

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 268 OF 2024

Surendra Bharat Choudhari & Anr.

... Appellants

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. Ashok M. Saraogi & Mr. Siddharth D. Singh for the Appellants.

Mr. Ashok R. Metkari, APP for the Respondent No. 1-State.

Mr. Prasanna K. Shahane a/w Mr. Ajit Masal for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATE : 29 JULY 2024.

P.C. :

1) This Appeal is filed under provisions of 14-A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**), challenging the Order dated 17 February 2024 passed by Additional Sessions Judge, Borivali rejecting the application filed by the Appellants seeking pre-arrest bail in connection with Crime Register No. 124 of 2023 registered with Bangur Nagar Police Station for offences punishable under Sections 504 and 506 read with Section 34 of Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s) and 3(1)(u) of the SC & SC Act.

2) I have heard Mr. Saraogi the learned counsel appearing for Appellants, Mr. Shah the learned counsel appearing for Respondent No. 2 and Mr. Metkari the learned APP appearing for Respondent No.1-State. I have also gone through the impugned order, F.I.R and the relevant documents produced alongwith the Appeal.

3) Perusal of the F.I.R. would show that the F.I.R. is lodged in respect of two distinct incidents. The first incident is in respect of conduct in issuing letter dated 14 December 2018 to Respondent No. 2 making reference to the Complainant's caste and refusing to appoint him on any post in the Society. The second alleged incident is of 9 January 2023 where the Appellants apparently hurled caste-based abuses to the Complainant.

4) So far as the first incident of 14 December 2018 is concerned, undoubtedly there is delay of more than five years in lodging the F.I.R.

5) So far as the second incident of 9 January 2023 is concerned, it is alleged in the F.I.R that the caste-based abuses were made by Appellants, when several residents had gathered on account of collapsing of roof of one of the members. Statement of Shri. Hitendra Maganlal Panchal is sought to be relied upon, which does not refer to any incident of collapse of roof, but the said witness said that the incident occurred when he was sitting in tin shed. Even with regard to the statement of Smt. Gita Surendra Desai, her version does not appear to be consistent with the F.I.R statement. More importantly, said witness Gita Surendra Desai appears to have lodged an

independent N.C. on 9 January 2023, which does not make any reference to any caste-based abusing on the part of the Appellants.

6) Perusal of records placed before me would undoubtedly indicate bitter dispute between the members with regard to redevelopment of the Society's building. The investigations into the crime are already complete and the chargesheet has been filed.

7) This Court, while granting interim protection to the Appellants made following observations in the Order dated 15 March 2024 :

"3. The dispute is over the redevelopment of the building. Even according to the complainant he was desirous of contesting the elections and getting elected as a member of the Managing Committee. It is the allegation that the appellant and other members abused him in the name of caste when some portion of the slab of the building collapsed. My attention is invited to the statement of the independent witnesses where the allegations about caste based abuses is not consistent with the complainant. So far as the abuses are concerned, learned counsel for the appellant submitted that the possibility of false implication only because the complainant is aggrieved that he was not inducted as a member of the Managing Committee cannot be ruled out."

8) In my view therefore, *prima facie* there is no material for accusing Appellants in respect of any offences under the S.C. & S.T. Act. Therefore, bar under section provisions of Section 18 of the SC & ST Act would not be attracted in the present case. Therefore, the interim protection granted in Appellants' favour deserves to be made absolute.

9) The Appeal accordingly succeeds and I proceed to pass the following order:

- a) The Order dated 17 February 2024 passed by the Additional Sessions Judge, Borivali is set aside.
- b) Interim protection granted in favour of the Appellants on 15 March 2024 is made absolute.
- (c) Appellants shall attend Trial Court regularly unless exempted from personal appearance.
- (d) Appellants shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.
- (e) The Appellants shall inform their latest place of residence and mobile contact numbers and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.
- 10) With the above directions, the Appeal is disposed of.

[SANDEEP V. MARNE, J.]