

242 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1803-2023(O&M)
Date of decision: 15th February, 2024

Om Parkash

...Appellant(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ajay Chaudhary, Advocate for the appellant.
Mr. Neeraj Poswal, A.A.G., Haryana.
Mr. Mukesh Mehra, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 14 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short ‘SC/ST Act, 1989’) against the order dated 03.06.2023 passed by learned Additional Sessions Judge, Ambala whereby an application filed by the present appellant for grant of anticipatory bail had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the FIR in this case was registered on the basis of a written complaint filed by the complainant-Kanchan alleging therein that she was married with the accused Rinku on 31.08.2017. On 20.01.2022, she had filed a complaint against her husband, mother-in-law and father-in-law i.e. the present appellant Om Parkash before the police but the same was got filed by her in-laws. A case under Section 13-B of Hindu Marriage Act, 1955 was filed seeking divorce by way of mutual consent. The statement of her

husband and herself during first motion had also been recorded and her in-laws had returned her dowry articles and an amount of ₹1,00,000/- was agreed to be paid to her out of which a sum of ₹ 50,000/- was paid. She alleged that at the time of recording their statements during second motion in the petition filed under section 13-B of the Hindu Marriage Act,1955, her husband and his family members refused to make any statement by proclaiming that they had filed that petition only with a view to make the complainant withdraw the complaint filed against them. She alleged that the appellant, her husband and other members to his family used to facility her by saying that she belong to '*Chamar*' caste and they could not accept her and that they would keep on dragging her in the Courts. She further alleged that on 22.03.2023, her brother had called parents in-laws in the Court premises and thereto addressed her brother and herself '*chamar*' and also told that she would be allowed to come back to her matrimonial home only if she would return the dowry articles and give a sum of ₹2,00,000/- to them. Therefore, she prayed for taking action against the culprits.

3. After registration of the FIR, investigation proceedings were initiated. Present appellant had filed the appeal alongwith application for grant of anticipatory bail which had been dismissed by the Court of learned Additional Sessions Judge, Ambala vide order dated 03.06.2023 by observing that since it could not be held *prima faice* that no case for commission of offence punishable under Section 3 of the Act 1988 was made against the appellant and therefore, their application for grant of anticipatory bail was not maintainable.

4. Feeling aggrieved from this order, the instant appeal has been filed. It is submitted therein and it has been argued by learned counsel for the appellant that he has been falsely implicated in this case. Infact, it was the respondent No.2-complainant who had refused to record statement during second motion in the petition filed under Section 13-B of Hindu Marriage Act and had raised demand of payment of an amount of ₹2,00,000/- from them instead of ₹1,00,000/- which was previously agreed to be paid. It is also argued that the general and omnibus allegations have been levelled against him. It had not been mentioned exactly as to which family member of the appellant had raised demand of ₹ 2,00,000/- or demand of dowry. The ingredients for commission of offence punishable either provisions of Section 3 of the SC/ST Act, 1989 were not at all attracted. The appellant had never used any derogatory remarks against the respondent. His custodial interrogation is not required. The appellant had also joined investigation in pursuance of order dated 05.12.2023. Therefore, it is argued that the appeal deserves to be allowed.

5. Respondent-State has filed status report, as per which, there were specific allegations against the appellant. He was asked to join the investigation but instead of joining the same, he had filed an application for grant of anticipatory bail. The co-accused Asha Rani has, however, been granted benefit of interim anticipatory bail. As such, it is argued that the appeal does not deserve to be allowed.

6. Mr. Mukesh Mehra, Advocate has put in appearance on behalf of the complainant and has filed his *Vakalatnama*. He has argued that there

is a *prima facie* case on record to show that the appellant insulted respondent No.2 in the name of her caste by addressing her as ‘*chamar*’ within public view when the brother of the respondent had called him in the Court premises as on 22.03.2023. He has argued that the appeal is not maintainable as the provisions of SC/ST Act, 1989 have been fully attracted in the case. Therefore, it is argued that the present appeal is not maintainable on this very ground and hence it is urged that the same is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

8. The first and foremost question that arises for consideration before this Court is as to whether the allegations in the FIR make out a *prima facie* case for applicability of provisions of the SC/ST Act 1989 because the well settled proposition of law is that if a *prima facie* case is made out, then the bar created by Section 18 and 18-A(1) shall not apply and anticipatory bail can be granted. In this regard, reliance can be placed upon the citation of ‘*Kashi Mahajan vs. State of Maharashtra*’, 2006 SCC, 454 and ‘*Prathvi Raj Chauhan Vs. UOI*’ (2020) 4 SCC 727, wherein it was observed that anticipatory bail could be granted if *prima facie* a case for commission of offence under the SC/ST Act 1989 was made out or not or if it can be shown that the allegations were false.

9. Keeping in view the above discussed proposition of law in mind, it is to be seen as to whether the present appeal can be said to be maintainable or not? As per allegations levelled in the FIR, the appellant along with co-accused used to insult the complainant by saying that she

belonged to *Chamar* caste and they could not accept her. It is also alleged that on 22.03.2023, the present appellant was called by the brother of the complainant in the Court premises to have some conversation and at that time, he called both of them as '*Chamar*'. It is well settled proposition of law that calling a person by these names is considered abusive language now a days and is offensive, which is not to denote a caste but to intentionally humiliate and insult someone. Reliance in this regard can be placed upon ***Manju Devi vs. Onkarjit Singh Ahluwalia @ Omkarjeet Singh & Others : 2017 (2) RCR (Criminal) 421***, wherein the accused had tried to outrage the modesty of a woman belonging to scheduled caste and called her 'Harijan, Dhobi'. Hon'ble Supreme Court observed that these names were not to denote the caste but to intentionally humiliate and insult the victim and the benefit of anticipatory bail was denied to the accused on the ground that the offence enumerated under the provisions of SC/ST Act had been made out and provision of Section 438 of Cr.P.C. were not available. Since in the instant case, the petitioner, who is father-in-law of respondent No. 2/complainant, is shown to have called her as *Chamar* at home and also within the public view as on 22.03.2023, therefore, the provisions of Section 3(1)(r)(s) of the SC/ST Act are *prima facie* attracted. As such, in my considered opinion, the provisions of Section 18 and 18-A of the SC/ST Act would certainly apply to the present case and therefore, anticipatory bail could not be granted to the appellant. In this regard, reliance can also be placed upon the judgment rendered by the High Court of Kerala in ***Abbas R. V. vs. State of Kerala and others, 2022 (5) KLT 618***, wherein similar

observations have been made. Therefore, the order passed by the learned trial Court whereby the benefit of pre-arrest bail had been denied to the victim does not want any interference. Accordingly the same is upheld. The appeal is dismissed.

15th February, 2024

Parveen Sharma

1. Whether speaking/ reasoned

2. Whether reportable

[MANISHA BATRA]

JUDGE

:

:

Yes / No

Yes / No