, Bhagwat Dyal Sharma is also using abusive words against the said particular community.

In support of his arguments, learned counsel for the appellant relies upon the judgment of this Court passed in **CRR No. 1354 of 2019 (O&M) and another connected case**, titled as, **“Pardeep Kumar Vs. State of Haryana and another”**, decided on **14.05.2020**, the relevant operative part of which are as under:-

“FIR No. 436 dated 26.10.2017 under Section 506/34 IPC and Sections 3(1) (r) and 3 (1)(s) of the Act was registered against the petitioners on the complaint of Rajinder Kumar-respondent No. 2 alleging that petitioners Sandeep Kumar and Pardeep Kumar used abusive language against him on mobile phone in the name of his caste and also gave threat to kill him.

xx xxx xx xxx

xx xx xx xxx

Learned counsel for the petitioners has argued that the allegations made against the petitioners do not fall within the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the telephonic call is not in a public view. Moreover, it is further alleged that when Devi Dayal and

some other persons approached the petitioners and told them to respect Rajinder Kumar, who is the Sarpanch, the petitioners again uttered objectionable remarks and at that time, respondent No. 2-complainant was not present. Hence, the ingredients of offence under the SC/ST Act and Section 506/34 IPC are not made out.

xx xxx xx xxx
xx xx xx xxx

To constitute the offence under the Act, it must be alleged that the accused intentionally insulted or intimidated with intention to humiliate a member of Scheduled Caste or Schedule Tribe in any public place within public view. In the present case, it is alleged that the offence has been committed by the petitioners by using the caste based remarks over a mobile phone call to the informant, or a member of Scheduled Castes, of which there are no records. Once it is admitted that the alleged conversation over the mobile phone was not in a public gaze nor witnessed by any third party, the alleged use of caste words cannot be said to have been committed within the public view.

xx xxx xx xxx
xx xx xx xxx

Merely uttering such wrong words in the absence of any public view does not show any intention or mens rea to humiliate the complainant who besides being Sarpanch, belongs to Scheduled Caste community. It would not, thus, ipso-facto, constitute acts of commission of offence, which are capable of being taken cognizance under the SC and ST Act, 1989.”

Moreover, learned counsel for the appellant relies upon the judgment by submitting that anything conveyed telephonically, does not amount to saying of such offending words in public.

On the other hand, learned State counsel, who has already filed reply dated 30th July 2022, which is available on record, has opposed the prayer of the learned counsel for the appellant of seeking concession of anticipatory bail, being the same barred under Section 18 of the SC/ST Act.

Learned Senior counsel appearing on behalf of the complainant, has also vehemently opposed the prayer and submissions made by learned counsel for the appellant seeking concession of anticipatory bail, by submitting that;

- i. Concession of anticipatory bail is strictly barred under the provisions of Section 18 of the SC/ST Act, therefore, prayer is not sustainable and present appeal is also not maintainable;
- ii. That the appellant is the person, who had actually abused the community in particular on telephonic talks and he is the person, who later made the same viral in public, and;
- iii. That case against the appellant would be made out as per Section 3(1)(u) of the SC/ST Act, which says as under:-

“3. Punishments for offences of atrocities.--(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;”

Learned Senior counsel has also passed on a ‘transcribed version’ of the telephonic talks in Haryanvi dialect and photocopy of the same is handed over to learned counsel for the appellant as well. Court has also perused the same (though for the sake of reservation, same is not taken on record of the present case). Referring to the said transcription, counsel for the appellant submits that during talks, abusive words are used by said Bhagwat Dyal Sharma also, but he is not an accused in the present case for the reasons best known to the prosecution.

As far as submissions of learned Senior counsel regarding making the audio viral is concerned, this Court puts a question to the learned State counsel about this allegation and what is the evidence to link the appellant with the same, to which the answer is negative.

Be that as it may, it would be for the trial Court to see after leading complete evidence by the prosecution before it, as to whether in the absence of any such evidence regarding making the audio call viral amongst people, offence against the appellant would be made out or not.

After hearing learned counsel for the parties and perusing the material available on record and the reasons given hereinabove, this Court is of the view that the impugned order dated 11.07.2022, passed by the learned Addl. Sessions Judge-I, Karnal, is not sustainable and is liable to be set-aside.

Therefore, in view of the findings recorded hereinabove, impugned order dated 11.07.2022 is set-aside and consequent thereupon, it is directed that appellant would join investigation as and when required to do so by the Investigating Agency. In the event of his arrest, the appellant shall be released on ad-interim bail, subject to his furnishing bail bonds to the satisfaction of the Arresting Officer. The appellant shall also abide by all the conditions laid down under Section 438(2), Cr.PC.

Appeal stands allowed in above terms.

(SANJAY VASHISTH)
JUDGE

September 13, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No