

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 574 OF 2021

Farooq Sattar Dalvi And Anr. ...Appellants
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr.R. S. Deshpande a/w Mr.Vijay S. Thakur Advocate for Appellants.

Ms. Saili Dhuru Advocate for Respondent No.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th JULY, 2023.

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1. This is an Appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”). The appellants are aggrieved by order dated 10th July 2021 passed by learned Additional Sessions Judge, Kalyan rejecting the application for anticipatory bail preferred by Appellants in connection with C.R. No. I-152 of 2021 registered with Hill Line Police Station, Thane City on 20th June 2021.

2. The FIR was registered at the instance of Respondent No.2 for offences under Sections 354(D) of the Indian Penal Code and Sections 3(1)(r), 3(1)(w) of SC/ST (Prevention of Atrocities) Act.

3. The case of the prosecution is that, the first informant is the office bearer of political party and belongs to Scheduled Caste. She is also member of Thane District Rural Whats APP group. The accused are also member of the same political party and whats-app group. The accused posted messages on those whats-app groups which was derogatory nature.

4. Appellant No.2 belongs to scheduled caste. Hence, offence under Section 3(1)(r), 3(1)(w) of the Atrocities Act cannot be attracted against him. The learned Sessions Judge while rejecting the application for anticipatory bail has observed that, Section 3(1)(w) is not attracted in this case. However, the application was rejected on that ground that Section 3(1)(r) is attracted qua the appellant No.1. The offence under Section 354(D) of IPC is bailable.

5. Learned Advocate for Appellant submitted that, neither Section 354(D) of IPC nor the provision of Atrocities Act invoked against the appellants are attracted in this case. All insults or intimidation to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The offence under Section 3(1)(r) of the said Act indicate that the ingredient of intentional insult and intimidation must be with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. The whats-app messages posted were not with the object of humiliating any member of the Scheduled Caste or Scheduled Tribe. The Appellants as well as the

complainant happen to be members of same political party. Assuming the language used in the posts on whats-app is derogatory, it cannot be said to have been posted with an intent to humiliate the member of the Scheduled Caste or the Scheduled Tribe. The complainant was annoyed with the Appellants taking some decisions without consulting her which led to exchange of messages. The intent therefore is absent.

6. Learned APP and learned Advocate for Respondent No.2 submitted that, the nature of message posted by the accused was derogatory and sent with a view to insult and humiliate the complainant as she belongs to Scheduled Caste. Prima facie offences are made out and the Appellants are not entitled for anticipatory bail.

7. It appears that, the alleged message was on account of animosity between Appellants and the complainant. Appellants as well as complainant are members of the same party and same whats-app group. In any case, the offences under the Atrocities Act cannot be applied against Appellant No.2 as he belongs to Scheduled Caste. Section 354(D) of the IPC relates to offence of stalking. Prima facie it is debatable whether the said provision can be applied in the present case. Section 3(1)(r) of Atrocities Act, provides that, whoever intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Case of the complainant is that, message was sent on whats-app group. The record does not indicate that, the alleged message

was forwarded to intentionally insult or intimidate the complainant because she belongs to Scheduled Caste or Scheduled Tribe. In these circumstances, bar under Section 18 of the Atrocities Act would not be an impediment to grant relief sought in this Appeal.

ORDER

- (i) Criminal Appeal No. 574 of 2021 is allowed.
- (ii) Interim order dated 12th August 2021 is confirmed.
- (iii) Impugned Order dated 10th July 2021 passed by learned Additional Sessions Judge, Kalyan in Criminal Anticipatory Bail Application No. 1101 of 2021 is set aside.
- (iv) In the event of arrest of the appellants in connection with C.R. No.I-152 of 2021 registered with Hill Line Police Station, Thane, City, they shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.
- (v) Appeal stands disposed off.

(PRAKASH D. NAIK, J.)