



CRA-S-3071-2024

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
252
CRA-S-3071-2024
Date of decision: 16th September, 2024

Jatinder Kumar

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. B.S. Toor, Advocate for the appellant.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed against the order dated 06.09.2024 passed by learned Additional Sessions Judge, Moga in case arising out of FIR No. 161 dated 23.08.2024 registered under Sections 351(2) of Bhartiya Nyaya Sanhita and Section 3(1) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') at Police Station City Moga, District Moga.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that Sudesh Kumar, father of the appellant had lodged a complaint with the police on 12.07.2024 making allegations that his daughter-in-law who was married with his son Pawan Kumar, was living separately due to matrimonial discord between them. A divorce case was pending. She had applied for a passport by giving an address which was of her matrimonial house wherein she was no more residing. Poonam Makhija,



CRA-S-3071-2024

-2-

Municipal Counsellor and her husband Raj Kumar Makhija had been supporting Kanchan and during the course of police verification, they had told the police officials that Kanchan was living at the above said address and they even signed as witnesses. Father of the appellant by alleging that Kanchan in connivance with the above named Raj Kumar Makhija and Poonam Makhija had been trying to usurp his house had prayed for taking action against them. On 05.08.2024, complaint was lodged by the complainant Matwal Singh alleging therein that on the same day, he along with Raj Kumar Makhija and other persons had visited the office of DSP, Crime against Women, Moga as a Panchayat was being convened to sort out the dispute between Kanchan daughter-in-law of Sudesh Kumar and Pawan Kumar-brother of the appellant. He alleged that in the presence of several persons, the present appellant who was accompanying his father Sudesh Kumar and brother Pawan Kumar had started hurling abuses to Matwal Singh, who is a Municipal Counsellor and used objectionable words regarding his caste by saying '*Saale chure Chamar harek de pichhe hi aajande han*'. He also misbehaved with other Panchayat members and when they tried to stop him, he extended threats to them and then fled away. On this complaint, inquiry was conducted and thereafter the aforementioned FIR was registered. Apprehending his arrest, the appellant had filed an application for grant of anticipatory bail which was dismissed by learned Additional Sessions Judge, Moga vide order dated 06.09.2024 by observing that a *prima facie* case for commission of offence under the provisions of SC/ST Act was made out and in view of the bar under Section 18 of the said



Act, application for grant of anticipatory bail was not maintainable.

3. Feeling aggrieved from the order of rejection of his plea for bail, the present appeal has been filed by the appellant.

4. It is argued by learned counsel for the appellant that he has been falsely implicated in this case. The allegations in the FIR, even if believed to be correct do not make out a case for commission of offence within the meaning of SC/ST Act. No specific words regarding caste of the complainant were mentioned in the complaint nor it is proved that he had used any abusive words thereby insulting the complainant in the name of his caste. In fact, the FIR in question is outcome of matrimonial dispute which was going on between appellant's brother and his wife. The appellant does not even know the complainant. He was threatened by Municipal Counsellor Poonam Makhija and her husband, who were exerting pressure to forcibly take possession of the house belonging to the father of the appellant. They in connivance with Kanchan had even attempted to get her passport issued on the same address. The appellant is ready to join the investigation. His custodial interrogation is not required. Nor any recovery is to be effected from him. The learned Additional Sessions Judge while passing the impugned order did not take all these facts into consideration. Therefore, it is argued that the impugned order is liable to be set aside, the appeal deserves to be accepted and he deserves to be extended benefit of anticipatory bail.

5. *Per contra*, learned State counsel assisted by learned counsel for the complainant has vehemently argued that there are specific allegations



CRA-S-3071-2024

-4-

against the appellant that on 05.08.2024, he had used abusive language and caste related remarks against the complainant when they were present outside the office DSP Moga, for mediation between Kanchan (sister-in-law of appellant) and his father Sudesh Kumar, qua a dispute which was pending between them. The caste related utterances had been made by the appellant in the office of DSP in the presence of other persons i.e. within public view obviously to humiliate him and thereby, he had insulted him. It is, therefore, argued that there is no merit in the appeal and it is urged that the same is liable to be dismissed.

6. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

7. As per the allegations, the appellant had uttered caste related remarks against the respondent No.2-complainant and had hurled abuses to him while he along with some other respectable members of the society had gone to office of Deputy Superintendent of Police, Moga for the purpose of mediation of a dispute which was going on between Kanchan (Sister-in-law of the appellant) and his father Sh. Sudesh Kumar. The appellant and the complainant hail from the same place and obviously appellant was knowing about the caste of the complainant. Undisputedly, it is a well settled law that anticipatory bail can be granted, only if a *prima facie* case for commission of offence under the SC/ST Act is not made out or if it can be shown that the allegations were false and in such a situation, the provisions of Section 18 of the Act would not apply. Reference in this regard can be placed on **Dr.**



Subhash Kashinath Vs. State of Maharashtra (2018) 6 SCC 454 and ***Prathvi Raj Chauhan Vs. Union of India (2020) 4 SCC 727***, wherein it was observed so. However, the question that arises for consideration in this case is as to whether the provisions of Section 3 of SC/ST Act are *prima facie* attracted in this case or not? In ***Swaran Singh and others Vs. State through Standing Counsel and another (2008) 8 SCC 435***, it was observed by Hon'ble Supreme Court that calling a member of the schedule caste as '*chamar*' with intent to insult or humiliate him in public view under Section 3(1)(x) of the Act (old Act) and whether there was intent to insult or humiliate by using the word '*chamar*' will ofcourse depend on the context in which it was used. In ***Chandra Poojari Vs. State of Karnataka, 1998 Cri. LJ 53***, High Court of Karnataka had observed that merely calling someone by his caste did not attract the provisions of SC/ST Act. It has to be proved that the accused was aware that the complainant belonged to that caste and was also conscious of the fact that the act was committed knowing that the victim belonged to the scheduled caste. In the instant case, the caste related remarks were uttered by the appellant within the public domain. These words are *prima facie* shown to be uttered with intent to insult the complainant, thereby attracting the provisions of Section 3(1)(r) & 3(1)(s) of the SC/ST Act. As such, the bar as created under Section 18 of the Act is certainly attracted in this case. The learned Special Court by dismissing the application of the appellant, in view of these facts, therefore, cannot be stated to have committed any illegality. Accordingly, finding no reason to interfere with the order as passed by the learned Special Court, the same is



upheld. The appeal is dismissed and it is held that since the provisions of commission of offence under Section 3(1)(r) & 3(1)(s) are shown to have been *prima facie* attracted in this case, therefore, the appellant is not entitled to be granted relief of release on pre-arrest bail.

8. It is, however, clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main appeal has been dismissed, pending application, if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

16th September, 2024
Parveen Sharma

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |