

(2020) 04 KAR CK 0028
In the Karnataka High Court
Case No : Criminal Appeal No. 381 Of 2021

Arun Manoraj R

APPELLANT

Vs

State Of Karnataka And Others

RESPONDENT

Date of Decision : 17-04-2020

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(c)(r)(s), 3(2)(iii)(v)(v-a), 14A(2)
Indian Penal Code, 1860 — Section 143, 144, 147, 148, 149, 395, 427, 435, 436, 448
Karnataka Prevention Of Destruction And Loss Of Property Act, 1981(KPDLP Act, 1981)
— Section 2

Citation : (2020) 04 KAR CK 0028

Hon'ble Judges : P.Krishna Bhat, J

Bench : Single Bench

Advocate : Hanumantharaya C.H, Madhav Kashyap, P.Prasanna Kumar,
Anandanaiah

Final Decision : Allowed

Judgement

P.Krishna Bhat, J

1. This appeal is filed under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the present appellant, who is arraigned as accused No.22 in Special Case No.758/2020 pending before the LXX Additional City Civil & Sessions Judge and Special Judge, Bengaluru.

2. The case of the prosecution is that on 11.08.2020 at about 8.30 p.m., accused being enraged on account of certain face book posts made by the son of CW.1 and CW.2 by name Naveen P. which allegedly was denigratory to the prophet and on account of the same, they formed themselves into an unlawful assembly holding deadly weapons in their hands had barged into the

house of CW.1 & CW.2 and thereafter, destroyed house hold articles

and they had also robbed valuable articles and thereafter, they had set fire to the house. The offences charge sheeted are under Sections 143, 144,

147, 148, 395, 435, 436 and 448 read with Section 149 of IPC, under Section 2 of the Karnataka Prevention of Destruction and Loss of Property Act,

1981(KPDLP Act, 1981) and Sections 3(1)(c)(r)(s), 3(2)(iii)(v)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (hereinafter referred to as 'SC/ST (POA) Act' for short)

3. Sri C.H.Hanumantharaya, learned counsel for the appellant advances mainly two fold contentions in support of the appeal. In the first instance, he

submits that charge sheet papers shows that the Tahsildar had given a certificate which would indicate that accused No.22 himself belongs to Adi

Dravida Community and therefore, he is a person belonging to Scheduled Caste Community and therefore, the offences under the provisions of SC/ST

(POA) Act do not get attracted to him and consequently, those part of the charge sheet allegations do not apply to him. Insofar as the other main

offences under Indian Penal Code namely Section 395 and Section 436 are concerned, he submits that the offence under Section 436 of IPC is

generally punishable with 10 years of imprisonment at the most and therefore, bail cannot be denied to the appellant. In regard to the more serious

allegation under Section 395 of IPC in the charge sheet is concerned, he draws my attention to the statements of the CWs.1, 2 and 3, who are the

complainant, his wife and their daughter. It is his submission that even if the statement is accepted in toto, the only thing mentioned as against the

present appellant is that he had appeared at the scene at the time of commission of offences and he had whispered something in the ears of some of

the accused persons and thereafter, he had gone away. He therefore submits that there is nothing on the material produced in the charge sheet to

make out an offence under Section 395 of IPC. He submits that rest of the offences alleged are all triable by the Court of JMFC. He therefore

submits that the appellant, who is in judicial custody since 19.08.2020 is entitled to be enlarged on bail.

4. Sri Madhav Kashyap, learned counsel appearing for Sri P.Prasanna Kumar, learned Special Public Prosecutor appointed by the State in this case

filed his detailed statement of objections and he places reliance on charge sheet

allegations and statement of various witnesses which are highlighted in the statement of objections. He particularly submits that the accused by forming themselves into an unlawful assembly had committed a very serious offence of rioting and targeting houses belonging to a particular community and set the houses on fire one after the other and they are menace to the Society and therefore, the appellant, who was part of that group is not entitled to grant of bail.

5. I have carefully perused the charge sheet papers and given my anxious consideration to the submissions made by learned counsel on both sides.

6. As rightly pointed out by the learned counsel for the appellant, the documents which are part of the charge sheet papers clearly show that the

present appellant, who is accused No.22 himself belongs to a Scheduled Caste namely Adi Dravida Community and therefore, the offences under the

provisions of SC/ST (POA) Act do not get attracted to him. Insofar as rest of the offences charge sheeted under the Indian Penal Code under

Sections 143, 144, 147, 148, 395, 435, 436 and 448 read with Section 149 are concerned, except the offences under Sections 436 and 395, rest are all

triable by a Court of JMFC. Insofar as offences punishable under Section 436 of IPC is concerned, it is not exclusively punishable with imprisonment

for life. Insofar as this particular appellant (A-22) is concerned, there is no allegations in the statements of the witnesses that he had himself

participated in the arsoning of the house. Insofar as offence under Section 395 of IPC is concerned, my attention was drawn to the statements of the

main eye witnesses in the case namely the complainant - CW.1, his wife-CW.2 and their daughter-CW.3 who are inmates of the house and they have

only stated that they had seen appellant coming near the house at that time of the incident and whispering something into the ears of two of the

accused persons (A9 and A12). The witnesses are very clear that immediately thereafter, this appellant had gone away from the said place. Further,

the present appellant is in judicial custody since 19.08.2020.

7. Taking into consideration the material available in the charge sheet papers, insofar as present appellant is concerned, I am of the view that the

appellant is entitled to be enlarged on bail.

Hence, the following:

ORDER

The appeal is allowed.

â?¢ Appellant/Accused No.22 is directed to be enlarged on bail on executing a personal bond in a sum of Rs.60,000/- (Rupees Sixty Thousand Only)

with two solvent sureties for the likesum to the satisfaction of Trial Court.

â?¢ He shall not threaten and tamper with the prosecution witnesses directly or indirectly.

â?¢ He shall not indulge in similar type of criminal activities.

â?¢ He shall not leave the jurisdiction without prior permission from the learned trial Court.

â?¢ He shall furnish his residential address to the Court below and if he changes the residential address, he shall keep trial Court informed.