

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1169 OF 2022

Prabhakar Bhimrao Patole .. Appellant
Versus
The State of Maharashtra and anr .. Respondents
...

Ms. Rui Danawal i/b Mr. Umesh Mankapure for the Appellant.
Mr. S.R. Agarkar, APP for the State/ Respondent no.1.
Mr. Abhinandan Vagyani i/b Pankaj Kandhari for Respondent No.2

CORAM: BHARATI DANGRE, J.

DATED : 21st MARCH, 2023

P.C:-

1 By the order dated 1/12/2022, recording the narration in the complaint, the appellant was granted interim protection from arrest in C.R. No. 447 of 2022, which had invoked Sections 427, 447, 452 and 506 r/w Section 34 of IPC and Sections 3(1) (g), 3(1)(r), 3(1)(s), 3(1)(t) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The respondent on being served is represented through Advocate Mr. Vagyani, who would strongly contest the appeal by submitting that though the appellant had purchased some portion of land in an auction, it is not this land and

therefore, he had no right to carry out the exercise, which was undertaken by him, knowing well that the respondent no.2 is belonging to Scheduled Caste.

2 Perusal of the narration in the complaint, prima facie do not justify invocation of section 3(1)(r), 3(1)(s), 3(1)(t) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as the plain reading of the complaint do not make reference to any castiest abuses being hurled in public view with an intention to insult the complainant. Further there is no allegation about destroying, damaging or defiling any object held to be sacred or in high esteem by the members of Scheduled Castes/Scheduled Tribes.

As far as invocation of Sections 3(1)(g) is concerned, which make an act by a person, not being a member of Scheduled Castes/Scheduled Tribes, who wrongfully dispossess the member of Scheduled Castes /Scheduled Tribes from his land or premises or interfere with enjoyment of his rights. The explanation appended to the said provision defines the expression wrongfully to include, against the person's will, without the person's consent, where such consent has been obtained by putting a person in fear of death or of hurt or by fabricating records of such land.

3 In the wake of the aforesaid provision when the FIR is perused, the complainant himself has narrated that a piece of land belonging to one Shahaji Bhimrao Patil was taken on lease

on 24/01/2022 and an agreement was executed. He further narrate that he moved ahead by operating a hotel in form of the shed and started running it in the name of 'Sarthak'.

On 12/11/2022, it is alleged that the appellant visited the hotel by claiming that the land belongs to him and therefore the rent and deposit should be passed on to him and he was asked to vacate the place. On 13/11/2022, the hotel was pulled down by the appellant is the allegation.

His complaint in respect of the said incident was however lodged on 17/11/2022, i.e. after 4 days.

4 The learned counsel for the appellant would specifically submit that a Sale Certificate was issued in favour of Rohit Prabhakar Patole in respect of 0 hectare 04 R (4 Guntha) area in Gat No. 75. The Sale Certificate placed on record give the description of the immovable property, which has been purchased by the appellant with the boundaries specified therein. It is informed that the suit has been filed by the owner of the said land against the appellant which is pending in the Court of Civil Judge, Junior Division, Kavthe Mahakal.

Prima facie from perusal of the document placed on record which specifically refer to the land being purchased in auction by the appellant, the submission of Mr. Vagyani is to the effect that it is not this land on which the complainant has erected the structure, which is purchased in auction. This aspect about the identify of land can be only looked into by the Civil

Court as the identification of the land is in dispute. However, there is no material placed by the complainant, to demonstrate that it is not this land, which is purchased by the appellant and therefore, the appellant cannot be prima facie accused of wrongfully dispossessing a member of Scheduled Castes. Ultimately this battle will have to be fought in the competent Civil Court as the Appellant on the basis of the Sale Certificate claim to be the owner of the land, on which the complainant is running the hotel.

In the wake of the above, the appellant deserve protection from arrest since the complainant has failed to demonstrate a prima facie case, that the appellant was not entitled to dispossess him, in the light of the Sale Certificate which has been placed on record and even with his name being mutated in the 7/12 extract i.e. land record.

5 Before parting, I would expressly want to observe about the manner in which the Investigating Officers are invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In this case i.e. Section 3(1)(r),(s),(t) has been invoked without reading of the complaint. The police officers on the receipt of the complaint are expected to read it carefully and on assimilating the facts, should infer, what offences are made out and accordingly while registering the FIR, on the basis of the complaint they should invoke the relevant provisions of law.

In the present case when the complaint is read as it is, there is no accusations levelled against the appellant as regarding hurling abuses, which would make out an offence under Sections 3(1)(r), 3(1)(s), 3(1)(t) as it contemplate an intentional insult of intimidation with an intent to humiliate a member of Scheduled Castes or Scheduled Tribes in any case within public view or abusing of any members of Scheduled Castes or Scheduled Tribes by caste name in any place within public view. Apart from this, 3(1)(t) which make an act of destroying, damaging or defiling any object generally known to be held sacred or in high esteem by members of Scheduled Castes and Scheduled Tribes, is an offence.

The complainant has not levelled accusations against the appellant even barely touching Sections 3(1)(r), 3(1)(s) and 3(1)(t), but despite this the said provisions have been invoked.

6 When the Act of 1989 create an specific embargo upon availing the remedy of anticipatory bail as provided under Section 438 of Cr.P.C and the statute has been enacted with a specific object of preventing the commission of offence of Atrocities against the members of Scheduled Castes and Scheduled Tribes and has ensured that the members of this class are not denied their civil rights and a wrong doer, who commits atrocities as defined under section 3 shall be punished, it is expected on part of all the stake holders, to be sensitive to the purpose of the enactment. On one hand, though the police

officers are expected to protect the right of the members of Scheduled Castes and Scheduled Tribes, who are subjected to indignity, humiliation, and harassment as they belong to this particular class, the police machinery is expected to assist them in asserting their rights and resist the practices of atrocities being committed upon them, however, at the same time they must view the accusations with utmost seriousness from a point of view of accused, who has to face them and who in the wake of section 18 of the Act is not entitled for seeking protection from arrest, despite the submission that no offence is made out against him.

The Hon'ble Apex Court in case of *Prathviraj Chauhan vs Union of India 2004, SCC 727*, dealing with the bar under Section 18 on grant of anticipatory bail under Section 438 of CrPC in respect of the offences under the 1989 Act, though recalled the earlier directions 79.3 to 79.5 in *Dr. Subhash Kashinath Mahajan vs The State of Maharashtra & anr (2018) 6 SCC 454*, has held, where prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of power, but Section 18 shall have no application where prima facie case is not made out. It is specifically held that the exclusion of Section 438 Cr.P.C inconnection with the offences under the Act has to be viewed in the context of the prevailing social condition, which give rise to such offences and the apprehension that the perpetrators of such

atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in prosecution of these offenders, if the offenders are allowed to avail anticipatory bail. The historical background relating to the practice of 'untouchability' and social attitude, which led to the commission of the offence was focused upon while justifying the bar under Section 18 of the Act and it has been held that it cannot be considered in any manner as violative of the article 21 of the Constitution.

7 However by an irresponsible act like this, where despite the complainant not levelling any accusations which would remotely attract Section 3(1)(r), 3(1)(s), 3(1)(t) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the concerned police officer of Kavthe Mahakal police station in District Sangli has acted in the most irresponsible manner, probably with an intention that the appellants are denied their right of protection, which otherwise would be made available. Based on this accusations levelled the Sessions Judge Sangli has recorded that prima facie case is made out and infact has rejected the Anticipatory Bail application by projecting the bar created under Section 18 of the Act.

This Court expect the officers of the police department to be responsible for such an act of wrongly invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, despite no accusations being levelled in the complaint.

The aforesaid act of the Investigating Officer whosoever has invoked the aforesaid provisions in C.R. No. 447 of 2022 registered with Kavthe Mahakal Police station shall be brought to the notice of the Superintendent of Police, Sangli and he shall circulate this order in all the police stations in Sangli district so that this conduct of invoking relevant sections, without any accusations to be found in the complaint, is not repeated.

8 In the aforesaid circumstances the interim order dated 1/12/2022, is made absolute.

The observations made above are prima in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the same.

(SMT. BHARATI DANGRE, J.)