

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1207 OF 2022**

Subhash Gangaram Patil

...Appellant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr.Ganesh Gole a/w Mr.Ateet Shirodkar i/by Mr.Kabul Singh
Labana Advocate for Appellant.

Mr. Ashish Ingle i/by Mr. Susmit Phatale for Respondent No.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D.NAIK, JJ.**DATE : 6th JULY 2023.**

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1. This is an Appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”). The appellant has challenged the order dated 21st November 2022 passed by learned Additional Sessions Judge, Kalyan rejecting the application for anticipatory bail preferred by the Appellant.

2. The case of the prosecution is as under:-

The informant belongs to Scheduled Caste. The landed plot bearing survey No. 70 situated at Patharli, Kalyan is property of Mahar Watan. The complainant and several other persons from the same community are

residing in the said area. The accused No.1 (Appellant) is also residing in the said area. There is dispute between the appellant and complainant's community about the aforesaid property. In the year 2016, the appellant had erected shed on this land. It was opposed by complainant and other members of the community. The appellant informed them that he would remove the shed latter and hand over the possession to them as and when required. The complainant and other members of community was performing functions in the said shed. In spite of informing appellant to remove the shed, he did not remove it. On 14th August 2022, the person from Gaikwadwadi erected iron poles at the said place to avoid encroachment by the accused. On 1st September 2022, the appellant/accused threatened complainant and told him to remove the poles. On 27th October 2022 at about 03:00 a.m., the brother of complainant had parked his car near the said spot. The appellant had parked his car behind the car of complainant's brother. It was not possible for complainant's brother to remove his car. He informed driver of the appellant/accused namely Gautam Lahane and Rajendra Kamble to remove car. They quarreled with complainant's brother. He gave call to control room. The appellant came to the spot. He assaulted complainant's brother. While the appellant/accused was assaulting complainant's brother, the complainant recorded video through his mobile phone and at that time the appellant and Gautam Lahane charged at him. The appellant assaulted

complainant with fist blow. The accused assaulted Somnath and brother of complainant. FIR was registered on 31st October 2022 for offences under Sections 323, 506 of Indian Penal Code and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act.

3. The appellant and the co-accused preferred an application for anticipatory bail before the Sessions Court. The said application was rejected vide order dated 21st November 2022.

4. The application preferred by accused Nos. 2 and 3 was allowed on the ground that they belong to Scheduled Caste. While rejecting the application of appellant it was observed that, it is specific case of informant that though disputed land is allotted and reserved for members of Scheduled Caste, he tried to encroach upon it and dispossess member of Scheduled Caste. Appellant is trying to encroach over it and dispossess the members of scheduled Caste and Scheduled Tribe from this land. The contention is supported by 7/12 extract and property card of the disputed land which suggest that the land was allotted for the houses of members of Scheduled Caste. The documents on record also suggest that on 16th January 2022 members of Schedule Caste lodged report with Tilak Nagar Police Station with specific allegation that the disputed land is for scheduled caste and they are being deprived of enjoyment of the land. On 2nd September 2022 the informant had lodged report with Police regarding encroachment over the land by appellant but no action was taken by police.

On 27th October 2022, the informant had brought to the notice of police incident of encroachment by appellant. However, police showed reluctance to register the FIR under the provisions of Atrocities Act. Subsequently, police registered FIR under Section 3(1)(x) of Atrocities Act which is not in existence as on today. This shows lapses on the part of police machinery in not taking allegations levelled by informant and his community members. The Court made reference to Section 3(2)(va) of the Atrocities Act and observed that, say filed by prosecution revealed that Sections 506, 323 of IPC as well as 143 and 147 of IPC were added in this crime. The schedule appended to the Atrocities Act includes all these sections. Section 506 provides punishment for criminal intimidation. As per Section 3(1)(f) of the Act, whoever, not being a member of Scheduled caste and Scheduled Tribes, wrongfully occupies or cultivates any land owned by or in the possession of or allotted to or notified by the Competent Authority to be allotted to a member of Scheduled Caste or Scheduled Tribe or gets such land transferred shall be punishable under Section 3(1)(g) of the Act. The said provision also provides punishment for wrongfully dispossessing a member of Scheduled Caste or Scheduled Tribes from his land or premises or interferes or interfering with the enjoyment of his rights, including forest land, over any land, by such member who does not belong to either Scheduled Caste or Scheduled Tribes. It was also noted that police did not invoke this provision despite grievance made by informant. Section 3(2)

(va) of the said Act is attracted against the appellant as there is prima facie case against appellant to that effect.

5. Learned Advocate for the appellant submitted that, there is delay in lodging the FIR. The complainant had approached the police on 27th October 2022 and lodged the complaint which was treated as N.C. complaint for offence under Sections 323, 504 and 506 of I.P.C.. The FIR was not lodged for offences under the Atrocities Act. The registration of FIR is afterthought. Agreement was executed on 3rd October 2006 between Boudha Yuvak Mitra Mandal, Patharli and M/s. Sai Enterprises which is the concerned of the appellant. In the said agreement, it was stated that, the property situated at Patharli bearing survey No.70(b) Hissa No. 9 was owned by Vitthal Pitambar Lakhmani and Ramesh Lakhmani and they had executed Development Agreement on 23rd December 2005 with M/s. Sai Enterprises. Respondent No.2 has started construction on the said property. The activities of the Trust are performed on the adjacent land. The Trust intends to construct the community hall but on account of financial constraint they could not to do so. On 18th September 2006, Trust had requested M/s. Sai Enterprises for providing hall for the community. Meeting was held on 22nd September 2006. M/s. Sai Enterprises had agreed to provide hall in newly constructed building admeasuring 200 sq. feet. Trust agreed to provide all the co-operation. The Trust had agreed that after executing the agreement, they would remove the board, flag and compound

from the said plot. Buddha Yuvak Mitra Mandal had issued consent letter dated 17th October 2013 for registering the gala situated in the newly constructed building. Thus, the appellant had right in the said property and there was no intention to dispossess the complainant's community from the said plot. The offences under the Atrocities Act are not made out. Bar under Section 18 of the Atrocities Act is not attracted. Learned Advocate for the applicant has relied upon the Judgment of Supreme Court in the case of Hitesh Verma Vs. The State of Uttarakhand and Anr. decided on 5th November 2020 passed in Criminal Appeal No. 707 of 2020.

6. Learned APP submitted that, the offence under the Atrocities Act as well as under the I.P.C. are made out. In view of Bar under Section 18 of the Atrocities Act, the application is not maintainable. The appellant is not entitled for anticipatory bail. There are specific allegations against the appellant in the FIR. The Assistant Commissioner of Police Dombivali Division has filed affidavit-in-reply. In 2016, the accused erected the shed in the said land. It is the Watan land which belongs to Mahar community. On objection raised by community, the accused promised that he would remove the shed. The appellant has attempted to encroach upon the land reserved for the people belonging to Scheduled Caste community. The CCTV footage shows that the accused has given blow using his hand on left rib of injured and also kicked him on his private part. 15 to 16 persons who are employees of accused are seen assaulting the informant and his brother

and one of them was carrying stick in his hand. The CCTV footage panchnama has been annexed to the affidavit-in-reply. The informant recorded the incident on his mobile. In the said video it appears that, the appellant was abusing and beating informant. Statements of injured informant, his brother and witnesses are recorded. Specific role is attributed to the appellant.

7. Learned Advocate for Respondent No.2 has opposed grant of any relief to the appellant. It is submitted that, specific role has been attributed to the appellant. Offence under the Atrocities Act are made out. Bar under Section 18 of the atrocities Act is attracted. The complainant had written letter to the police for taking on record CCTV footage.

8. Learned Advocate for Respondent No.2 has relied upon the decisions of the Supreme Court in the case of Hariram Bhambhi Vs. Satyanarayan and Anr. (2021) SCC Online SC 1010; Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors. (2012) 8 SCC 795; Shakuntla Devi Vs. Baljinder Singh, (2014) 15 SCC 521; Union of India Vs. State of Maharashtra and Ors. (Review Petition (Cri.) No. 228 of 2018; Prathvi Raj Chauhan Vs. Union of India & Ors. (2020) 4 SCC 727; National Campaign on Dalit Human Rights and Ors. Vs. Union of India and Ors. (2017) 2 SCC 432.

9. The 7/12 extract with regard to the subject property indicate that the land is reserved for mahar community. Assuming that, there was an

agreement dated 3rd October 2006, such property does not get transferred to another person. The respondent No.2 has filed affidavit-in-reply and placed on record the copies of extract 7/12 extract and property card of the property. The photographs of the spot are also on record. The FIR indicate that, in order to restrain the appellant from further encroaching in the property, community member had erected poles on the said property. Written complaint dated 11th September 2022 filed with Police Station. Although, the complainant had approached the police for lodging the FIR, N.C. complaint was registered on 27th October 2022. Respondent No.2 made an application on 31st October 2022 to the police requesting them to secure the CCTV footage of the spot. Respondent No.2 made an application on 1st November 2022 to Additional Commissioner of Police for recording his supplementary statement. The supplementary statement of the complainant was recorded on 3rd November 2022 and he was called at police station on 18th November 2022 for identifying CCTV footage. The agreement dated 3rd October 2006 relied upon by appellant is apparently neither registered nor notarised. The decision relied upon by learned Advocate for appellant is not applicable to the fact of the present case. The law relating to maintainability of the application under Section 438 of Cr.P.C. and in view of bar under Section 18 of the Atrocities Act, the law is well settled in the various decisions placed for consideration by learned Advocate for Respondent No.2. Supplementary statement of Respondent

No.2 was recorded on 3rd November 2022. He has provided the details of the incident. Thereafter, another statement of Respondent No.2 was recorded on 18th November 2022. Both statements refer to assault by the appellant and his associates. The statement dated 18th November 2022 refer to abuses by the appellant on his caste. Reference is also made to the incident of assault by the appellant on the private part of the complainant. Apparently, FIR was registered under Section 143, 147, 149, 201, 323, 506 read with 34 of the Indian Penal Code and Section 3(2)(va) of Atrocities Act were invoked. In the light of this case even provision of Section 3(1)(f) (g) of the Atrocities Act are also attracted. I have perused the panchnama dated 5th November 2022 relating to CCTV footage it refers to the role played by appellant and his associates. It refers to the assault by the appellant upon the complainant. Recording of CCTV footage corroborates the version of complainant. Apart from the offence of Atrocities Act, offences under the IPC as stated above are attracted against the appellant, thereby Section 3(2)(va) of Atrocities Act is also attracted. In these circumstances and in view of bar under Section 18 of the Atrocities Act, the appellant is not entitled for anticipatory bail.

ORDER

- (i) Criminal Appeal No.1207 of 2022 is rejected.

(PRAKASH D. NAIK, J.)