

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 813 OF 2023

Sidhanath Lala Pandule .. Appellant
Versus
State of Maharashtra and anr .. Respondents
...

Mr.Bhalchandra Shinde a/w Mr. Ganesh Pawar for the appellant.
Mr. S.R. Agarkar, APP for the State.
Adv. Gunjan Mangla for respondent no.2.
P.S.I. V.S. More, Loni Kalbhore, Police Station.

CORAM: BHARATI DANGRE, J.
DATED : 12th SEPTEMBER, 2023

P.C:-

1 The appellant is apprehending his arrest in CR No. 258 of 2023 registered with Loni Kalbhore Police Station (Pune city) on 10/04/2023, which has invoked the offence under Sections 376, 376 (2)(n), 313, 504, 506 a/w 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 The perusal of the complaint, lodged by the respondent no.2, a women aged 35 years has given the date of occurrence of the offence to be from 26/01/2017 to 10/03/2022.

In the complaint, she has disclosed that she had obtained divorce from her husband in the year 2010, and while she was residing with her brother, she came in contact with the present applicant in the year 2017, as he visited her house on

maintaining friendly relationship with her brother.

It is the accusations against the appellant that, when her brother was not at home, he expressed his liking towards her and when she refused to establish any alliance, he is alleged to have told her that he would keep her as his second wife and threatened that she maintain relationship with him.

The first incident when it is alleged that the physical relationship was maintained, is reported to be have taken place on 26/01/2017, when the appellant visited her house, in absence of her brother and committed forcible intercourse. It is also alleged that he clicked some pictures and threatened her, that if she restrain him from having the sexual pleasure, on demand, he would make the same viral.

Being threatened, she continued the relationship and it is her accusation that in the year 2019 she conceived, but terminated the pregnancy on 14/05/2019.

3 The learned counsel for the appellant would assertively submit that though this incident narrated in the complaint is alleged to have occurred in the year 2019, the complaint is lodged almost after two years, on 10/04/2023 and that itself speaks for volumes.

His specific submission is, the relationship maintained was consensual and there was no promise of marriage, on the contrary since she was a divorcee, both of them maintained a relationship, with sufficient understanding and maturity, and therefore, the accusations of the physical

intercourse being indulged into against her Will and without her Consent, is not established.

4 Apart from this, as far as the invocation of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are concerned, since it is a submission that the offence of rape is not committed merely on the ground that the victim belong to the Scheduled Caste category and hence, the said offence is not attracted.

5 On reading of the complaint, I am in agreement with the arguments advanced on behalf of the counsel for the applicant and when one read the relevant provision of Section 3(1)(w)(i) and (ii) of the Act of 1989, it necessarily contemplate an intention on part of the person to commit the offence, knowing that the victim belongs to Scheduled Caste or Scheduled Tribe.

The offence under the 1989 Act, can only be made out if the other ingredients therefor being satisfied, it was committed only because of the person belonging to Scheduled Caste or Scheduled Tribe. The offence of intentionally touching a women with a sexual intention or use of words, acts or gestures of sexual nature towards a women will not amount to an offence under the 1989 Act, unless it is established that such act is committed only on account of the victim belonging to a SC/ ST category. The offence under 1989 Act is made out, when a member of vulnerable section of society is subjected to indignities, humiliations and harassment, because of belonging to that section of society.

Prima facie, the complaint lack any material to reflect that the appellant indulged with her and committed sexual intercourse against her Will only because she belongs to Scheduled Caste.

Apart from this, the delay in lodging the complaint must also be taken note of as the complainant will have to explain the same.

6 Though the learned counsel for the respondent no.2 would make an attempt to submit that, the respondent no.2 was under an impression that he was not married, I do not find any substance in the said submission and there is no indication to that effect in the complaint lodged by the complainant.

In the wake of the above accusations, since I am of the opinion that the custodial interrogation of the applicant is not necessary, since *prima facie* relationship maintained with the respondent no.2 appear to be consensual in nature, and *prima facie* reading of complaint do not make out an offence under Section 3(1) (w)(i) & (ii) the appellant deserve his release on bail, subject to the following stipulations:

O R D E R

- (a) Appeal is allowed.
- (b) In the event of his arrest, the Appellant, Sidhanath Lala Pandule in connection of C.R.No. 258 of 2023 registered with Loni Kalbhor police station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties of the like amount.

- (c) He shall report to the concerned police station on every Thursday between 1:00 p.m to 3:00 p.m for period of six weeks and thereafter as and when called for.
- (d) He 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 not set his foot in Handewadi, Tq: Haveli, District Pune, where the respondent no.2/the complainant is residing and shall in no way pressurize her in any manner and upon such an attempt, she is entitled to seek cancellation of the bail.

(SMT. BHARATI DANGRE, J.)