

(2020) 05 BOM CK 0002

In the Bombay High Court

Case No : Criminal Appeal No. 114, 120 Of 2020

Arjun S/O. Mohan Rathod And Others

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 08-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 143, 147, 148, 149, 307, 341, 336, 384, 392, 506
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(3), 3(1)(r), 3(1)(s), 14A, 18, 18A(i)
Code Of Criminal Procedure, 1973 — Section 164, 328, 438

Citation : (2020) 05 BOM CK 0002

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : S. S. Deshmukh, B. V. Virdhe, S. A. Nagarsoge

Final Decision : Allowed

Judgement

1. Heard both sides.
2. Since arguable points are made, the appeals are admitted.
3. By consent the appeals are taken up for final disposal.
4. Both these appeals have been filed by the original accused in Crime No.03 of 2020 dated 08-01-2020, registered with Mahur Police Station District Nanded for the offences punishable under Section 143, 147, 148, 149, 506 of Indian Penal Code and under Section 3(1)(3), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of the First Information Report lodged by present respondent No.2. These appeals have been filed as per the provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
5. The application filed by the appellants in both the appeals i.e. Bail Application No.42 of 2020 which was filed collectively by the appellants for the grant of pre-

arrest bail under Section 438 of Code of Criminal Procedure has been rejected by the learned Special Judge/ Additional Sessions Judge-2, Nanded on 21-01-2020.

6. The appellants / original applicants were apprehending their arrest in the said crime and, therefore, they had filed the said application contending that the informant i.e. present respondent No.2 who is resident of Datta Nagar, Mahur Tq. Mahur Dist. Nanded has filed the said First Information Report in order to harass them. He was indulged in making complaints in respect of allotment of sand spot to the revenue authorities for ulterior purpose with an assertion that the sand has been sold at a exorbitant rate. The informant had made unfounded and frivolous complaints to achieve ulterior objects and initially approached the police on 03-12-2019 with an allegation regarding unauthorized excavation. It was also alleged that, the appellants had assaulted, abused and threatened him. Police started inquiry and statements of witnesses were recorded. However, in the wake of the statements of the witnesses, even the informant was called and CCTV footage of the S. T. Stand, where the alleged spot was, was also collected by the investigating officer. In that inquiry it is revealed that, no such incident had taken place and ultimately the informant had withdrawn the complaint by giving a specific statement to that effect on 10-12-2019. However, at the behest of police, a settlement was arrived at and it was agreed that 18 brass of sand would be supplied to the informant by the appellants and the informant would pay amount of Rs.2,000/-per brass. The sand was accordingly supplied by the appellants however he did not pay the due amount i.e. Rs.36,000/- and in order to avoid payment of the price of the said sand, he lodged report on the basis of some concocted story, which then came to be registered on 08-01-2020 as Crime No.03 of 2020. In fact on the day of incident the informant himself had snatched amount of Rs.3000/- from appellant Pratik Kopulwar and had given threat of initiating prosecution under Atrocities Act for which Pratik Kopulwar has lodged offence punishable under Section 341, 392, 384, 336, 506 read with 34 of the Indian Penal Code with Mahur Police Station vide Crime No.04 of 2020. When the appellants had approached the Special Judge under the Atrocities Act for pre-arrest bail; the Special Judge did not consider the facts of the case and earlier record. Their bail application has been casually rejected holding that, prima facie case has been made out and, therefore, the application itself is barred under Section 18 of the Atrocities Act. They have, therefore, prayed for allowing the appeal.

7. Respondent No.2 has filed affidavit-in-reply and denied all the allegations against him. It has been contended that, he is one of the persons who assesses about the illegal excavation of sand from river Painganga bed at the hands of the appellants. He had raised that issue before the revenue authorities time and again, and the revenue officers had directed several times to the subordinate officers to look into the matter and hold detailed inquiry. The subordinate revenue officers did not bother to carry out that inquiry when in fact the appellants are illegally executing the sand from the said river which has fallen under Eco Sensitive Zone. When he had made the said complaint with the

revenue authorities, the informant was assaulted at night on 02-12-2019 and, therefore, he had given written complaint about the same to the police station on 03-12-2019. At that time also abuses were given in the name of the caste to the informant. The police authorities did not bother to take cognizance. Thereafter, when he went to police authority on 08-01-2020 and was returning back, the incident had taken place. He was brutally beaten in the police station itself at about 03.45 p.m., as a result of which he had sustained head injury. He was shifted to Rural Hospital, Mahur and then to Vasantrao Naik Government Medical College and Hospital, Yavatmal. After getting the treatment in Yavatmal, the statement of the informant was recorded by PSI Bhalchandra Tidke. However, since the incident had taken place within the jurisdiction of Mahur Police Station, it was then transferred to concerned police station for further investigation. In fact the First Information Report in respect of Crime No.04 of 2020 is a counterblast to the First Information Report lodged by him. The incident had taken place as narrated by him in his First Information Report and he has been abused in the name of caste by the present appellants. Therefore, there is total bar to the application under Section 438 of Code of Criminal Procedure.

8. Heard learned advocate Mr. S. S. Deshmukh for appellants, learned Additional Public Prosecutor Mr. B. V. Virdhe for respondent No.1-State, and learned advocate Mr. S. A. Nagarsoge for respondent No.2.

9. It has been vehemently submitted on behalf of the appellants that, the documents on record would show that, though the informant had lodged the report or given complaint application to the revenue authorities regarding illegal excavation of sand, no action has been taken by any authority. Rather on 02-05-2017 the Grampanchayat Padsa has passed a resolution against the informant stating that, he is lodging false complaints against the villagers. He himself is indulged in stalking girls and they used to go to school. Yet he himself had given a complaint regarding housing scam but all of them know that it is false and, therefore, it was decided that the offence registered against the informant should be taken back. With such character the informant has posed himself that he is a nature lover and is very much concerned about the illegal excavation of the sand. He had then lodged a written complaint with Mahur Police Station on 03-12-2019 regarding some incident that had allegedly taken place at 9.45 p.m. on 02-12-2019 near the public urinal within S.T. Stand. The police had undertaken inquiry, statements of witnesses were recorded and most of them have stated that, no such incident had taken place. Ultimately by giving a specific application in his handwriting on 10-12-2019, he had withdrawn his complaint dated 03-12-2019. If he had taken back those allegations then there was nothing against the appellants. In view of his said application, the complaint application dated 03-12-2019 came to be disposed of and station diary entry was taken accordingly. Further there appears that on the same day there was an agreement cum application by the present appellants to the police inspector. On the same day that all the appellants would give 18 brass sand within two to three days to the complainant/ informant and he would pay Rs.2000/- per brass to the

appellants. No doubt there appears to be no signature of the informant on the same, yet in the communication given by PSI Tidke to PI Mahur, there is a reference that there is settlement/ compromise between the applicant and non-applicant, yet it appears that, thereafter on 08-01-2020 the First Information Report came to be lodged. Therefore, the outcome of the First Information Report is not based on any sound principle, it is tented as the informant intended to avoid payment of the amount which he had agreed to be given to the appellants per brass. He has then made allegations against police inspector of Mahur Police Station also without any reason. The entire story itself is unbelievable. When the First information Report is lodged with malafide intention, then definitely the learned Special Judge ought to have stated that, there is no prima facie case and the protection ought to have been given to the present appellants.

10. Per contra, the learned Additional Public Prosecutor as well as learned advocate for respondent No.2 submitted that, perusal of the First Information Report would show that, it attracts the basic ingredients of the offence punishable under Section 3(1)(r) and 3(1) (s) of the Atrocities Act and, therefore, application for pre-arrest bail is barred. It will not be out of place to mention here itself that, when it was pointed out by the learned advocate for the respondent No.2 that, even till 07-03-2020 statement of one of the eye-witness, who was accompanying informant, was not recorded. Directions were given to the police officer to record his statement and, accordingly, his statement has been recorded on 07-03-2020. In fact at that time a statement was also made on behalf of the prosecution that the said eye-witness is absconding and in spite of call given by the investigating officer, he had not appeared. When the arguments were heard, the statement of said eye-witness was recorded and, therefore, that will also be considered while assessing the facts of the case. Coming back to the arguments those have been submitted on behalf of the informant that, the informant is the person who was resisting the illegal activities of the appellant and, therefore, the appellants wanted to eliminate him. In fact, the incident had taken place just outside the office of Deputy Superintendent of Police and he was dashed by tractor with an intention to eliminate, yet the police are not protecting his life. A detailed statement has also been recorded on 09-01-2020 stating as to how the police officer also behaved with the informant. His First Information Report was not immediately taken and this has all happened because he is member of Scheduled Caste. The first Information Report is definitely making out offence under the Atrocities Act and, therefore, the learned Trial Judge was right in rejecting the application.

11. At the outset, a fact is required to be taken into consideration that the First Information Report is lodged against total seven persons. Out of that, accused No.5 to 7 i.e. the appellants in Criminal Appeal No.114 of 2020 are 'Mannerwarlu' by caste. The said 'Mannerwarlu' caste is a 'Scheduled Tribe' as per the Schedule of the Constitution of India. Section 3 (1) (r) and 3 (1) (s) runs thus ;

"3 (1)

(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;"

(s) : - abuse any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view ;....."

12. Thus, it is to be noted that, the bare perusal of the above said sections would make it clear that the person which is making such allegations or utterances should not be a member of either Scheduled Caste or a Scheduled Tribe, as per T. Toranath & Anr. v. State of A.P. & Ors., reported in 1999 (1) Crimes 188. That means, the offence under these can be lodged against those persons only who are not being a member of a Scheduled Caste or a Scheduled Tribes. Therefore, definitely those sections are not attracted against these appellants i.e. original accused No.5 to 7. The learned Trial Judge has failed to consider this important aspect and it appears that, mechanically the application has been rejected. Further a very cryptic order has been passed as on the date of the order that was passed by the learned Judge, there was no offence registered for bodily injury and not even under Section 307 of Indian Penal Code. Yet it is stated that the applicants committed serious offence against the informant and injured him by giving dash by tractor with an intend to kill him. Such cryptic orders are required to be deprecated, there ought to have been proper application of mind by the learned Special Judge. The very purpose of such provision of pre-arrest bail would then get frustrated if such technical as well as cryptic approach is adopted. Even on the date the arguments were advanced before this Court, the learned Additional Public Prosecutor has not stated that, there is any addition of section involving offence against body.

13. It is further to be noted that, out of appellants in Criminal Appeal No.120 of 2020 except appellant No.4 Mohmmad Mujib Mohmmad Suleman Faruqui, others are stated to be 'Banjara' by caste, which is 'Nomadic Tribe'. If we considered the contents of the First Information Report, it appears that, all seven accused persons are stated to have abused the informant in chorus which is unrealistic. Abuses or utterances cannot be in chorus as two men or women do not think alike at the same time. What is going on in the mind of another person cannot be revealed and, therefore, especially the abuses cannot be in chorus. In the First information Report it is stated that, all the accused have uttered 'Mahardya', 'Dhedgya'. A reliance can be placed on, Shashikant Ramhari Tambe and Others v. State of Maharashtra, reported in 2008 All M.R. (Criminal) 2132. Even on this ground this Court comes to the conclusion that, no prima facie case has been made out.

14. The First Information Report further contends that, when the informant was coming out of office of Deputy Superintendent of Police, he was dashed from back side by a green coloured tractor. He pushed the tractor and went aside. He says that, this is done in order to kill him. At the first place the facts those are

required to be considered are that, the tractor is stated to have come from back side, and at what distance the tractor was when he first noticed, then it is hard to believe that if a tractor has been brought in order to kill a person then how it could have been pushed by the informant as the tractor is a heavy vehicle for a person to push when it is moving. Further in the First Information Report itself, he has made allegations against Police Inspector, Mahur Police Station. We are also then required to consider the earlier happenings between him and the appellants. Though he had made complaint against the present appellants, it appears that, by giving an application in his own handwriting he had taken it back and on the same day he had entered into compromise. The police officer to whom all these documents were submitted, has then acted upon the same, which presupposes that he would have verified the contents of those applications. The facts are therefore required to be read between the lines. The said complaint which was made by the informant earlier appears to be with some ulterior motive and when there is settlement between him and the appellants, he has taken back that application. He got something in return for the same. Now it appears that, the appellant is encashing the fact that he is member of Scheduled Caste.

15. The medical document which is now produced along with the affidavit-in-reply i.e. the referral card given by Rural Hospital, Mahur shows that, the history was given as assault by someone on 08-01-2020 at 5.30 p.m. First Information Report says that, the occurrence was between 13.30 hours to 16.00 hours on 08-01-2020. The referral card further states that, there was Blunt Trauma to Head Swollen at right and left parietal region. Though it appears that the informant was discharged long back, neither he nor the police have collected the medical record and it was handed over to police. Therefore, when no such document is coming forward even at this stage, at the cost of repetition it will have to be observed that, there was no material before the learned Special Judge to observe that appellants committed serious offence by giving dash by tractor with intent to kill him.

16. Even if we brush aside the First Information Report which has been lodged by accused Pratik Kopulwar as counterblast yet what we cannot forget is, the statement of the witnesses those have been recorded by police in the present case those witnesses are stating against the informant. Some of the witnesses are police officers / constables on duty and rather they are giving a different picture that the quarrel was picked up by the informant himself and he had assaulted the present appellants, the informant had taken the receipt of the sand forcibly from Pratik Kopulwar. Further witness Sumit Pandit, Ajay Mujmule have stated that many people who had gathered at the spot, were recording the incident in their mobile. Witness Pratik Kamble himself had torn his T-Shirt and the informant as well as Pratik Kamble had abused appellant Pratik Kopulwar. These statements have been recorded under Section 164 of Code of Criminal Procedure. It appears that, the witness Shrinivas Phad had done the video shooting of the incident and he had submitted the mobile to police. The data has

been taken on compact disk and the hash value of the same has been taken. That means, whatever the witnesses are saying appears to be supported by the electronic evidence also. Under such circumstance this Court holds that, there is no prima facie case made out so as to infer that there is bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In view of Prithviraj Chavan v. Union of India, in Writ Petition No.1015 of 2018, decided by Hon'ble apex Court on 10-02-2020, following observations have been made:

"10. Concerning the applicability of provisions of section 328 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions."

17. There is no bar in entertaining pre-arrest bail applications. It can be observed that, there is substance at this stage in the submission on behalf of the appellants that the First Information Report is filed with malafide intention and, therefore, the order passed by the learned Special Judge while rejecting the application deserves to be set aside by allowing the appeal. Hence, following order.

ORDER

(1) Both the appeals stand allowed.

(2) The order passed in Miscellaneous Criminal (Bail) Application No.42 of 2020, by learned Additional Sessions Judge-2, Nanded on 21-01-2020 is hereby set aside.

(3) The application stands allowed. In the event of arrest of the appellants Pratik Rameshwar Kopulwar, Mangesh @ Lakhan Uttam Rikkamwar, Santosh Rameshwar Rikkamwar, Arjun Mohan Rathod, Lakhan Uttam Jadhav, Rameshwar Kondbaji Musale, Mohmmad Mujib Mohmmad Suleman Faruqui, in Crime No.03 of 2020, registered with Mahur Police Station, Dist. Nanded for the offences punishable under Section 143, 147, 148, 149, 506 of Indian Penal Code and under Section 3(1) (r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on P. R. and S. B. of Rs.15,000/- each (fifteen thousand).

(4) The appellants shall not tamper with evidence of the prosecution in any manner.

(5) They shall remain present before the investigating officer whenever directed by the investigating officer, and should co-operate with investigation. Investigating officer to give prior notice of 48 hours to the appellants in case of need of their presence before him.