

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1118 OF 2024

Farman Ismail Kavlekar

...Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr. Ashutosh M. Kulkarni, Senior Advocate i/b. Mr. Sachin Hande with Ms. Poonam Pal for the Appellant.

Ms. Shilpa G. Talhar, APP for Respondent No.1-State.

Mr. Rajdeep Lahiri i/b. M/s. Arihant Associates for Respondent No.2.

Mr. M.M. Jadhav, HC, SDPO Office, Khed, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 21 October 2024.

P.C. :

1. This is an appeal filed under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging the order dated 4 October 2024 passed by the learned Additional Sessions Judge, Khed, District-Ratnagiri, for the offences punishable under Sections 352, 351(2) of Bhartiya Nyay Sanhita (**BNS**) and Sections 3(1)(r) and 3(1)(s) of the SCST Act.

2. The prosecution story, in brief is that Complainant and the Appellant are serving in Modern High School, Dabhol, Taluka-Dapoli. It is the contention of the Complainant that Appellant has grudge against the Complainant on account of Complainant being senior to him. On 29 August 2024 Complainant was summoned in the office of Head Mistress and upon reaching the cabin, Complainant noticed that the Appellant was already present in the cabin of Head Mistress and saw that Appellant was saying something about Complainant to Head Mistress. It appears that in addition to Head Mistress few other staff members -Sadik Mohammedhusain Musa, Dilip Harishchandra Karjavkar, Vasim Ibrahim Dalvi, etc. were also present in the cabin. When the Complainant objected about the complaints about him with the Head Mistress, Appellant uttered following words :-

"ये महारड्या, बुद्ध तू मला काय शिकवणार तुझी लायकी व जात माझ्या पायाखाली आहे"

There are further allegations of Appellant abusing and threatening the Complainant. Additionally, it appears that there is an allegation of Appellant threatening Incharge -President of the Management also. Accordingly, FIR came to be lodged at the instance of the Complainant on 4 September 2024 under the provisions of 3(1)(r) and 3(1)(s) of the SCST Act and Sections 351(2) and 352 of the BNS, 2023.

3. The application filed by the Appellant for grant of pre-arrest bail was rejected by the learned Sessions Judge on 4 October 2024, which is subject matter of challenge in the present Appeal.

4. I have heard Mr. Kulkarni, the learned senior counsel appearing for the Appellant, who would submit that the incident had occurred inside the cabin of Head Mistress and therefore it cannot be stated that utterances are made in public view. He would further submit that perusal of the FIR would indicate that concerned utterances are not made with a view to humiliate the caste of the Complainant. He would submit that this is a pure seniority dispute between the Appellant and the incharge president, who has set up the complainant for implication of the Appellant in a false case. Mr. Kulkarni would highlight the delay in lodging of the FIR alleging that incident occurred on 29 August 2024 whereas the FIR is lodged on 4 September 2024. He would also draw my attention to various complaints lodged by Appellant against the Complainant dated 30 August 2024, 2 September 2024, etc. He would submit that case merely involves dispute between teacher and management in which offences of SCST Act are deliberately added for the purpose of ensuring the arrest of the Appellant.

5. The Appeal is opposed by Ms. Talhar, the learned APP appearing for Respondent No.1-State. She would place on record statements of the witnesses present at the time of incident to demonstrate that the Appellant made caste-based utterances towards the Complainant on 29 August 2024. She would submit that all the ingredients of Sections 3(1)(r) and 3(1)(s) of the SCST Act are clearly made out. She would pray for dismissal of the Appeal.

6. The Appeal is also opposed by Mr. Lahiri, the learned counsel appearing for Respondent No.2-Complainant. He would draw my attention to the affidavit-in-reply filed on behalf of Respondent

No.2. He would also submit that all the ingredients of offences under the provisions of Sections 3(1)(r) and 3(1)(s) are clearly made out and that therefore bar under Section 18 of the SCST Act would apply and therefore, the Appellant cannot be granted pre-arrest bail. He would pray for dismissal of the Appeal.

7. I have considered the submissions canvassed by the learned counsel appearing for the parties and also perused the records of the case.

8. It is seen that in addition to the offences under the BNS Appellant is also charged with provisions of Sections 3(1)(r) and 3(1)(s) of the SCST Act, which provide thus:-

Section 3. Punishments for offences of atrocities.

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

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

9. For attracting offence under the provisions of Sections 3(1)(r) and 3(1)(s) of the SCST Act, it needs to be demonstrated that there is intentional insult or intimidation with intention to humiliate a member of scheduled caste or scheduled tribe and that such an act should take place within public view. Similarly for establishing

offence under Section 3(1)(s), what needs to be proved is abusing a member of scheduled castes by caste name in any place within public view. In the present case, there is no dispute to the position that incident has happened in presence of Head Mistress in her cabin where other teachers and staff members were also present. I have gone through the statements of the witnesses and it appears that witnesses-Sadik Mohammedhusain Musa, Dilip Harishchandra Karjavkar and Smt. Dilashad Sikandar Mulla have given statements reflecting utterances made by the Appellant. Only one witness-Vasim Ibrahim Dalvi has not supported the theory of caste-based utterances on the ground that he was unwell and was unable to pay attention to exact conversation.

10. In my view, therefore, intentional insult /intimidation with intention to humiliate the Complainant as well as abusing him in public view appears to be made out. Since the ingredients of Sections 3(1)(r) and 3(1)(s) are prima facie made out, bar under Section 18 of the SCST Act would clearly apply in the present case.

11. So far as delay in lodging of the FIR is concerned, it appears that complaint was lodged on 29 August 2024 itself. Mere existence of seniority dispute either between Complainant and Appellant or between Appellant or Incharge-president would not be a ground for granting anticipatory bail when all ingredients of offence under the provisions of Sections 3(1)(r) and 3(1)(s) are prima facie made out.

12. I am therefore of the view that learned Judge has rightly rejected the application for anticipatory bail. Appeal is devoid of merits and is dismissed.

13. It is clarified that the observations made herein are prima facie and shall not come in the way of Trial Court or Special Court while deciding the application for bail or for deciding the case finally.

[SANDEEP V. MARNE, J.]