

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 277 OF 2024

Mahesh Siddharam Trigule

... **Appellant**

Versus

State of Maharashtra And Anr

... **Respondents**

Mr. Ritesh Thobde *a/w Ms. Ankita Pramod Rai for Appellant.*

Ms. Rashmi S. Tendulkar, APP *for Respondent No.1 / State.*

Mr. Vijay R. Mahanoor, PC, Akkalkot Police Station is present.

CORAM : SANDEEP V. MARNE, J.

DATE : 14 OCTOBER 2024.

P.C. :

1) This is an Appeal filed under provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (**SC & ST Act**) challenging the Order dated 1 March 2024 passed by the learned Special Judge, Solapur rejecting the application for grant of pre-arrest bail in connection with C.R. No. 18 of 2024 registered with Akkalkot North Police Station for offences punishable under Sections 7(1)(d) of Protection of Civil Rights Act, 1955 and under Section 3(1)(r) of the SC & ST Act.

2) I have heard Mr. Thobde, the learned counsel appearing for the Appellant. He would submit that the Appellant is already on interim protection granted by this Court by Order dated 15 March 2024. While granting interim protection, this Court made following *prima facie* observations:

"3. The date of the alleged incident is 15.01.2024. It is the allegation that on occasion of annual religious ceremony at Mahadev Temple where the cultural programme was organized, the complainant along with the members of his community were watching the cultural programme. At that time, one person who according to the complainant is the present applicant took the sword from the player taking part in the cultural programme, and with an intention to humiliate his community, made a remark in Kannad Language which is an abuse in the name of his caste. Learned counsel for the applicant submitted that there is discrepancy in the name of the appellant taken by the complainant."

3) The prosecution story, in brief, is that on 15 January 2024, the Complainant belongs to Mahar (scheduled caste) community. He was watching Virbhadrha program in front of Mahadev Mandir in the village along with other persons of Mahar community, who are named in the FIR. Virbhadrha program *inter alia* involves performance of martial arts with use of weapons. While the Complainant was watching Virbhadrha program along with persons named in the FIR, Appellant suddenly took a sword from one of the performers and made following utterances in Kannada language (reproduced in FIR in Devnagari script) towards Appellant and other names persons:

ताईगे बय्यावा व्हल्या, तंदेगे बय्यावा व्हल्या, नडीयो ह्यण्णीगे अड्डु बरांव व्हल्या, तन्न ससीये बिट्टु परस्त्री मोहदाग इरावां 'व्हल्या, व्हलसा तिनाव्यां व्हल्या, व्हल्यारु व्हलगेरीगे इरबकु हेळीदर्या, सुळीमकळीगे हिंदु तंदु करीयाकत्तीम्यागे कुंडरसरी उरयल्ला मिरवणुकी तगदीदा"

4) While granting interim protection in favour of the Appellant, this Court was apparently not made known the exact meaning and translation of the above utterances in Kannada Language. The learned APP has placed on record supplementary statement of the Complainant recorded on 26 January 2024, which contains translation in Marathi of the above words in Kannada. The Marathi translation as reflected in the supplementary statement reads thus:

"आईला शिव्या देणारा महार, वडीलाना शिव्या देणारा महार, नांदणारे बाईच्या आडवे येणारा महार, स्वतःच्या सुनेला सोडून परस्त्रीला मोहामध्ये पडणारा महार, घाण खाणारा महार, महारा नी महारवाड्यातच राहीले पाहीजे छिनालच्याना पकडून आणून काळ्या गाढवावर बसवून पुर्ण गावभर मिरवणूक काढली पाहीजे,"

5) The above translation would undoubtedly show that the utterances are not only derogatory but are aimed at humiliating the entire community. The utterances are allegedly made by Appellant while looking at Appellant and other Mahar community persons and are thus addressed towards them. There is a specific allegation in the FIR statement that the above quoted words were uttered by the Appellant with intention of humiliating the Complainant and others belonging to Mahar community. In my view, therefore, all ingredients of Section 3(1)(r) of the SC & ST Act are *prima facie* satisfied in the present case. Section 3(1)(r) of the SC & ST Act reads thus:

(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;

6) In the present case, the utterances are made towards Complainant and other persons belonging to Mahar community and there is specific allegation in the FIR statement that the intention was

to humiliate members of Mahar community while making the above quoted utterances. Mr. Thobde would rely upon judgment of this Court in ***The State of Maharashtra Vs. Bhanu Kanu Hatankar***¹ in which this Court has quoted judgment of Delhi High Court in ***Ms. Gayatri @ Apurna Singh Vs. State and Another***² and has held in paragraph 8 and 9 as under:

8. The High Court of Delhi in ***Ms. Gayatri @ Apurna Singh Vs. State and Another*** has relied upon judgment of the Division Bench of Delhi High Court in ***D.P. Vats Vs. State*** which held that the word “a member” occurring in Section 3 (1) (x) means an individual member and not against a group of members or the crowd or the public in general though these may comprise of SC/ST. Paragraph Nos. 31 to 34 of the said judgment reads as under ;

31. Section 3(1)(x), though quoted herein above in para 8, may be once again set out for ready reference, which reads as follows:

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

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine." (emphasis supplied)

32. The ingredients of the aforesaid offence were culled out in Daya Bhatnagar (supra) as follows:

"15. Basic ingredients for the offence under Clause (x) of Subsection (1) of Section 3 of the Act, revealed through the bare reading of this section are as follows: (a) there should be intentional insult or intimidation by a person, who is not a member of SC or ST; (b) the insult must be with an intent to humiliate the member of the SC or ST. As the intent to humiliate is necessary, it follows that the accused must have knowledge or awareness that the victim belongs to the SC or ST. This can be inferred even from long association; and (c) the incident must occur in any place within the public view. There cannot be any dispute that the offence can be committed at any place whether it is a private place or a "public view" as long as it is within the "public view". The requirement of "public view" can be satisfied even in a private place, where the public is present... ..". (Emphasis supplied)

33. In D.P. Vats (supra), the Division Bench examined whether the uncontroverted allegations made in the FIR in that case - even if taken on face value, would constitute the alleged offence under Section

1 Criminal Appeal No. 346 of 2009 decided on 5 February 2021

2 2018 ALL MR (Cri) 95

3 of the SC/ST Act, or for that matter, under the IPC. The ingredients of Section 3(1)(x) and Section 3(1)(xi) of the SC/ST Act were taken note of by the Division Bench in the following words:

"9.

(a) A person making the alleged derogatory utterance must know that the person whom he was intentionally insulting, intimidating with intent to humiliate him was a member of SC/ST.

(b) Such intentional insult, intimidation or humiliation must be directed against and made to a member of SC/ST and for being member of SC/ST.

(c) The utterance must be made at any place within "public view"." (emphasis supplied) 34. The Division Bench observed in paragraphs 10, 12 and 13 of this decision as follows:

"10. In the present case, we are concerned with the first two ingredients and it emerges therefrom that a case would fall under the first sub-section only when the person making the derogatory utterance knows that the person whom he was intentionally insulting or intimidating or humiliating in the name of the caste was a member of SC or ST. If he had no knowledge of his caste status, the offence under sub-section (1)(x) would not be constituted. Similarly if his utterance was not directed against a member of SC/ST in contradistinction to a group of members of SC/ST or the community as a whole, it would not again make out an offence under sub-section (1)

(x). The word "a member" occurring in the provision assumes crucial importance in this context and leaves no scope for doubt that it must be directed against the individual member and not against a group of members or the crowd or the public in general though these may comprise of SC/ST. If it is made in generalized terms against all and sundry and is not individual specific in the name of caste, it would not make out an offence under the first sub-section, the rationale being that intentional insult, intimidation and humiliation made in the name of caste was liable to be caused to a person and in this case to an individual member of SC/ST and not to a group of members or public in general.

11. x x x x x x x x

12. That being so, we hold that derogatory utterance made in generalized terms in a public gathering, even in the name of caste would not attract an offence u/s 3(1)(x) unless it was directed against an individual member of the caste/Tribe and the person making it knew that the victim belonged to SC/ST. For sub-section (xi) also, it was an essential requirement that the person using force or assaulting a women of SC/ST must know that she belonged to that caste/Tribe.

13. It does not, therefore, appear to us that uncontroverted allegations contained in FIR No.678/01, even if taken on face value, would attract an offence under sub-sections (1)(x) or (1)(xi) of SC/ST (POA) Act 1989. This is so because petitioner had made the utterance "CHUDE

CHAMARON TUMHE MAAR DUNGA MAIN TUMSE NAHIN DARTA" in generalised terms. It was not directed against any particular member of SC/ST to attract the offence u/s 3(1)(x) of the Act. Nor was it shown or known whether he knew anyone in the group or crowd to be a member of SC or ST to whom the utterance could be linked. The same holds true of the alleged offence under the other sub-section. The allegations in the FIR nowhere disclose that petitioner had assaulted or used force against any woman in the gathering whom he knew to be belonging to SC/ST. That is not to suggest that allegations made in the FIR had to state all the ingredients of the offence. But the allegations were required to lay at least the factual foundation for attracting the offence under section 3(1)(x) and (xi) which is lacking in the present case." (Emphasis supplied)

9. In the application (Exh.13) and complaint (Exh.14) filed by P.W.1, P.W. 1 complainant alleges that accused committed insult of Bouddha community and Dr. Babasaheb Ambedkar by using derogatory remarks. There he did not allege his own insult or expressed grievance about individual insult. From the contents of the application as well as complaint it is clearly seen that perception of the complainant or grievance of the complainant was that accused committed insult of Dr. Babasaheb Ambedkar as well as Bouddha community by uttering derogatory and insulting remarks vis-a-vis Dr. Babasaheb Ambedkar.

7) In **Ms. Gayatri @ Apurna Singh Vs. State and Another**, Delhi High Court has relied upon judgment of its Division Bench in **D. P Vats Vs. State**³ in which it is held that the word "a member" occurring in Section 3(1)(x) means an individual member and a group of members or the crowd or the public in general though these may comprise of SC/ST.

8) Relying on judgment of this Court in **Bhanu Kanu Hatankar**, Mr. Thobde has contended that for attracting offence under Section 3(1)(r) of the SC & ST Act, it is incumbent that the humiliation must be caused to an individual member of SC/ST community and not to a group of members or public in general. In my view, the ratio of the judgment in **Bhanu Kanu Hatankar** would *prima facie* not apply to

³ 2002 (99) DLT 167

the present case. In that case, the allegations involved insult of Boudh community and towards Dr. Babasaheb Aambedkar by using derogatory remarks. The case did not involve any intention of humiliating a particular person as such. In the present case, however, there is a direct allegation of the Appellant uttering the above quoted words with intention of humiliating the Complainant and other members of the Mahar community. In my view, therefore, all ingredients of Section 3(1)(r) of SC & ST Act are *prima facie* made out and therefore bar under provisions of Section 18 of SC & ST Act would clearly be attracted. In my view, this is not a fit case for grant of anticipatory bail to the Appellant in the light provisions of Section 18 of the SC & ST Act.

9) I therefore do not find any error on the part of the learned Special Judge in rejecting the application filed by the Appellant. Appeal, being devoid of merits, is **rejected**.

[SANDEEP V. MARNE, J.]