

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 751 OF 2023

Shobha Kiran Magar ...Appellant
 Versus
 State Of Maharashtra And Anr. ...Respondents

WITH
CRIMINAL APPEAL NO. 752 OF 2023

Dhiraj Kiran Magar ...Appellant
 Versus
 State Of Maharashtra And Anr. ...Respondents

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Mr.Aniket U. Nikam, Mr.Aashish I. Satpute, Mr.Piyush Toshnival i/by
 Mr.Amit Icham Advocate for Appellant in both Appeals.

Mr.Raj Kamble a/w Mr.Suraj Gaikwad and Shree Bhosale, Advocate
 for Respondent No.2 in both Appeals.

Ms.P. N. Dabholkar, APP for the Respondent-State in Appeal No.
 751/2023.

Mr.Y. M. Nakhawa, APP for the Respondent-State in Appeal No.
 752/2023.

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CORAM : PRAKASH D. NAIK, J.

DATE : 7th JULY, 2023.

P.C.:-

1. These Appeals are preferred under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC and ST Act”). The Appellants have challenged the orders dated 22nd June 2023 passed by the learned Additional Sessions Judge-5,

Nashik, rejecting the application for Anticipatory Bail Nos.1264 of 2023 and 1265 of 2023 preferred by the Appellants.

2. Appellants are apprehending arrest in connection with C.R. No. I-235 of 2023 registered with Mumbai Naka Police Station, Nashik on 10th June 2023 for offences punishable under Sections 3(1)(r)(s), 3(2)(va) of the SC and ST (Prevention of Atrocities) Act and Sections 504, 506, 509 of the Indian Penal Code.

3. The First Information Report (for short "FIR") was lodged by Respondent No.2. It is alleged that, the Respondent No.2 is a member of political party since last 20 years. On 10th June 2023, she was requested to visit Government Guest House at Nashik. At about 12:30 p.m., she proceeded to the Government Guest House. She was greeted with birthday wishes by the Bhausahab Choudhary and informed that the issues relating to distribution of certain posts for the women members are to be discussed. All the lady members of the party were sitting in the hall. The Appellant in Criminal Appeal No. 751 of 2023 was sitting in front of the complainant. Discussion about the distribution of posts for lady members of the party was in progress. At that time, the aforesaid Appellant (accused No.1) looked at the Respondent No.2 and questioned whether the posts can be distributed to the persons belonging to Mahar caste viz. "महारधेड्यांना पद द्यायचे का" आणि आम्ही का महारांच्या पंगतीत बसायचे का?". The Respondent No.2 asked accused No.1 as to why she is talking like that and whether they are not

Corrected version of order dated 07.07.2023 pursuant to speaking to minutes of order dated 27.07.2023.

doing any work of the party. This was not liked by accused No.1. She picked up the chair and charged towards Respondent No.2 for assaulting her. The other lady members, who were present at the spot stopped accused No.1 from doing so. However, accused No.1 kept on abusing the complainant. Thereafter, the complainant and her others approached Mumbai Naka Police Station for lodging the complaint against accused No.1. The accused No.1 and her son (Accused No.2/appellant in Criminal Appeal No. 752 of 2023) came there and started quarrelling with them. The accused No.2 used abusive words against the complainant by stating that “तु छिनाल आहेस, बोचाडे” “तुम्हाला बघुन घेतो”. She was abused and threatened by him in most filthy language. On the basis of statement of Respondent No.2, FIR was registered.

4. Appellants preferred applications for anticipatory bail before the learned Sessions Judge, Nashik which has been rejected vide orders dated 22nd June 2023. While rejecting the applications for anticipatory bail it was observed that, the allegations are in respect of the caste of complainant, who is from Scheduled Caste. The accused mentioned caste and insulted the complainant on caste by taunting that, they will not sit next to her and why post should be given to the complainant, who belongs to Scheduled Caste. The incident had occurred in the presence of other members of the party in the Government Rest House, which is public place and in presence

of others. There is *prima facie* insulting expressive words on the caste of the complainant, uttered by accused No.1. The accused No.2 came to the Police Station and used words affecting modesty of a women. This act is in continuation to the act by mother, who started the abuses in Government Guest House. In view of bar under Section 18 of the Atrocities Act, it was not even to grant any relief to the Appellants.

5. Learned Advocate for the Appellants submitted that, bar under Section 18 of the Atrocities Act would not be attracted in the present case as *prima facie* the offences are not made out against the Appellants. On reading FIR, it is evident that, there is mere reference of caste of complainant which is not enough to invoke the provisions of Atrocities Act. The Appellant No.2 has not been attributed the allegations of abusing the complainant on her caste. The first informant has not mentioned either her caste or caste of accused in FIR. Section 3 of the Atrocities Act begins with the expression “whoever, not being a member of a Scheduled Caste or Scheduled Tribes”. It is incumbent on the prosecution to show that, the accused does not belong to Scheduled Caste or Scheduled Tribes. In the absence of such assertion in the FIR, the offences under Sections 3(1)(r) and 3(1)(s) of Atrocities Act cannot be said to have been made out. There is no evidence to show that, the Appellants were aware that, the complainant belonging to Scheduled Caste. Section 3(2)(va) of the Act would not be attracted as offences under Sections 504, 506, 509 of Indian

Corrected version of order dated 07.07.2023 pursuant to speaking to minutes of order dated 27.07.2023.

Penal Code are not made out.

6. Learned Advocate for the Appellant has relied upon the following decisions :-

- (i) Gorige Pentaiah Vs. State of A.P. and Ors. (2008) AIR SCW 6901;
- (ii) Vasantrao and Ors. Vs. State of Maharashtra and Anr. (2019) SCC OnLine Bom 5300;
- (iii) Nitin Anna Patil Vs. State of Maharashtra (2015) SCC ONLINE BOM 8109;
- (iv) Shekhar Vs. State of Maharashtra and Ors. (2009) SCC OnLine Bom 260;
- (v) Suryakant and Anr. Vs. State of Maharashtra and Anr. (2019) SCC OnLine Bom 725;
- (vi) Ganesh Dadasaheb Bhosale Vs. The State of Maharashtra and Anr. decided by this Court vide Criminal Appeal No. 1743 of 2019 dated 11th December 2020.
- (vii) Santosh Damu Bhagar and Anr. Vs. The State of Maharashtra and Anr. decided by this Court vide Criminal Appeal No.75 of 2020 dated 28th February 2020.
- (viii) Jairam S/o Shankarrao Tale and Anr. Vs. The State of Maharashtra and Anr. decided by this Court vide Criminal Appeal No. 190 of 2019 dated 8th April 2019.

7. Learned Advocate for Appellants also submitted the decision of this Court in the case of Ramrao Kashinath Rathod Vs. The State of Maharashtra and Anr. vide order dated 26th April 2022 passed in Criminal Appeal No. 229 of 2022 had turned down the submission that, the FIR does not disclose the caste of the accused. However, while deciding the said Appeal,

the decision in the case of Gorige Pentaiah Vs. State of A.P and Ors. was not brought to the notice of this Court.

8. Learned APP submitted that, *prima facie* offences invoked in the FIR are made out against the accused. In view of bar under Section 18 of the Atrocities Act, Appellants are not entitled for relief under Section 438 of Cr.P.C. The FIR referred to the abuses, hurled by the accused No.1 against Respondent No.2. The nature of abuses uttered by the said accused shows that, the intention of the accused was to insult and humiliate complainant on the basis of her caste. The incident had occurred at the Government Guest House in the presence of several other persons. The contents of the FIR and the investigation conducted revealed that, the complainant belongs to Scheduled Caste. The Appellants were aware about the caste of the complainant. Not mentioning caste of complainant or accused in FIR would not vitiate the FIR. Caste certificate of complainant has been collected which shows that she belongs to Scheduled Caste. The version of the complainant is corroborated by other witnesses. The FIR is not encyclopedia. The accused No.2 has followed the complainant to the Police Station along with the accused No.1 and the nature of abusive and threatening words uttered by him makes out the offences under Sections 504, 506 and 509 of the I.P.C. as well as offence under Section 3(2)(va) of the Atrocities Act. The Appellants are influential persons. Both the Appellants are having criminal antecedents. Four cases were registered in

Corrected version of order dated 07.07.2023 pursuant to speaking to minutes of order dated 27.07.2023.

the past against the Appellant in Criminal Appeal No.751 of 2023 viz. C.R. No. 280 of 2022 registered with Bhadrakali Police Station, Nashik for offence under Section 188 of I.P.C. and Sections 37(1)(3), 135 of the Maharashtra Police Act; C.R. No. 338 of 2022 registered with Bhadrakali Police Station for offence under Section 188 of I.P.C. and Sections 37(1)(3), 135 of the Maharashtra Police Act; C.R. No. 102 of 2021 registered with Aadgaon Police Station for offence under Section 188 of I.P.C. and C.R. No. 212 of 2021 registered with Bhadrakali Police Station for offences under Section 188 of I.P.C. and Section 269, 270 of Disaster Management Act. Six cases were registered against the Appellant in Criminal Appeal No.752 of 2023 in the past viz. C.R. No. 309 of 2018 registered with Panchavali Police Station for offences under Sections 353, 332, 186, 504, 506 of I.P.C.; C.R. No. 43 of 2017 registered with Mhasrul Police Station for offences under Sections 185, 3(1), 183 of Motor Vehicle Act; C.R. No. 275 of 2009 registered with Sarkarwada Police Station for offence under Section 395 of I.P.C.; C.R. No.358 of 2013 registered with Ambad Police Station for offences under Sections 452, 323, 504, 427 read with 34 of I.P.C.; C.R. No. 113 of 2011 registered with Panchawati Police Station for offences under Sections 326, 324, 323, 504 and 506 of I.P.C. and C.R. No. 213 of 2008 registered with Panchawati Police Station for offences under Sections 323, 324 of I.P.C..

9. Learned Advocate for Respondent No.2/complainant in both the

Corrected version of order dated 07.07.2023 pursuant to speaking to minutes of order dated 27.07.2023.

Appeals submitted that, the intention of the Appellants is reflected in the abuses uttered by them. Accused No.1 had humiliated and insulted the complainant in the presence of several persons. The Appellant in Criminal Appeal No.752 of 2023 has intimidated and used vulgar language against the complainant. The offences under Sections 504, 506 and 509 of I.P.C. are clearly made out against him. Sections 3(1)(r)(s) and 3(2)(va) of the Atrocities Act are attracted against both the Appellants. Appellants are influential persons. In view of bar under Section 18 of the Atrocities Act, they were not entitled for anticipatory bail. They are indulging in threatening the witnesses. Non-cognizable complaint has been lodged in view of threats issued at the instance of the Appellants on 6th July 2022, fair investigation is required to be conducted in this case and custodial interrogation of the Appellants is necessary. They have repeatedly committed breach of law, which is evident from their criminal antecedents. Reliance is placed on the decision of the Supreme Court in the case of Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors. in Special Leave Petition (CRL.) No.6432 of 2012 dated 10th September 2012; Suresh Supdu Kapadnis Vs. The State of Maharashtra, 2017 (3) Mh.L.J. (Cri.) 328; Shakuntla Devi Vs. Baljinder Singh, 2013 ALL MR(Cri.) 2272.

10. On reading FIR, it can be discerned from its contents that, the first incident had occurred on 10th June 2023 at about 12:30 p.m.. The abusive words allegedly uttered by the Appellant in Criminal Appeal No.751 of

2023 clearly indicate her intention to insult and humiliate the complainant on her caste. The complainant has clearly stated that, during discussion about the distribution of certain posts to the lady members of the party, the accused No.1 looked at complainant and uttered the abusive words on the basis of her caste. The words uttered by the accused No.1 itself shows that, she was aware about the caste of the complainant. The incident had occurred in the Government Rest House. Several other persons were present at the time of incident. The accused No.1 has also allegedly charged at the complainant by lifting chair with a view to assault her. Thereafter, the complainant had proceeded to the Police Station for lodging the complaint. Both the accused reached there and started quarrelling with complainant and others. Appellant in Criminal Appeal No.752 of 2023 then uttered the objectionable words. The complainant was threatened and abused in most filthy language. The offences under Sections 504, 506 and 509 of IPC are attracted. Section 504 of IPC relates to “intentional insult with intent to provoke breach of the peace”. Section 506 of IPC provides “punishment for criminal intimidation” and Section 509 of IPC refers to “word, gesture or act intended to insult and modesty of a woman”. The nature of words uttered by the accused No.2 reflects his intention which constitutes the said offences. The schedule appended to Atrocities Act referred to the offences under IPC provides list of offences to which Section 3(2)(va) can be applied. Sections 506 and 509 of IPC are covered by said schedule. Section

3(1)(r) of Atrocities Act relates to the offence of intentional insults or intimidation with intent to humiliate the member of Scheduled Caste or Scheduled Tribe in any place within public view and Section 3(1)(s) refers to abuses to any member of a Scheduled Caste or a Scheduled Tribe by caste in any place within public view and public place. Section 3(2)(va) is applicable to a person, who commits any offence specified in the Schedule, against the person or property, knowing that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine. All these offences registered against the Appellants are applicable and justified in the present case. I have perused the investigation papers and it is evident that, the incident had occurred at the Government Guest House and as reflected in the FIR is corroborated by the version of witnesses.

11. From the contents of the FIR and the words uttered by accused No.1, there is no doubt that she was aware about the caste of the complainant. They are members of the same party. The accused had looked at the complainant and made casteist remarks. It was not necessary to mention that, the accused was aware about the caste of the complainant. The knowledge is implied in the word used by the complainant and the facts of this case. During the course of investigation, the caste certificate of the complainant has been collected. It was pointed out that, the complainant

belongs to scheduled caste. Thus, merely because her caste is not referred in the FIR it would not affect the legality in the FIR registered against the accused. It was not necessary that, the FIR must contain the averment that, the accused are not members of Scheduled Caste or Scheduled Tribe. It was also argued that, mere reference of caste of the complainant was not sufficient to invoke the provisions of the Atrocities Act. On reading FIR it cannot be said that, the accused has merely referred to the caste. There is clear intention to insult and humiliate the complainant on the basis of her caste. The accused No.2 has prima facie committed offences under Sections 504, 506, 509 of IPC and Section 3(2)(va) of Atrocities Act.

12. Learned Advocate for the Appellants has relied upon the decision of the Apex Court in the case of Gorige Pentaiah Vs. State of A.P and Ors. (supra), wherein it was observed that, in the complaint, it was not mentioned that the accused was not a member of Scheduled Caste or Scheduled Tribe and intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view. When the basic ingredients of the offence are missing in the complaint, permitting such a complaint to continue and to compel the accused to face the criminal trial would be unjustified.

13. In the subsequent decision of the Apex Court delivered by three Judges Bench in the case of Aashabai Machindra Adhagale Vs. State of Maharashtra and Ors. (AIR 2009 SC 1973), the first informant had

challenged the order passed by this Court wherein the FIR was quashed on the ground that, the caste of the accused was not mentioned and the proceedings cannot be continued and deserves to be quashed. In paragraph 14 of the said decision it was observed that, it needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned Counsel for the Appellants whether the accused belong to Scheduled Caste or Scheduled Tribe can be gone into when the matter is being investigated. It is to be noted that under Section 23(1) of the Act, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995 have been framed. In paragraph 16 of said decision it is observed that, after ascertaining the facts during the course of investigation it is open to the Investigating Officer to record that, the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe. After final opinion is formed, it is open to the Court to either accept the same or take cognizance. Even if, the charge-sheet is filed at the time of consideration of the charge, it is open to the accused to bring to the notice of the Court that, the material do not show that, the accused does not belong to Scheduled Caste or Scheduled Tribe. Even if, charge is framed at the time of trial materials can be placed to show that, the accused either belongs to or does not belong to Scheduled Caste or Scheduled Tribe.

14. In the case of Nitin Anna Patil Vs. State of Maharashtra (supra), this Court had observed that, mere reference of the caste of the complainant is

not sufficient and that the FIR does not disclose the caste of the complainant and accused. In the case of Shekhar Vs. The State of Maharashtra and Ors. (supra), this Court had observed that, caste of the accused was not mentioned in the FIR and there is no statement that the accused does not belong to Scheduled Caste or Scheduled Tribe. Reference was made to the decision of this Court in the case of Manohar Kulkarni Vs. State of Maharashtra (2005 ALL MR (Cri.) 2602). In the case of Suryakant and Anr. Vs. State of Maharashtra and Anr. (supra), similar observation was made by this Court. In the case of Ganesh Dadasaheb Bhosale Vs. The State of Maharashtra and Anr. (supra), Appeal under Section 14-A of the SC and ST (Prevention of Atrocities) Act was allowed on the ground that, caste of the accused and complainant is not mentioned. In the case of Santosh Damu Bhagat and Anr. Vs. The State of Maharashtra and Anr. (supra), it was observed by this Court that mere name of caste is not sufficient and it was not committed that the accused belongs to higher caste. In the case of Jairam Tale and Anr. Vs. The State of Maharashtra and Anr. (supra), the Court took a view that mere reference of caste is not sufficient to invoke Section of Atrocities Act.

15. In the present case it is already stated hereinabove that it is not mere reference of caste but clear humiliation of the complainant and abuse on the basis of her caste. The aforesaid orders are contrary to the decision of the Supreme Court referred to hereinabove wherein it is stated that, it is

not necessary to mention caste of accused in FIR.

16. This Court in the case of Ramrao Kashinath Rathod Vs. The State of Maharashtra and Anr. (supra) it was submitted by learned Advocate for the accused that, the FIR does not disclose the caste of the accused and Section 3 of the Act mandate the mentioning of the caste of the accused. Learned Advocate representing the Appellant therein had relied upon the several orders passed by this Court. The learned Single Judge while adjudicating the said Appeal, vide order dated 26th April 2022 had observed that, the pronouncements relied upon by learned Advocate for the Appellant do not lay down correct proposition of law. Undoubtedly, a person, who is a member of Scheduled Caste and Scheduled Tribe cannot be prosecuted for commission of Atrocities on the other members of Scheduled Caste and Scheduled Tribe. The prosecution is enjoined to establish that, the perpetrator of the alleged offence under Section 3 of the SC and ST Act is not a member of Scheduled Caste and Scheduled Tribe. However, this burden on the prosecution does not necessarily support a proposition that, the fact that the accused does not belong to Scheduled Caste and Scheduled Tribe must be mentioned in the First Information Report and failure to do so entails the consequence of drawing an inference that no *prima facie* offence is made out, or for that matter, quashing the prosecution. At multiple stages in the course of prosecution for the offence punishable under Section 3 of the SC and ST Act, the said question can be agitated,

Corrected version of order dated 07.07.2023 pursuant to speaking to minutes of order dated 27.07.2023.

addressed and determined. With reference to the submission that, mere reference to the caste of the complainant in the allegations attributed to the accused is not sufficient to bring the conduct of the accused within the dragnet of Section 3(1)(r) and 3(1)(s) of Atrocities Act, it is observed that the question essentially turns on the intent of the accused to insult or humiliate the victim with reference to her caste or tribe. The use of the words, with reference to the caste of the victim, is required to be considered in the entire setting and context of the matter. It would be hazardous to lay down a broad proposition of law that mere reference to the caste or tribe of the victim, falls within the dragnet of the offences punishable under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

17. In the present case, it is difficult to accept that the accused No.1 had merely referred to the caste of the complainant. The contents of the FIR clearly indicate that, the abuses were intentional and the purpose is humiliation.

18. Learned Advocate for the complainant had relied upon the decision of the Apex Court in the case of Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors. (supra), in paragraph 9 and 10 of the said decision it is observed as follows:-

“9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are

not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

19. In the case of Shakuntala Devi Vs. Baljinder Singh (supra), it was observed that, Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1984 provides that nothing in Section 438 of the Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. Section 18 of the Act creates a specific bar to grant of anticipatory bail to a person against whom any offence is registered under the Atrocities Act.

20. In the fact of the case, no exception can be made to grant Anticipatory Bail to the Appellants as offences are clearly made out against the appellants. The submissions of learned Advocate for appellants are required to be rejected. There is no infirmity in the orders passed by the Sessions Court rejecting the application for Anticipatory Bail. In view of bar under Section 18 of the Atrocities Act, no relief can be granted to appellants. It is noted that, the Appellants are involved in cases in the past as the prosecution has pointed out criminal antecedents of appellants.

Considering all the aforesaid circumstances, the Appeals deserves to be dismissed being devoid of merits.

ORDER

Criminal Appeal Nos.751 of 2023 and 752 of 2023 are dismissed.

(PRAKASH D. NAIK, J.)