
(2009) 03 JH CK 0117
In the Jharkhand High Court

Bhim Upadhyay and Others	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436, 438
Penal Code, 1860 (IPC) — Section 323, 34, 341, 354, 427

Citation : (2009) CriLJ 3669 : (2011) 7 RCR(Criminal) 1467

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—The petitioners Bhim Upadhyay, Uday Upadhyay, Parmila Devi, Mukesh Upadhyay & Om Prakash Upadhyay apprehend their arrest for the alleged offence under Sections 341/323/504/354/427/34 I.P.C. as also u/s ? S.C. & ST. (Prevention of Atrocities) Act, 1989.

2. The informant Subhadra Devi who belongs to a member of scheduled caste alleged against the petitioners Uday Upadhyay, Bhim Upadhyay, Om Prakash Upadhyay & Mukesh Upadhyay that they had tried to raise wall illegally on the land of the informant and they had also tried to demolish the home of the informant, thereby stopped her exit. On 23.07.2008 at about 5 p.m when the informant opposed their high handedness it was alleged that the petitioner Uday Upadhyay & Bhim Upadhyay abused her by calling her "Dusadhin" and the latter thrashed whereas, the other petitioners Om Prakash Upadhyay, Mukesh Upadhyay & Parmila Devi abused by using filthy languages against her.

3. Learned Senior Counsel Mr. Tripathy, to begin with, submitted that the petitioners are innocent and have been falsely implicated in the instant case. The entire allegations are misconceived and no offence much less u/s ? of the S.C. & ST. (Prevention of Atrocities) Act is attracted against any of them in the given facts and circumstances of the case. Admittedly, it was nowhere whispered by the informant that the entire exercise of assault, using abusive language by calling her in the name of "Dusadhin" was held in presence of any witness and

the written report was technically drafted by the interested person to implicate the petitioners for the alleged offence in which the Anticipatory Bail Petition is not maintainable u/s 18 of the Act.

4. In the given facts and circumstances the question arises as to whether the petitioners deserve anticipatory bail u/s 438 of the Code of Criminal Procedure in view of the expressed bar by Section 18 of the special law viz. S.C. & ST. (Prevention of Atrocities) Act, 1989 or not.

5. In Virendra Singh Vs. State of Rajasthan, the Full Bench of Rajasthan High Court while considering the applicability of Section 18 of the S.C. & S T. (Prevention of Atrocities) Act 1989 vis. a. vis. Section 438 of the Code of Criminal Procedure observed,

It has to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1909 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 infer 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. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case u/s 3 of the Act of 1989 and once the ingredients of the offence are available in the F.I.R. or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down u/s 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the F.I.R. itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the F.I.R. or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but, if the allegations in the F.I.R. or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the F.I.R. and not beyond that because once it is gathered from the F.I.R. that

the applicant is an accused of committing an offence laid down u/s 3 of the Act of 1989, the bar of Section 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinizing the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down u/s 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 F.I.R. 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.

6. This Court in *Ram Kumar Sinha v. State of Jharkhand* reported in 2005 (2) ECC 321 relying upon the decision of the Full Bench of Rajasthan, observed that ones it is apparent from the F.I.R./Complaint that an offence under the Act, is apparently alleged, the Court would not be justified at all in weighing or scrutinizing the preponderance of the probability of commission of the offence by the accused but if from the F.I.R./Complaint itself the ingredients of the offence u/s 3 is found to be missing the bar created by Section 18 would not be allowed to operate against the accused.

7. Section 3 of the Act contains 15 classes and contravention of any of the clauses makes punishable offences awarding imprisonment for a term which shall not be less than 6 months but it may extend to 5 years and with fine. Section 4 is the punishment prescribed to a public servant for his willful negligent in his duties required to be performed by him and such negligence also attracts imprisonment for a term for not less than 6 months but could be extended up-to 1 year. In the given fact and situation, I find that Section 4 is not at all attracted against the petitioners. However, on the plain reading of the written report of the informant, prima facie, the offence is attracted u/s 3(x) of the S.C. & ST. (Prevention of Atrocities) Act which reads as hereunder:

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than 6 months but it may extend to 5 years and with fine.

8. I find from the nature of allegation levelled by the informant that it were only the petitioners Bhim Upadhyay & Uday Upadhyay who had insulted and intimidated by calling her "Dusadhin" near outside their houses and it was specifically alleged that the petitioner Uday Upadhyay had thrashed her by

holding her hair In view of such allegation in the written report presented by the informant Subhadra Devi who is admittedly a member of Scheduled Caste I find that the anticipatory bail on the face value of direct allegation is not maintainable u/s 18 of the Act and therefore it is rejected. But in so far as the allegation against the other three petitioners are concerned I find that the elements of Section 3(x) of the Act are not attracted against any of them and therefore, in view of the given proposition of law as referred to hereinabove I find their prayer for anticipatory bail u/s 436 Code of Criminal Procedure reasonably requires consideration. Thus, in the event of their arrest or surrender within 15 days of this order, the petitioners Om Prakash Upadhyay, Mukesh Upadhyay & Parmila Devi are directed to be released on executing bail bond of Rs. 10,000/- (Ten thousand) each with two sureties of like amount each to the satisfaction of the Chief Judicial Magistrate, Garhwa in connection with Manjhi (Kandi O.P.) P.S. Case No. 0105 of 2008 corresponding to G.R.No.869 of 2008 subject to the conditions as laid down u/s 438(2) of the Code of Criminal Procedure, bailers would be the near relatives of the petitioner and they would appear in the court below regularly.