

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1046 OF 2023

Vishal Suresh Oswal .. Appellant
Versus
The State of Maharashtra and anr .. Respondent

WITH
CRIMINAL APPEAL NO. 960 OF 2023

Vishal Suresh Oswal .. Appellant
Versus
The State of Maharashtra and anr .. Respondent

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Mr. Nitesh S. Nevshe for the appellant in both Appeals.
Mr.Akshay P. Kataria for respondent no.2.
Mr.S.R. Agarkar, APP for the State.
PSI U.S. Deshpande from Shivaji Nagar police station.

CORAM: BHARATI DANGRE, J.
DATED : 2nd NOVEMBER, 2023

P.C:-

1 In both the Appeals, the appellant husband seek protection from arrest in two distinct C.Rs lodged by his wife, invoking the Scheduled Caste and Scheduled Tribes (Prevention of Corruption) Act, 1989. I shall deal with appeals separately.

Cr.Appeal No. 960/2023

The appellant came to be arrested on 17/3/2023 in C.R. No.I-105/2023 registered with Shivaji Nagar police station, Ambernath, Kalyan, at the instance of his own wife, accusing him and one of his friend of committing forcible sexual intercourse with her and based on her complaint, Sections 376, 323, 504, 506 (2), r/w Section 34 of the IPC is invoked, along with Section 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 The complainant, wife of the present appellant narrated in the complaint that she was married to him since the year 2016, but her grievance is that knowing that she belong to Bouddha (Scheduled) caste, she was always subjected to mental and physical torture. This constrained her to file a complaint with Lonavla City police station on 18/10/2022, against her husband and his family members. Out of the wedlock, three children are born and she continue to stay in Ambernath, away from her husband and his family since September 2022.

According to the complainant, since on 25/1/2023, the appellant visited her house and coerced her to withdraw the complaint filed by her and also abused her on that count, hence, she once again filed an N.C. with Shivaji Nagar police station u/s.504 of the IPC.

The incident about which she made a grievance, is alleged to have occurred on 9/03/2023 when the appellant visited her on the pretext that his mother had suffered a heart attack and that she should accompany him, but when she came out of the house, she was sexually abused by him as well as another person acquainted to him. It is her specific narration that both the accused persons humiliated her in the name of her caste and indicated to her that since she belong to the said caste, she deserve only such treatment and this constrained her to report to the concerned police station, and offences of rape was registered against the present appellant and one unknown person.

On reading the complaint, it is evident that there was ongoing matrimonial discord, as the complainant had lodged complaints in the past, against the appellant as well his family members. The incident dated 9/3/2023 is reported to the police on 17/3/2023 and the delay is unexplained, as in the complaint, the complainant had narrated that immediately after the incident, she had disclosed the incident to her childhood friend, who advised her to report to the police station. It is not that the complainant is not acquainted with the procedure, as in the past also, she had lodged a complaint against the appellant and his family members. The delay, therefore, must be viewed with suspicion as it creates a doubt as regards her version.

Moresoever, if she is making allegation of rape, after lapse of period of almost eight days, there is no medical evidence

available to corroborate her version and hence, except her own statement, there is no evidence to *prima facie* establish the offence, which she has alleged against the appellant. Moreover, another accused who is alleged to have committed rape on her, is neither identified nor arrested.

3 In the wake of the above, since *prima facie* the allegations being doubtful, and appear to be made to frame her husband, the appellant deserve his release on bail since his incarceration is since 17/3/2023 and particularly, on completion of investigation, charge-sheet is already filed.

His release is however, subject to the condition that she shall not in any way, pressurize the complainant, so as to deter her from prosecuting the proceedings, which she has initiated, which may take the route of law. Hence, the following order :-

ORDER

- (a) Appeal is allowed. Impugned order dated 05/07/2023 passed by Addl. Sessions Judge, Kalyan, is quashed and set aside.
- (b) The appellant Vishal Suresh Oswal shall be released on bail in C.R.No. 105/2023 registered with Shivaji Nagar police station, on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.
- (c) The appellant shall mark his attendance on first Monday of every month between 5 to 6 pm till framing of charge and thereafter as directed by the concerned Court.

- (d) On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.
- (e) The appellant 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.
- (f) The Appellants shall attend the trial on regular basis.

Cr.Appeal No. 1046/2023.

4 Appeal No.1046/2023 is yet another Appeal filed by the same appellant being aggrieved by the refusal, by the Addl. Sessions Judge, Vadgaon, District Pune, to protect him from arrest in another C.R. registered by his wife with Lonavla City police station on 18/10/2022.

 The C.R. has invoked Section 498A, 354, 323, 504, 506 of the IPC as well as 3(1)(r)(s), 3(2)(va), 6 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the subject C.R, apart from the appellant, her mother-in-law, father-in-law, brother-law and his wife are arraigned as accused.

 Worth it to note that this is the same C.R, to which a reference is made by the complainant when she approached Shivaji Nagar Police Station, stating that in the past, i.e. October 2022, she had lodged a complaint against the entire family of her husband.

5 When the complaint, which is the basis of C.R.No. 157/2022 is perused, the complainant has narrated she belonging to Scheduled Caste and marrying the appellant since she was impregnated by him and it is at her insistence, the marriage was solemnized in Alandi. It is her version that she was asked not to disclose her caste and to pretend that she belongs to Marwadi community, but when the remaining accused nos.2 to 5 became aware of her caste, they started subjecting her to harassment on that count. There are accusations levelled against all accused, but while dealing with the application filed by accused nos.1 to 5, the Special Judge specifically recorded that the allegations against accused nos.2 to 5 are vague in nature and the delay was also taken into consideration when she had complained about her brother-in-law, outraging her modesty.

Apart from this, it is also specifically recorded that the incident of abuses having been hurled with an intention to insult and humiliate her in the house and not in public view, and hence, Section 18A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, are not applicable.

The very same order, recorded that the appellant who is the husband, however, must take the accusations.

6 I feel no justification for the said observation as the marriage of the couple had taken place in the year 2016 and there are three children born out of the said wedlock and hence, what

has been transpired prior to the marriage that she was asked not to disclose her caste, is not of any worth consideration, when she levelled accusations in the year 2022.

Since the investigation in the subject C.R is complete and the charge-sheet is already filed, I see no reason why the appellant shall be subjected to custodial interrogation even in this C.R.

Since the reading of the FIR as it is, do not make out prima facie case of cruelty as well as under Section 323, 504, 506 of IPC and under the relevant provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, the appellant deserve protection from arrest.

ORDER

- (a) Appeal is allowed. Impugned order dated 21/07/2023 passed by the Addl. Sessions Judge, Vadgaon, District Pune, is set aside.
- (b) The appellant Vishal Suresh Oswal shall be released on bail in C.R.No. 157/2022 registered with Lonavla City police station, on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The appellant shall attend the concerned police station on 13th and 14th November, 2023 between 4.00 pm to 6.00 p.m and thereafter as and when directed.
- (d) On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

- (e) The appellant 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.
- (f) The Appellant shall attend the trial on regular basis.

(SMT. BHARATI DANGRE, J.)