

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 CRIMINAL APPEAL NO.694 OF 2023

Juned Mansoor Shaikh
Age : 27 years, Occu : Business,
R/o. House No.1560, Shani Lane,
Zendigate, Ahmednagar .. Appellant

Versus

1. The State of Maharashtra
2. Sonubai Raosaheb Borde
Age : Major, Occu : Service,
R/o. Govind Dham,
Opposite Priya Daarshani School,
Bhingar, Ahmednagar, Dist. Ahmednagar .. Respondents

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Advocate for Appellant : Mr. Z.H. Farooqui
APP for Respondent / State : Mr. V.S. Badakh
Advocate for Respondent No.2 : Mr. Nitin S. Salunke

...

CORAM : R. M. JOSHI, J.
DATE : 10th OCTOBER, 2023

PC. :-

. Appellant is aggrieved by order of rejection of the anticipatory bail by the learned Additional Sessions Judge in connection with Crime No.343 of 2023 registered with Ahmednagar Camp Police Station, Dist. Ahmednagar for the offences under Sections 498-A, 323, 504, 506, 420 r/w. Sec.34 of the Indian Penal Code (hereinafter referred to as the 'IPC') and

Sections 3 (1)(r), 3 (1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short, 'Atrocities Act').

2. Informant is the wife of the appellant. A detailed FIR has been lodged owing to the series of incidents since the year 2016 onwards till 28.06.2023. It is the contention of the informant that she got married to the appellant on 20.06.2019 and even prior thereto marriage was performed under the Special Marriage Act on 14.02.2019. There are various allegations made against the appellant by the informant. The appellant initially though has taken care of her, but subsequently he has refused to maintain her as well as her son. The informant has made reference to number of incidents wherein the appellant has abused and insulted her over her caste. Such incidents are claimed to have occurred on 04.06.2023, 05.06.2023, 06.06.2023 and 28.06.2023.

3. Learned counsel for the appellant submits that though allegations are made against the appellant regarding the offences punishable under the Atrocities Act, while drawing attention of the Court to the FIR it is submitted that none of the incident is occurred in the presence of the independent person. As such, according to him, in view of the judgment of the Hon'ble Apex Court in the case of *Hitesh Verma vs. State of Uttarakhand & another*,

2020 (10) SCC 710, no offence can be said to have been committed under the Atrocities act. As far as other allegations are concerned, it is the contention of the learned counsel for the appellant that there is no element of cheating appearing from the FIR against the appellant and as such the offence under Section 420 of the Indian Penal Code does not get attracted. It is also submitted that there is no illegal demand made nor the informant is said to have been harassed for non-fulfillment of the said demand and therefore offence under Section 498-A of the Indian Penal Code is not made out.

4. Learned counsel for the informant submitted that the appellant had suppressed the fact of his first marriage and therefore performance of marriage with informant by the appellant amounts to cheating. He also submitted that the two incidents had occurred, one in the shop of the appellant and other in the office of the appellant and therefore, the said places are in the public view and hence the offences under the Atrocities Act get attracted against the appellant.

5. Learned APP opposed the application by contending that statement by the informant before Bharosa cell indicates that the appellant had suppressed the fact of first marriage and thereafter he was not ready to shoulder responsibility of wife and child. According to him, it is not the fit

case for grant of anticipatory bail.

6. At the outset, this Court is required to consider as to whether the bar created by Section 18 of the Atrocities Act gets attracted to the present case or not. Even if the allegations made in the FIR are accepted as it is, there is nothing on record to indicate that the said incidents have occurred in presence of any third person. The Hon'ble Apex Court in the case of **Hitesh Verma vs State of Uttarakhand & another, 2020 (10) SCC 710** has held that in order to constitute an offence of abusing or insulting under Sections 3 (1)(r), 3 (1)(s) of the Atrocities Act, the incident should take place within public view. Perusal of the investigation papers though show that the statements of the neighbours were recorded, however they do not support the allegation with regard to the insult of the informant over her caste. As such *prima facie* this Court is of the view that the offence under the Atrocities Act do not apply to the present case. As far as the offence under Section 498-A is concerned, there is no allegation in the FIR about any illegal demand of any property or valuable security by the appellant and that the informant is harassed for non-fulfillment of the same. Thus, *prima facie* offence under Section 498-A does not get attracted. There is no dispute about the fact that the appellant has performed marriage with the informant. Though the statement is appeared to have been made before the Bharosa cell that the factum of first marriage was

suppressed by the appellant, however in the same statement it is stated that in spite of the said fact she continued to stay with the appellant. As such, at this stage it is difficult to accept that any offence of cheating punishable under Section 420 of the IPC is made out against the appellant. In such circumstances, appeal deserves to be allowed. Hence the following order:

ORDER

- (i) Appeal is allowed in terms of interim order dated 09.08.2023

(R. M. JOSHI, J.)

GGP