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

CRIMINAL APPEAL NO.810 OF 2023

1. Keshav s/o Ganpat Kakade,
Aged 63 years, Occu. Agriculturist,
2. Raju s/o Keshav Kakade,
Aged about 40 years,
Occu. Agriculturist.
3. Vijay s/o Keshav Kakade,
Aged about 35 years,
Occupation : Driver,
All R/o. Toe, Tah. and
District – Washim.

..... APPELLANTS

// VERSUS //

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Washim (Rural),
District -- Washim.
- 2) Ganesh S/o Dhondu Ingle,
Aged about 30 Years,
Occupation : Agriculturist,
R/o Toe, Tah. and Distt – Washim.

.... RESPONDENTS

Mr. R. N. Ghuge, Advocate for appellants.
Mr. A. R. Chutke, APP for respondent No.1/State.
Mr. B. D. Khandare, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17.01.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

(2)

3. The present appeal is preferred by the appellants against the order passed by the Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, by which anticipatory bail application of the appellants is rejected in Misc. Criminal Bail Application No.403/2023.

4. The appellants are prosecuted on the basis of report lodged by the informant Ganesh Dhondú Ingale vide Crime No. 505/2023 for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the said Act' for short), registered with Washim Rural Police Station.

5. As the appellants were apprehending arrest at the hands of police, they approached to the Special Court for grant of bail in the event of their arrest. The learned trial Court has rejected the application, considering there is a bar under Section 18 of the said Act.

6. Being aggrieved and dissatisfied with the said order, present appeal is preferred on the ground that learned trial Court has not considered that there was previous dispute on account of boundaries of the agricultural lands, initially also the informant has

(3)

lodged the report which was registered as NC report. Being aggrieved with the same, the informant has approached to the District Court and filed an application under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) but the District Court by passing order it is observed that on perusal of the report given to the police it reveals, there is no whisper about the abuses in respect of the caste, on the contrary, there appears to be civil dispute and damaging the boundary between the field and, therefore, police have rightly registered the offence and rejected the application. The said order of the learned Additional Sessions Judge, Washim was not challenged at the relevant time. It is further contention of the appellants that now present FIR is lodged on the basis of report on 29.11.2023, prior to that complainant approached to the police and his statement was recorded but no cognizance was taken therefore, complainant approached to the Higher Authority and in view of the observations by the Commission, which is constituted for the Scheduled Castes and Scheduled Tribes, the FIR was registered. It is further contended that in the first statement dated 16.07.2023 there was only allegation against the appellant No.1, but subsequently while lodging the report, general allegation is made against all the appellants. Thus, the statement of the informant before the police Authority are not consistent. Moreover, mere reference of the caste is not sufficient to

(4)

attract the provisions of the said Act. The order passed by the learned Special Court is erroneous and liable to be set aside.

7. Learned Counsel for the appellants reiterated the said contentions and submitted that there is no dispute that since long the civil disputes are pending between the present appellants and the informant on account of boundary. In the year 2017 also, the present complainant filed a report with the Police Station dated 02.06.2017 on the basis of said report, police have registered the offence, which is a non-cognizable offence under Sections 504 and 506 read with Section 34 of the Indian Penal Code. Being aggrieved with the same, the informant approached to the District and Sessions Court, Washim by filing application under Section 156(3) of the Cr. P.C. The learned Sessions Court considered the report of the applicant lodged by him on 02.06.2017 at Police Station, Washim and observed that there was no whisper about the abuses in respect of his caste and rejected the application under Section 156(3) of Cr. P. C. Present FIR is lodged regarding the incident dated 21.06.2023 and 16.07.2023. As per the allegations, on 21.06.2023 the measurement of land of the present appellants and the informant was carried out and it reveals as per the allegation that present appellants have encroached 7 R land of the informant. It is alleged that on 16.07.2023, when informant along with his parents had been to his agricultural field, he found that

(5)

present appellants were removing the boundary marks which were affixed by the land record officials and there was hot exchange of words between them and then the present appellants abused him on the caste. On the basis of said report, police have registered the crime.

8. Learned Counsel for the appellants submitted that the reply filed by the respondent No.2 is considered, wherein the statement of the informant dated 16.07.2023 was recorded by the Investigating Officer which shows that at the initial time, he has only made allegation against the appellant No.1, by alleging that he has abused him on his caste. Whereas, in the subsequent FIR, he made allegation against all the appellants. Thus, the statement of the informant is not consistent. Moreover, the alleged incident has not taken place within the public view and, therefore, the provisions of Atrocities Act are not applicable. He further submitted merely reference of the caste is also not sufficient to attract the provisions. Now, in catena of decision it is held that when *prima facie* case is not made out against the appellants, then application for anticipatory bail is maintainable and no bar under Sections 18 or 18A of the said Act is attracted. In view of that, appeal deserves to be allowed.

9. Learned APP strongly opposed the appeal on the ground that not only the statement of the informant but the statement of one

(6)

of the eye witness also supports the contention of the informant, thus there is *prima facie* case against the present appellants and, therefore, bar under Section 18 of the said Act, is attracted and the appeal deserves to be dismissed.

10. Learned Counsel for the respondent No.2 also endorsed the same contention and submitted that the present informant is continuously victim at the hands of the present appellants of the Atrocities and the informant has made various complaints against them, till the Commission which is constituted for the Scheduled Caste and Scheduled Tribes and, therefore, considering the *prima facie* case against the present appellants, the appeal deserves to be dismissed.

11. Having heard the learned Counsel for the appellants, the learned APP for the State and learned Counsel for the respondent No.2. Perused the documents on record and the investigation papers. It appears from the investigation papers that since long there is a dispute between the informant and the present appellants, on account of agricultural land boundary. The agricultural land of the present appellants and the land of the informant is adjacent to each other. One civil suit is also filed by the appellants for declaration and injunction. Previously also, the informant has lodged the report dated 02.06.2017. Initially, he has not alleged any abuses on the part

(7)

of the present appellants and, therefore, only NC report was lodged. Subsequently, he filed the application under Section 156(3) of Cr.P.C. which was rejected by the Court by observing that there was no whisper about the abuses on the caste. The alleged incident according to the informant occurred on 16.07.2023, regarding the alleged incident, he initially approached to the Police and Police have recorded his statement. The statement is on record, in the said statement, he made allegation against the appellant No.1 that he abused him on his caste by referring his caste. Whereas, in a subsequent FIR, which was registered on 29.11.2023, he made a general allegation against all the appellants that they have abused him on his caste by referring his caste. During investigation, the Investigating Officer has recorded the statement of the witnesses. The statement of the witnesses including the statement of the eye witnesses, who also disclosed that it was the appellant No.1, who abused the informant - respondent No.2 on his caste. Thus, it appears that while lodging the FIR with intent to implicate all the family members, the general allegations is made by the informant against all the appellants.

12. Whether the bar is attracted or not attracted is to be ascertained from the well settled law. It is well settled that if a person is even alleged of accusation of committing an offence under

(8)

the Act of 1989, the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to inter as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989 the courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. The issue was dealt by the Full Bench of the Rajasthan High Court in the case of **Virendra Singh Vs. State of Rajasthan** reported in **2000 Cri. L. J. 2899** and while discussing the issue it is held by the Rajasthan High Court that the question therefore which has been referred for consideration by this Full Bench is whether the Court while dealing with an application for anticipatory bail can scrutinize and examine the material to see if a prima facie case is made out constituting an offence under the Act of 1989 or whether it would be justified in rejecting the application merely because the case has been registered under the said Act or it is registered alongwith some other Sections of the IPC. Before it is elaborated further, we wish to make it clear at the outset before we proceed to answer this reference even at the risk of repetition that we are acutely conscious of Section 18 of the Act of 1989 which explicitly bars grant of anticipatory bail to any person who is even accused of an offence under the Act of 1989 and there would be no

(9)

difficulty in rejecting their application once it is disclosed that the person can be said to be an accused of having committed an offence under the Act of 1989, since the clear bar of Section 18 would instantly operate against him, but the difficulty arises where the ingredients constituting an offence under the Act of 1989 is totally missing and the Court is confronted with the question as to whether the same would merit rejection merely due to the fact that the case has been registered under the S.C.S.T. Act of 1989. While answering the issue raised it is held by the Full Bench of Rajasthan High Court that if from the FIR itself the ingredients of offence as laid down under Section 3 of the Act itself is found to be missing, the bar created by Section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations levelled against the accused are even prima facie correct or incorrect.

13. On the basis of the judgment of the Full Bench of the Rajasthan High Court, this Court also in case of **Ratnakala**

Martandrao Mohite Vs. The State of Maharashtra and another reported in 2020 ALL MR (Cri.) 334, **Navnath s/o Dalsing Rathod @ Aade and others Vs. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another** decided on 25.04.2019 in Criminal Appeal No.968/2018 observed that the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining whether there is a material to make out a *prima facie* case for offence punishable under the Act 1989. The basic ingredients of Section 3(1)(r)(s) are that there must be intentional insult or intimidation with intent to humiliate a member of Scheduled Caste and Scheduled Tribes in any place within public view. It is abundantly clear that *mens rea* in the deceive factor in the offence under the Act. There must be intentional insult or intimidation with intent to humiliate member of Scheduled Caste and Scheduled Tribes in any place within the public view.

14. The Hon'ble Apex Court in the case of **Prathvi Raj Chauhan Vs. Union of India and others** reported in (2020) 4 SCC 727 wherein also it is held that where *prima facie* case is not made out anticipatory bail can be granted in appropriate circumstances with a cautious exercises of powers Section 18 and 18A of the 1989 Act have no application where *prima facie* case is not made out however for

(11)

evaluating the *prima facie* case reappreciation of the evidence is not required.

15. In the light of the above well settled principle, if the facts of the present case are considered, admittedly the investigation papers shows that there was previous disputes between the appellants and the informant. Previously also the complaints were lodged by the present informant against the present appellants. As far as the present FIR is concerned, admittedly initially the complainant has alleged only against the appellant No.1 but subsequently, while lodging the FIR, he has made allegation against all the appellants by making general statement. During investigation, the Investigation Officer has also recorded the statement of one of the eye witness, who has also attributed the role of the abuses to the appellant No.1 only. Thus, it is apparent that with intent to implicate all the appellants the subsequent statement is made by the informant alleging against all the appellants that, they have abused the informant by referring his caste. Thus, considering the investigation papers and the recitals of the FIR, it is crystal clear that some incident taken place, as the appellant No.1 has abused the informant, however no case is made out against the appellant Nos.2 and 3, only general allegations are made in the FIR, against them. In view of that, the

(12)

appeal deserves to be allowed partly. Accordingly, I proceed to pass following order.

ORDER

- (i) The appeal is allowed partly.
- (ii) The order dated 19.12.2023 passed by the learned Additional Sessions Judge (Special Court), Washim in Misc. Criminal Bail Application No.403/2023, is quashed and set aside.
- (iii) The appellant **No.(2) Raju S.o Keshav Kakade and No.(3) Vijay S/o Keshav Kakade** be released on anticipatory in the event of their arrest in connection with Crime No.505/2023 registered with Police Station Washim Rural for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- (iv) The appellant Nos.2 and 3 shall remain present before the Investigating Officer as and when required for the investigation purpose.
- (v) The appellant Nos. 2 and 3 shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (vi) The prayer of the appellant No.1 for releasing anticipatory bail is rejected. The appeal to the extent of appellant No.1 is hereby dismissed.

(URMIL A JOSHI-PHALKE, J.)