

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO.42 OF 2023

Mukesh Ramdas Chavan & Anr.	]	..	Petitioners
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Saurabh Butala i/b Sachin Chandan for the Appellants.

Mr.N.B. Patil, APP for the State-Respondent No.1.

Mr.Anil Kamble for Respondent No.2.

PSI Vishe, Ulhasnagar Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 5th April, 2023

P.C.

1] By the present Appeal, the Appellants have questioned the order dated 04.01.2023, passed by the Additional Sessions Judge in Anticipatory Bail Application No.2381/2022, rejecting the Application filed by the Appellants for protecting them from arrest in CR No. 382/2022.

2] Heard the learned counsel for the Appellants, the learned counsel for Respondent No.2 and the learned APP.

3] The subject CR No.382/2022 has invoked the offence punishable under Section 498A, 417, 494, 323, 504 and 109 of the IPC and Section 3(1)(x) [3(1)(r) and 3(1)(s)] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complainant

is Respondent No.2 who has lodged complaint against the present Appellants. The occurrence of offence is described in the proforma of FIR, to be from 29.04.2019 to 20.09.2022.

The aforesaid period has some relevance and it can be seen that on 17.06.2022, Respondent No.2 has lodged the FIR with the same Police Station which came to be registered as CR No.215/2022 which had invoked offence under Sections 376 and 506 of the IPC against Appellant No.1.

4] Perusal of the said complaint dated 17.06.2022, in short reveal that the Appellant No.1 was accused of committing forcible sexual intercourse with her and it is alleged that on 29.04.2022 (actual dated 29.04.2021) based on the Memorandum of Understanding (MoU) alleged to have signed between the parties, it is alleged that after solemnizing of the marriage, she alongwith her children, since she was already separated from her ex-husband, started residing together.

In the aforesaid CR, the Appellant was released on bail by the Additional Sessions Judge, on 27.07.2022, by recording that the allegations did not satisfy the ingredients of Section 376, as it did not appear that the accused had made any false promise to the prosecutrix and committed rape upon her. It was categorically recorded that in fact, he had performed marriage with her and started cohabiting with her and it is not the case that after performance of marriage, accused had left her or deceived her. The only grievance which according to the learned Additional Sessions Judge, was that the Accused established sexual intercourse with her under the influence of liquor. Relying upon the decision in the case of **Pramod Pawar vs. State of Maharashtra**¹ his liberty was restored to him.

¹ 2019 ALL MR (Cri) 3949 sc

5] The learned counsel for Appellants would submit that, immediately after his release on bail, the second FIR came to be lodged with an intention of roping the Accused and this time alongwith his mother on 08.05.2022. He would submit that the other incident narrated in the complaint dated 08.12.2022, were in fact available at the time when the first FIR was lodged, but they were not mentioned and this include incident of dated 23.04.2022 as well as 25.05.2022.

The only incident which has occurred subsequent to the lodging of first FIR, which find mention in the second FIR is of 20.09.2022 when it is alleged that when the complainant became aware of solemnization of marriage of the Appellant with other girl, she went to his house to question him and it is alleged that he abused her in the name of caste and when she sought assistance from his mother, who was also present in the house, she also insulted her by specifically referring to her caste and she is alleged to have said that since she was from lower caste, she had got her son married to a girl from higher caste, who has also given gold and cash in marriage. The allegation is, this incident adversely affected her and she was also threatened that she would be falsely implicated in any case.

6] The incident dated 20.09.2022 apparently took place in the four corners of the house of the Appellant Nos.1 and 2 and on reading of the complaint, it is not alleged that some other person was present in the house or the incident took place in public view, so as to attract the ingredients of Section 3(1)(r) and 3(1)(s) of the Act of 1989, which contemplate an act of intentional insult or intimidation, with an intent to humiliate the member of scheduled caste or scheduled tribe, in any place, within public view.

7] The learned APP would submit that the prosecution has moved an application before the learned Judge for insertion of Section 3(1)(u) of the Act of 1989, but as on date, the Application is pending and when the Special Judge rejected the application seeking protection from arrest, the said provision was not invoked.

Needless to state that upon insertion of the said Section, the prosecution is at liberty to take appropriate steps.

8] In the wake of aforesaid, since prima facie reading of the FIR do not lead to commission of offence under Section 3(1)(r) or 3(1)(s) and as far as other incidents are concerned since they were not narrated in the complaint dated 17.06.2022, which prima facie appear to be afterthought, I deem it appropriate to pass the following order :

ORDER

(a) In the event of arrest in connection with C.R.No.382/2022 registered with Vithalwadi Police Station, the Appellants Mukesh Ramdas Chavan and Lalita Ramdas Chavan, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The appellants shall report to the concerned police station on Thursday, between 3.00 p.m. to 5.00 p.m. for a period of two weeks.

(c) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

[BHARATI DANGRE, J]