

rajshree

Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2023.11.01
18:20:05
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1030 OF 2023

Pratik Balaso Thorat] .. Appellant
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Vaibhav Gaikwad, for the Appellant.

Ms.M.R. Tidke, APP for the State.

Ms.Saloni Ghule, Appointed Advocate for Respondent No.2.

SDPO Annasaheb Jadhav, Sangli City Sub Division present.

CORAM : BHARATI DANGRE, J

DATE : 31st October, 2023.

P.C.

1] The Appellant faces accusation under Section 376(2)(n), 420, 417, 323, 504, 506 read with 34 of the IPC and under Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988. On investigation being completed, charge sheet is filed.

2] The complaint is filed by a girl aged, 25 years belonging to Scheduled Caste, who narrated that while she was undertaking a nursing course, she was acquainted with the present Appellant and became friendly with him.

In the FIR lodged on 14.08.2023, she has accounted the details of their relationship commencing from 2019 upto the year 2023 and while narrating the first incident when the physical relationship was established by the Appellant with her, on the occasion of his birthday on 16.04.2021, she categorically state that physical relationship was established against her will. Thereafter, when the talks of marriage were initiated by her parents, she disclosed that the Appellant is going to marry her and her family readily agreed.

Thereafter, pretentiously that they were engaged to get married, the couple frequented at various places like Goa and Mahabaleshwar, and established physical relationship and according to the complainant, it was under the pretext that they are in any way getting married.

Another incident, of 09.05.2023 when she was forced to have physical relationship is also narrated.

Thereafter, on 01.08.2023, when the talks of marriage were going on, the mother of the Appellant is alleged to have spoken to the prosecutrix in humiliating manner and questioned her, as to why she had established physical relationship with her son before marriage. She was pushed out of the house and she was warned that if the marriage is solemnized with her, family will have to face disgrace in the society.

3] This resulted in complaint being lodged by the prosecutrix alleging that from 16.04.2021 till 01.08,2023, the Appellant knowing very well that the prosecutrix belongs to Scheduled Caste, by promising her to marry, established physical relationship with her on several occasions and for settling the marriage, when her family had visited his house, they were humiliated and insulted, on the ground that she belong to a lower caste.

4] Apart from Section 376(2)(n), Section 420 and 417, the charge sheet is filed under Section 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the SCST Act.

Section 3(1)(w)(i) and 3(1)(w)(ii) reads thus :

“3. Punishments for offences atrocities –

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent.;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

The aforesaid provision punishes an intentional act of touching a

woman belonging to Scheduled Caste, knowing that she belongs to the Scheduled Caste, when such act of touching is of sexual nature and without the recipients consent.

5] The victim has categorically stated that the physical relationship was established against her wishes and without her will and this act would definitely attract Section 3(1)(w)(i) and (ii) of the SCST Act.

The test of applicability of provision of anticipatory bail to the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, being really culled out by the Apex Court in the case of *Prathviraj Chauhan vs. Union of India & Ors. (2020) 4 SCC 717* is, to read the FIR as it is and if it prima facie do not make out any offence, then the bar under Section 18 of the Act of 1989, shall not apply.

However, when the FIR is perused, with the version of the prosecutrix that she was forced into relationship and physical relationship was established without her consent, custodial interrogation is warranted, as the bar under Section 18 of the Act is not raised.

In the wake of above, Appeal stands dismissed.

[BHARATI DANGRE, J]