

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 733 OF 2023

Anil Kumar Mahendrapratap Singh .. Appellant
Versus
State of Maharashtra and anr .. Respondents
...

Mr. A.H.H. Ponda, Sr. Advocate with Mr.Nilesh Pandey, Madhav Thorat, Rahul Bhosale for the appellant.
Mr.Y.M. Nakhwa, APP for the State.
Mr.Sushil Shukla with Ms.Janki J. Sampat for respondent no.2.

CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER, 2023

P.C:-

1 On 30/6/2023, the appellant was admitted to protection from arrest by way of an interim order, in C.R. No.749/2022 being registered on 27/9/2022, invoking the offences under the IPC and in particular, Section 406, 420 r/w Section 34 of the IPC.

2 In the said C.R, the applicant was held entitled to be released on bail in anticipation of his arrest by the Addl. Sessions Judge, Kalyan, and notice was issued to the respondent as to why the said order should not be confirmed.

It is on 5/12/2022, the supplementary statement of the complainant is recorded, which prompted the Investigating Officer to add Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 to the subject C.R. and since the provisions of the special statute were invoked in the wake of the bar imposed under Section 18, the Sessions Court on 24/6/2023, refused the protection from arrest, which has constrained the appellant to file the present appeal.

3 The learned APP Mr. Nakhwa would press into service the supplementary statement of the complainant recorded on 5/12/2022. This statement is recorded precisely after a period of three months, when she first lodged a complaint, which resulted in invocation of offences under the IPC without any reference to the casteist abuses being hurled at him on 4/8/2022.

The supplementary statement refer to an incident, of which a reference was made in the original complaint, but now with an improvisation, to the effect that when he went to the office at Dombivli, to demand his money back from accused no.1 Sunil Kumar and to question as to why he was abused in the name of caste by the present appellant, Anil Kumar, it is alleged that he was dragged out of the office and brought into a public place, and abuses were hurled at him in the name of caste, which caused humiliation and harassment to him.

The supplementary statement make a reference to these abuses in specific.

The complainant make a further statement that the Appellant was aware that he belong to Scheduled Caste, when the abuses were hurled, the staff from the office of Sunil Kumar Singh was also present along with two independent witnesses Shri Mahadev Nirmal and Jagdish Tadcheriya.

4 When the original complaint and the supplementary statement is perused, it becomes very evident, that a person who was abused in the name of caste, much prior to the date, when the complaint was lodged i.e. 27/9/2022 do not mention about these abuses, though he refer to the incident dated 4/8/2022 and it took him merely three months to recollect, that he was abused in the name of caste. Not only this, the Investigating Officer on the basis of the supplementary statement record the statement of Mahadev Nirmal and Jagdish Tadcheriya, who never came forward from 27/9/2022 till the recording of the supplementary statement of the complainant.

Prima facie, this version appear to be an after-thought and since it comes after three months, it deserve to be viewed with lot of suspicion and with motives being attributed for false implication of the accused persons.

I inquired from the Public Prosecutor, about the investigation carried out on this aspect of the abuses being hurled

first upon the telephone and thereafter, in person, when the complainant is alleged to have visited the office of Dr. Sunil Singh. On the instructions of the Investigating Officer, the learned APP make a statement that the call could not be traced because it was a Whatsapp call. When the Investigating Officer is asked to offer an explanation, on what basis he is making this statement, he make a reference to the original complaint and on its reading, I do not find any such indication that the call made to Sunil Singh, was a Whatsapp call.

The version of the complainant, as regards the FIR lodged on 27/9/2022 is, that he repeatedly made phone calls, messages and Whatsapp to Sunil Kumar Singh, but he avoided to answer the same. By no stretch of imagination, this can be construed that the phone call made to Sunil Singh on 4/8/2022, when it is alleged that the present appellant hurled casteist abuses on phone, was a Whatsapp call and this can thus be referred to an imagination of the Investigating Officer.

5 The learned Senior counsel Mr.Ponda, has relied upon a certificate issued by the Manager, C & B & and HR Operations, Clariant India Limited, on 2/1/2023, certifying that on 4/8/2022, Anil Kumar Singh (Appellant) was present in the Airoli office from 11.31 am to 19.17 p.m. Fortunately, the I.O present in Court admit that he has carried out investigation in this aspect and confirm the veracity of the certificate issued that the appellant was present in his Airoli office on 4/8/2022.

This falsify the first accusation about the casteist abuses being hurled to the complainant on telephone and the subsequent case of insult and humiliation in public view. The supplementary statement is an after-thought and prima facie, appear to be malicious.

6 The second incident which has its prelude in the phone call, where it is alleged that abuses in name of caste are hurled, I do not think that a prima facie case is made out from reading of the complaint and specifically the supplementary statement. In the wake of the decision of the Apex Court in case of *Prathvi Raj Chauhan Vs. Union of India & Ors, (2020) 4 SCC 727*, bar u/s.18 of the Act shall not operate. This is the precise reason why by order dated 30/6/2023 the appellant was admitted to protection from arrest and since now the investigation has further travelled, I deem it appropriate to confirm the order dated 30/6/2023.

Appeal stand allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)