



(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.766 OF 2023

1. Ravindra s/o Baburao Pardhi,
Aged about 48 Years,
Occupation : Private Work,
2. Shatrughan S/o Baburao Pardhi,
Aged about 33 Years,
Occupation : Private Work,
3. Pradip S/o Baburao Pardhi,
Aged about 30 Years,
Occupation : Private Work,
II are R/o Plot No.4/1, Ward No.3,
Near Water Tank, Khasala,
Taluka – Kamptee.

..... APPELLANTS

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Kapil Nagar,
District Nagpur.
2. Sudhir S/o Ramkishan Jambhulkar,
Aged about 36 Years, Occupation : Business,
R/o. Plot No.246, Lende Nagar,
Bhilgaon, Taluka Kamptee,
District Nagpur.

.... RESPONDENTS

Mr. R. M. Daga, Advocate with Mr. A. S. Band, Advocate for appellants.
Mrs. Sneha Dhote, APP for respondent No.1/State.
Mr. Santosh Chavhan, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 07.02.2024
PRONOUNCED : 14.02.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. The Appellants have challenged the order passed by the Additional Sessions Judge – 9 and Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in Criminal Bail Application No.3140/2023 by which, the application for anticipatory bail is rejected on 05.12.2023.

4. The accusation against the present appellants is on the basis of report lodged by Sudhir Ramkrushna Jambhulkar alleging that he belongs to the Mahar Community and acquainted with the present appellants, as they are residents of Khasala. On 24.11.2023 at about 9.15 a.m. to 9.30 a.m., he was standing in front of his Hardware shop, at the relevant time, appellant No.1 Ravindra Pardhi came there and abused him by saying “तू माझी विनाकारण बदनामी करतोस, तूला जास्त माज आला आहे, तूम्ही तिन चार घराचे महार माझे काही उपडू नाही शकत, तूला जिवानिशी मारून टाकीन, साल्या मादरचोदा तू स्वतःला काय समजतो” and thereafter they went in a Pan Stall and again returned back along with his brother appellant Nos.2 and 3. At the relevant time, appellant No.1 was holding a fiber log and appellant No.3 was holding a wooden log. They all have assaulted him by

(3)

means of weapons due to which, he sustained the injuries on his head. At the relevant time witnesses namely, Pramod Nagbhide, Mangesh Kuthekar, Sandip Sahare were present. He was immediately shifted in the hospital. On the basis of said report, police have registered the crime against the present appellants.

5. After registration of the crime, the appellants filed Criminal Bail Application No.3140/2023 for grant of anticipatory bail. The learned trial Court observed that the appellants have abused the informant on his caste and also beaten him and in view of the bar under Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to 'the Act of 1989'), rejected the application.

6. Being aggrieved and dissatisfied with the order passed by the learned Special Court, the appellants have preferred this appeal on the ground that the learned Special Court had not considered that the provisions of Atrocities Act are not applicable, as there is no whisper in the FIR showing that appellants have abused him on his caste. Mere reference of the caste is not sufficient to attract the provisions as far as the injuries are concerned, the informant has sustained simple injury and after treatment, he was discharged from the hospital. The custodial interrogation of the present appellants is

(4)

not required. The order passed by the learned trial Court is erroneous and liable to be set aside.

7. Heard learned Counsel Mr. R. M. Daga for the appellants. He reiterated the contentions and submitted that even taking the allegation as it is, no offence is made out under Sections 3(1)(r), 3(1)(s) and 3(2)(va) against the present appellants, as there is no whisper in the FIR the present appellants have abused the informant on his caste. To attract the relevant provisions there must be intentional insult with intent to humiliate a member of Scheduled Castes or Scheduled Tribes in any place within a public view. Mere calling a person by his caste name may amount to insult or abused to him but it cannot be said to be with intent to humiliate such person. The injury sustained by the informant are also in simple in nature and custodial interrogation of the present appellants is not required.

8. Learned APP Ms. Dhote for the State opposed the application on the ground that the informant has sustained the injury on his head. There is a specific allegation against the present appellants that they have abused him by referring his caste which is sufficient to attract the provisions of the Atrocities Act. The informant has sustained the injury in the said incident which is witnessed by the independent witnesses namely, Pramod Nagbhide and others, who have also supported the allegations that the present

(5)

appellants have abused the informant. Thus, a *prima facie* case is made out against the present appellants. In view of that, the appeal deserves to be dismissed.

9. Learned Counsel Mr. Santosh Chavhan for the respondent No.2 reiterated the said contentions and submitted that the offence is made out against the present appellants. The informant has received a grievous injury. The bar under Section 18-A of the Act of 1989 is attracted, therefore, the appeal is devoid of merits and liable to be dismissed.

10. On hearing the learned Counsel for the appellants, learned Counsel for the respondent No.2 and the learned APP for the State. The point of controversy in the present appeal is on the question of pre-arrest bail by exercising power under Section 438 of Cr. P.C. The appellants preferred the present appeal by resorting the remedy under Section 14-A (2) of the Act of 1989 and submitted that as *prima facie* case is not made out hence, the bar under Section 18 of the Act of 1989, is not attracted.

11. The allegation against the present appellants is that on 24.11.2023 when the informant was standing in front of his shop, the present appellants came there holding weapons in their hands and assaulted and abused him.

(6)

12. The said allegations are denied by the present appellants and submitted that due to the previous dispute, they are falsely implicated in the alleged offence. It is further alleged that the informant was humiliated by the present appellants by abusing him on his caste. Whereas, the learned Counsel for the appellants submitted that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act.

13. I have given thoughtful consideration to the rival submissions of both the parties and also perused the various decisions which dealt with this issue. This Court in the case of **Ratnakala Martandrao Mohite v. The State of Maharashtra & Anr.** reported in **2020 ALL MR (Cri) 334** and **Navnath s/o. Dalsing Rathod @ Aade and others vs. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another in Criminal Appeal No.968 of 2018 decided on 25.04.2019**, in which the scope of Section 18 and applicability is considered. The decisions relied upon on the judgment of **Kiran Madhukar Ingle Vs. State of Maharashtra and another** reported in **2019 All MR (Cri.) 2825** which dealt with the issue of applicability of Section 18 of the Act of 1989 elaborately and held that the provisions of Section 18 as well as newly amended Section 18-A of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the

(7)

concerned Court from examination of the allegations made in the FIR on its face value to determine whether prima facie case is made out or not?

14. In paragraphs No.13 and 15 of the said decision it is held that the Court of Sessions or High Court can entertain the application for pre-arrest bail to ascertain its maintainability. The law does not permit to reject the application for anticipatory bail merely because the case has been registered under Section 3 of the Act of 1989. But, it is incumbent on the part of the Court to examine as to whether the applicant at all is a fit person to be treated as accused of the crime registered under the Act of 1989. Section 18 of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint. When the Court is held competent to enter into scrutiny of the allegations to determine whether the person can be treated as accused of commission of offence under the Act of 1989, then question would arise as to what extent the Court would be justified to examine material to determine the prima facie case against him. It is further held in paragraph 15 that the exposition of law as referred above unequivocally pointer to the inference that the application for anticipatory bail can be entertained only on the ground of inapplicability of the provisions of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and

(8)

not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under Section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law.

15. In **Vilas Pandurang Pawar and another Vs. State of Maharashtra and others** reported in **2012 ALL MR (Cri.) 3743 (S.C.)**, wherein the Hon'ble Apex Court reiterated the similar principle of law and observed that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of Act 1989, unless it prima facie finds that such an offence is made out. Thus, the principles underlying is that the application under Section 438 of Cr.P.C. needs to be considered for ascertaining whether there is a material to make out prima facie case for offence punishable under the Act of 1989.

16. After perusal of the FIR lodged against the present appellants *prima facie* reveals that the allegation against the present appellants is that they abused the informant on his caste. The basic

(9)

ingredient of Section 3(1)(r)(s) are that there must be “intentional insults” with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Merely calling a person by his caste though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

17. The allegations against the present appellants are that when the informant was standing outside his shop, he was abused and insulted by the present appellants. The Investigating Officer has recorded the statements of the independent witnesses, who have supported the contentions that the informant was abused and assaulted by the present appellants. To attract the provision it is alleged that the present appellants have referred him by his caste. From the various judicial decisions it is evident that application under Section 438 of the Cr.P.C. for the relief of anticipatory bail can be entertained only on the ground of inapplicability of the provisions of the Act of 1989 and it would be verifiable only after perusal of recitals of FIR or complaint itself and not beyond that. It is the rule that once it is gathered from the FIR that the appellants are the accused of committing of offence as prescribed under Section 3(1)(r)(s) or 3(1)(w)(ii) of the Act, the bar under Section 18-A of the Act of 1989 would come into operation against them. If the contents of FIR do not constitute ingredients of offence under the Act of 1989, there

would not be any embargo on statutory bar in grafted under Section 18 or 18A of Act of 1989. It is not permissible for the Court to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of the complainant.

18. Taking into consideration overall the legal principles and the facts of the present case it reveals that the only allegation against the present appellants is that they have called the informant by referring his caste. Merely calling a person by his caste though may amount to insult by abuse to him, but it cannot be said to be with intent to humiliate such person. From the recitals of the FIR also it reveals that at the relevant time, the informant was standing outside the shop and present appellants came there and referred his caste and thereafter assaulted him. The medical certificate of the informant shows that in the alleged incident he has sustained the simple injuries and after treatment he was discharged from the hospital. As far as the application of the bar under Section 18 or 18-A is concerned, it is open to the Court to find out by looking to the FIR of the case itself as to whether prima facie case is made out against the present appellants. The circumstances show that there was a previous dispute between the informant and the present appellants and from the allegation it reveals that the present appellants have referred his caste, but the recitals of the FIR nowhere

(11)

show that he was abused on the caste. There are no other circumstances incriminating in nature on record to point out intentional insult or intimidation with intent to humiliate the informant within public view by the appellants.

19. Thus, considering the entire allegations and considering the fact that the informant has sustained the simple injury and discharged from the hospital. There is no whisper in the FIR to show that the informant was abused on his caste. Thus, the *prima facie* case was not made out to attract the provisions of the Atrocities Act.

20. In **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727**, wherein also the Hon'ble Apex Court held that grant of anticipatory bail under Section 438 Cr.PC. is barred in respect of offences under the 1989 Act. However, where *prima facie* case not made out anticipatory bail can be granted in appropriate circumstances, with a cautious exercises of power. Sections 18 and 18-A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating the *prima facie* case, reappraisal of the evidence is not required.

21. Thus, considering the overall material, the bar under Section 18-A of the Act of 1989 is not attracted. The observation of the learned trial Court that a *prima facie* case is made out to attract

(12)

the provisions is erroneous. In view of that, appeal deserves to be allowed. Hence, I proceed to pas following order.

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 05/12/2023 rejecting the application for anticipatory bail in Criminal Bail Application No.3140/2023 is quashed and set aside.
- (iii) The appellant No.(1) **Ravindra s/o Baburao Pardhi**, No.(2) **Shatrughan S/o Baburao Pardhi** and No.(3) **Pradip S/o Baburao Pardhi** are released on anticipatory bail in the event of their arrest in connection with Crime No.526/2023 registered with Police Station, Kapil Nagar, Nagpur, District Nagpur for the offences punishable under Sections 294, 324, 341, 504 and 506(2) of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- (iv) The appellants shall attend concerned Police Station once in a week on Sunday in between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.
- (v) The appellants shall produce the incriminating weapons fiber log and wooden log and the period of production be considered as their custody for the purpose of Section 27 of the Indian Evidence Act.
- (vi) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(13)

22. The learned trial Court shall not influence by any observations which is *prima facie* in nature while dealing with the trial.

The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)