

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1024 OF 2019

1. Sandhya Madhukar Bhagat,
2. Prakash Madhukar Bhagat,
3. Pradnya Prakash Bhagat,
4. Savita Vijay Huddar,
5. Vijay Rama Huddar,
All R/o.Bhagatwadi, Village Sukapur,
Tal.Panvel, District Raigad-410 206.

Appellants

versus

1. The State of Maharashtra
2. Mrs.Poonam Pramod Bhagat,
R/o. As above and Room no.1, Panchasheel Society,
Sector 6, New Panvel-410 206

Respondents

Mr.Nitin Sejjal with Ms.Pooja Sejjal, Advocate for Appellants.
Mr.Vijay Kurlle with Mr.Samkit Shah, Advocate for Respondent no.2.
Mr.Y.M.Nakhwa, APP, for Respondent-State.
Mr.Ashok Rajput, ACP, Panvel Division and Mr.Sumeet Kendre, PSI,
Khandeshwar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th July 2023

PC :

1. This appeal is preferred u/s.14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act') challenging the order dated 23rd July 2019 passed by Additional Sessions Judge, Raigad-Alibag rejecting Criminal Miscellaneous Application No.584 of 2019 preferred by Appellants seeking pre-arrest bail in C.R No.146 of 2019 registered with Khandeshwar Police Station for offences under Sections 498-A, 323, 504, 506 r/w 34 of Indian Penal Code and u/s.3(1)(v) of Atrocities Act

2. The case of prosecution is as under. The marriage between the complainant/Respondent no.2 and Pramod Bhagat was solemnized on 14th December 2006. Respondent no.2/complainant belongs to Bouddha community. It was a love marriage. The marriage was opposed by family of her husband. They did not attend the marriage. After the marriage, the complainant starting residing with her husband. Her mother-in-law, brother-in-law, wife of brother-in-law and their son were residing with her. The sister-in-law of complainant namely Ganga @ Savita Huddar and her husband Vijay Rama Huddar are residing in the neighbouring room. In the absence of her husband, the brother-in-law and his wife were instigating her mother-in-law to force the complainant to leave the house as she belonged to Mahar caste. All the accused were humiliating the complainant on the basis of her caste. She was threatened that she will not be allowed to stay with her husband and that she will be killed. The accused were ill-treating her. She was abused on her caste. She was mentally tortured. She was not allowed to sit and have food with others in the house. After her husband leaves house the accused were causing harassment to her. She was abused repeatedly on her caste. On account of harassment she started residing with her husband at Panchasheel Nagar, Room No.1, Sector-6, New Panvel. Her husband, brother in law were pursuing business started by her father in law and for the purpose of correspondence relating to loan her husband had provided address of New Panvel. Since Sales Tax Officers and borrowers were troubling them, the complainant had started residing at her parental home. About three months ago she had started residing at her ancestral home of her husband. On 7th June 2019 at about 5.00 p.m, the complainant was assaulted by her mother in law, sister in law, brother in law and

forced to leave house. She gave a call on 100 number. Police arrived at spot. Accused were advised not to trouble the complainant. Due to ill-treatment, complainant was ill. She was admitted to hospital for treatment. On 8th June 2019 she was assaulted by accused and confined in room. Her articles were thrown out. Her neighbour Sanjay Sutar was helping her to restore her articles to the premises. He was assaulted by accused. On 5th July 2019 complainant went out of house to bring some articles. The accused were in the house. When she returned from the shop she found that door was locked. Her mother in law, sister in law were present in house. They refused to open the door. They told her that since she belongs to Scheduled Caste, they will not open the door. She gave call to police. Police reached the spot. Her mother in law opened the door. She told police that house belongs to her. She would not allow the complainant to enter the house. Investigation proceeded. On completing investigation charge sheet has been filed for offences under Section 498-A, 323, 504, 506, 34 of IPC and Section 3(1)(r) (v) V of the Atrocities Act.

3. Application for anticipatory bail preferred by Appellants was rejected by Court of Sessions.

4. Appellant no.1 is mother in law, Appellant no.2 is brother in law, Appellant no.3 is sister in law, Appellant no.4 is sister of husband, Appellant no.5 is husband of Appellant no.4.

5. Learned advocate for Appellants submitted that charge sheet was filed for the offences under Sections 498-A, 323, 504, 506, 34 of IPC and u/s.3(1)(4)(s) of Atrocities Act. The FIR was registered for the offences as stated above. The complaint is false. The alleged incident has occurred in the residential premises. It is not within public view. The incident is not supported by independent witness.

The offences are not made out. Charge sheet is filed. Prior to registration of FIR, proceedings under Domestic Violence Act were initiated by Respondent no.2. The complainant was residing separately with her husband. The FIR is registered on account of matrimonial discord between parties. Crime No.22 of 2020 was registered at the instance of one of the accused with same Police Station for offences u/s.392, 454, 341, 323, 504, 506, 427 r/w 34 of IPC. The complainant is neither owner nor in possession of premises which is subject matter of dispute. The said house is not matrimonial home of complainant. The property where the Appellants are residing is in name of Appellant no.1 and 3. The complainant and her husband do not have any undivided share in property. No prima facie offences u/s.498-A, 323, 504, 323, 504, 506 of IPC are made out. The husband of complainant is not named as accused in the offence, though offence is registered u/s.498-A of IPC makes it clear that the FIR is nothing but a story concocted by complainant with mala fide intention to falsely implicate the Appellants in an offence to pressurize them and win over in the property disputes raised by her husband. Section 3(1)(r)(s) and (V) are not attracted. On 7th June complainant and others arrived at house no.151 and created chaos. Damage was caused to car. Appellant no.1 lodged complaint on 7th June 2019. Non-cognizable complaint was recorded. 8th June again complainant and others arrived at house no.151 and abused Appellants. The Appellant no.1 lodged complaint. It was recorded as N.C complaint for offences u/s.323, 504, 506 of IPC. The Appellants had sent representation about threats by complainant to Khandeshwar Police Station on 30th June 2019.

6. Advocate for Appellants has relied upon following decisions :-

(i) B.Venkateshwaran & others Vs. P.Bakthavatchalam – 2023 ALL SCR (Cri) 307;

(ii) Balkrushna Uttamrao Mule and others Vs. The State of Maharashtra and another – 2023 ALL MR (Cri) 271.

7. Respondent no.2 has filed affidavit in reply opposing prayer sought in this appeal. It is submitted that the complainant was continuously harassed on the basis of her caste. She was assaulted and abused. The incidents of harassment are spelt out in the FIR. In view of bar u/s.18 of Atrocities Act, no relief can be granted to the Appellants. Proceedings under the Domestic Violence Act were withdrawn in peculiar circumstances. The incident of abuses on caste and assault is witnessed by neighbour whose statement is recorded during investigation. The complainant is residing at the same place where the incident had occurred. The complainant was humiliated, beaten with broom and stick and threatened to leave her house where she was residing with her minor child. Reliance is placed on the photographs. The offences under the Atrocities Act are made out. The property where Respondent no.2 is residing is ancestral property of her husband and she has right to enjoy said property. She was dispossessed of said premises which she had legal right through her husband. The offence u/s.498-A of IPC is made out. The photograph prima facie suggest that complainant has been assaulted by the accused. The statements of police indicate that Respondent no.2 was dispossessed from the premises. Thus, offences are clearly made out. Appellants are not entitled for anticipatory bail.

8. Learned APP submitted that the FIR clearly makes out offence under IPC as well as under Atrocities Act. During the course of investigation statements of witnesses were recorded. Statement of

neighbour who was also assaulted by accused namely Mr.Sutar has been recorded. Castiest remark hurled against complainant by the accused is witnessed by neighbour of complainant which corroborates version of complainant. The injury certificate on record supports the allegations in the FIR about assault. The complainant was dispossessed from the premises. Thus, all the offences under Atrocities Act as well as IPC are made out. Statement of complainant and her husband were recorded u/s.164 of Cr.P.C. Their versions establish offences against accused. Appellants are not entitled for anticipatory bail.

9. There is matrimonial discord between parties. Respondent no.2 has also initiated proceedings under Domestic Violence Act. Subsequently said proceedings were withdrawn. The FIR was registered on 5th July 2019 for the offences u/s.498-A, 323, 504, 506, 34 of IPC and u/s.3(1)(r) of Atrocities act. Subsequently Section 3(1)(r)(s) were added at the time of filing of charge sheet. Investigation is completed and charge sheet is filed. Custodial interrogation of Appellants is not required for any purpose. During the course of investigation statements of various witnesses were recorded. Statements of complainant and her husband were recorded u/s.164 of Cr.P.C. Statement of complainant dated 29th August 2019 recorded u/s.164 of Cr.P.C indicate that she has improvised her version. Statement of Sanjay Yeshwant Sutar was recorded on 20th July 2019. In the FIR his presence is not recorded by complainant. According to this witness he is the neighbour of complainant and that he saw the accused throwing articles from the house and that complainant was assaulted and abused on caste by accused. Although the incident is of 5th July 2019, his statement was recorded on 20th July 2019. According to him, he was assaulted by accused and he has taken

treatment at Rural Hospital, Panvel. Thus, he is interested witness and cannot be termed to be an independent person. The alleged abuses on caste hurled on the complainant is not corroborated by any other independent person. It is debatable whether complainant was residing in the premises as alleged by her where alleged incident has took place. From the FIR itself it can be seen that she has left matrimonial home on account of harassment and started residing at another place. According to her, she came back to the ancestral home of her husband and she was forced to leave house on 7th June 2019. The day on which she returned to the said premises is not specified. The statement of police constables only indicate that complainant was outside premises. There is nothing to indicate that she was occupying the premises and she was dispossessed from the premises. The premises is owned by Appellant nos.1 and 2. The FIR is not against husband. Prima facie offences under Atrocities Act are not made out. Crime No.22 of 2020 was registered with Khandeshwar Police Station for offences u/s.392, 452, 341 323, 504, 506, 327 of IPC against complainant. This Court had allowed the application for anticipatory bail preferred by Respondent no.2 vide order dated 14th December 2020. While allowing said application it was observed that there are pending disputes between complainant, his family members on one hand and applicants therein on the other hand. Respondent no.2 had registered the FIR under Atrocities Act. Prima facie cause for the dispute is inter caste marriage of complainant/Respondent no.2 with Pramod Bhagat and there are diverse claim over family property. Respondent no.2 had instituted proceedings under Domestic Violence Act. Statement of Pramod Bhagat mentions that his marriage was performed with Respondent no.2. It was opposed by his family members and they did not attend

the marriage. After the marriage he went to the house of his parents. His wife was insulted and for a period of three months he started residing on the first floor of said building. His wife was facing problems even after residing on first floor. Therefore he shifted to New Panvel in another premises obtained on rental basis. Thereafter in February 2020 he purchased house at Panchasheel Nagar, Room No.1, Sector-6, New Panvel. He had difficulty in pay instalments of loan. The recovery agents were troubling him. He did not pay maintenance of Panchasheel Society. His wife went to the house of his parents without informing him. She had filed complaint under Domestic Violence Act. He has not stated the date on which his wife has returned to his matrimonial home. From his statement it can be seen that for short period the complainant resided at the matrimonial home along with accused and thereafter she shifted to first floor and then to rental premises and then to new house at New Panvel. Thus, for a substantial period of time the complainant was not residing along with accused. The version of complainant that she was dispossessed after she was started residing with accused suffers from doubt. Apparently husband of complainant is not accused in the FIR. It was registered against Appellants who are relatives of her husband. In the present case investigation is complete and charge sheet is filed.

10. Considering all these circumstances, case for grant of relief sought in this appeal is made out. Bar u/s.18 of Atrocities Act would not be an impediment to grant reliefs sought in this appeal. Hence I pass following order :

ORDER

- (i) Criminal Appeal No.1024 of 2019 is allowed and disposed off;
- (ii) The impugned order dated 23rd July 2019 passed by learned

Additional Sessions Judge, Raigad-Alibag in Criminal Miscellaneous Application NO.584 of 2019 is set aside;

(iii) Interim order dated 2nd August 2019 is confirmed;

(iv) In the event of arrest o Appellants in connection with C.R No.146 of 2019 registered with Khandeshwar Police Station, the Appellants be released on bail on furnishing P.R bond in the sum of Rs.15.000/- each with one or more sureties in the like amount.

(PRAKASH D. NAIK, J.)

MST