

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 104 of 2023

Pravin Sukhadev Ghadge .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr. Aniket Nikam with Piyush Toshnival i/b Amit Icham for the appellant.

Mr.Yashodeep Deshmukh for respondent no.2.

Mr.S.R. Agarkar, APP for the State.

ASI Jitendra S. Pathak, present.

CORAM: BHARATI DANGRE, J.

DATED : 27th MARCH 2023

P.C:-

1 Heard Mr.Aniket Nikam, learned counsel for the appellant, Mr.Yashodeep Deshmukh for respondent no.2 and learned APP for the State.

2 By order dated 3/2/2022, the applicant is admitted to interim protection in connection with C.R.No. 90 of 2022 which has invoked offence punishable u/s. 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which initially invoked u/s.354A(1)(i) and 323 of IPC. The above C.R came to be registered on a complaint lodged by the respondent no.2, on 25/12/2022, thereby informing that on the

earlier day, when he boarded a train at Sangola, one man aged 32 years gained entry into the compartment and gave an impression that he was a railway employee and asked for place to sit. He sat next to his daughter, aged 19 years along with his bag and when the complainant asked him to remove the bag and sit properly, he started ogling his daughter, who was scared. The complainant therefore, asked him to move himself and at that time, it is alleged that he was kicked in his stomach and assaulted by fists and blows. Even when his wife intercepted, she was also pushed away, as a result of which she sustained bruises and her spectacles fell down. The co-passengers in the compartment caught hold of the said person and information was transmitted to Miraj Railway Station and he was taken into custody when it was revealed that he was working as a T.C and posted at Miraj.

3 Perusal of the complaint do not reveal that any offence under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was committed, but upon the statement of the complainant and his daughter being recorded on 30/12/2022, the offence punishable u/s.3(1)(r) came to be added.

The statement recorded u/s.164 take the case of the complainant ahead, when it is stated that the appellant disclosed that he belongs to Maratha community and the complainant and his family is Muslim. At that time, it is alleged that the complainant disclosed that he belong to 'chamar' and upon his disclosure, he alleged to have uttered certain abuses which

insulted him and caused his humiliation as he belong to a particular caste.

4 The law as laid down by the Hon'ble Apex Court and which has now been crystallized in case of *Prathvi Raj Chavan Vs. Union of India, (2020) 4 SCC 727* is to the effect that on reading of the complaint as it is, if the prima facie case is made out, then the bar u/s.18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall come into picture, but if it is not so, then in the case, an application u/s.438 Cr.P.C in form of Anticipatory Bail is liable to be considered by the concerned Court.

Perusal of the complaint and the subsequent recording of the statement u/s.164 would reveal that two distinct versions are surfacing through the complainant. There is no reason why the reference to the casteist abuses did not find place in the complaint which was immediately lodged. The version in the 164 statement appear to be an after-thought and in these circumstances, apart from the fact that on completion of investigation, charge-sheet also has not been filed, I deem it appropriate to confirm the order dated 3/2/2023 subject to the same stipulation..

Appeal stand disposed off.

Before parting, I would also like to place on record appreciation for Mr.Yashodeep Deshmukh, who was appointed by

the legal services authority to represent the complainant and who has rendered his assistance effectively. The Legal Services Authority shall make payment of remuneration due and payable to him, within a period of four weeks from today.

(SMT. BHARATI DANGRE, J.)