

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.310 OF 2021

Sanket Waman Hadap	]	..	Appellant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Ganesh Gupta for the Appellant.

Mrs.Anamika Malhotra, APP for State-Respondent No.1.

None for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 08th March, 2023

P.C.

1] CR No.109/2020 registered with Khalapur Police Station invoked offence punishable under Section 323, 352, 354, 427, 504, 506(2), 509, 120(B) r/w 34 of the Indian Penal Code and u/s 3(1)(b), 3(1)(c), 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w)(ii), 3(1)(x), 3(1)(y), 3(1)(z), 3(1)(za)(A) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 for short referred to as (“the Act of 1989”), on the basis of complaint filed by one Kashinath Sonawane.

The subject CR has arraigned 8 persons as accused and all these persons belong to the “Hadap family”.

2] It is in the background of this CR, the Appellant has filed the Appeal, being aggrieved by the rejection of his Application by the Special Court on 06.03.2021, when protection from arrest was refused .

3] Heard the learned counsel for the Appellant and the learned APP for the State.

4] On perusal of the complaint, it is apparent that the complainant has referred to the discord between the parties on account of the waste water being directed to their house, which has resulted into lot of inconvenience to the entire family and the act attributed is reported to have taken place since the year 2008.

In the meantime, it is alleged that the Appellant became member in the Grampanchayat and thus it is alleged that he gained supremacy in the said capacity.

The complainant make reference to a meeting which was organised for the purpose of resolving the said issue and it is alleged that, it is the Appellant who, in presence of Extension Officer Mr.Shinde, hurled abuses, which amounted to an offence under the Act of 1989.

Another incident which is referred to in the complaint is alleged to have taken place on 09.06.2020, when water was over-flowing from one of the tap and at that time it is alleged that the Appellant who was up Sarpanch by this time, arrived at the spot. The complainant, who was working in the premises of his house, could hear the heated arguments and when he reached there, he could notice his wife opposing the Appellant from locking the tap and it is then alleged that when his wife persuaded the Appellant not to take action, he pressed her hand, by the shoes he was wearing and even kicked her. It is also alleged that he slapped her and uttered casteist abuses, and also threatened her that since he is up Sarpanch, she may proceed to initiate any action, which would not result into consequences.

It is also alleged that, at that time, the family of the Appellant also instigated him and all of them collectively abused the family of the

complainant and also physically indulged with them. Thereafter, police patil was requested to fix the tap, since it would have caused inconvenience to the people.

It is also alleged that when his wife went to lodge complaint, police authority refused to accept the same, but only when communication was addressed to the Superintendent of Police, Raigad, and it was threatened that hunger strike would be launched, if there is no action, the complaint was registered.

5] The learned counsel for the Appellant informed that some of the accused granted protection from arrest, whereas, four accused who were arrested, were subsequently released on bail.

In order to establish doubt in the case of prosecution, the learned counsel for the Appellant has invited my attention to the two statements of independent witnesses, which are compiled in the charge-sheet, which according to him make the case of the prosecution doubtful and untrustworthy.

One of such statement is of one Mahadev Shinde, Extension Officer, whose reference has been made by the complainant in the FIR when he state that, in presence of the Extension Officer, he was abused in the name of his caste.

The statement of Mahadev Shinde, compiled in the charge-sheet, however, completely deny happening of any such incident and in fact in his statement recorded under Section 164 of the Cr.P.C., he categorically state that the meeting was held for obtaining directions from superior officers for resolving the issue of waste water and no such incident as alleged occurred, where the Appellant abused the complainant.

Another statement of one Santosh Dharma Pawar which is compiled in the charge-sheet, give a further impression, that the incident referred in the complaint, did not actually occur, since this witness state that when the issue about waste water was being discussed, Kashinath Sonawane, Gopinath Sonawane and his wife were present and they opposed creation of waste water tank at the place which was indicated and were insisting that it should be constructed in the next square, when they were informed that final decision would be taken by the Grampanchayat committee.

Mr.Santosh Pawar state that no abuse were hurled at the complainant or his family nor any incident of physical assault took place on the said date.

He also refer to a resolution, passed by the Grampanchayat in its monthly meeting when a decision was taken to put an end to the dispute as regards the flow of waste water. He categorically state that no verbal altercation took place between Sanket Hadap and Kashinath Sonawane and in fact false complaint was lodged.

This witness also make a specific statement that the son of the complainant i.e. Gopinath Sonawane himself is a member of "Pathdarshi Nal Panipurvatha Yojana" and he was aware of the entire working of the Committee as well as the decision taken, for free flow of the waste water.

6] As regards the incident, which is alleged to have taken place on 09.06.2020, the charge-sheet has compiled the statement of the persons which include Suman Kashinath Sonawane i.e. wife of the complainant, Namrata Pravin Sonawane and Ashwini Gopinath Sonawane, daughters in law of the complainant, however, they speak in sync with the complainant.

However, statement of one Pandharinath Agiwale, which is compiled in the charge-sheet, give a completely different version when he refer to an incident dated 04.06.2020, when he was present in his house and was fetching water. At that time, Deepak Hadap came on the road and when he noticed one Parvati Sonawane filling water by removing tap, he asked her to desist from such act. When he went to close the tap and warned Parvati that he would lodge complaint with the Committee, inadvertently the tap was broken and thereafter he left the tap at the spot. He specifically state that no abuse or assault as alleged, took place at the relevant time.

Referring to the incident dated 09.06.2020, this witness specifically state that when the Appellant Sanket Hadap accompanied with Tanaji Hadap arrived at the spot to fit the broken tap, this was opposed by Suman Sonawane, which resulted into some verbal altercation, but no incident of assault or abuse, actually happened.

7] In the wake of material compiled in the charge-sheet, prima-facie case of the prosecution appear to be doubtful.

In any case, the Appellant was never arrested during the course of investigation and since charge-sheet is now filed, and the material against the Appellant clearly surfacing on record, which in my opinion, prima-facie is not sufficient to accuse him of the alleged offence of abusing the complainant and his family members by casteist remarks and thereby intending to demean or lower their image, in the society due to the abuses being hurled in public view.

The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

In the wake of above, interim relief granted in favour of the Appellant deserve to be continued by the following order :

ORDER

- (a) Criminal Appeal No.310/2021 is allowed.
- (b) In the event of arrest in connection with C.R.No.109/2020 registered with Khalapur Police Station, the appellant Sanket Waman Hadap 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.
- (c) The appellant shall report to the concerned police station as and when called for.
- (d) The appellant 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.
- (e) The Appellant shall attend the trial regularly.

[BHARATI DANGRE, J]