

(2019) 12 GUJ CK 0046
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2250 Of 2019

Dalsukhbhai Meghabhai Handa	Vs	APPELLANT
State Of Gujarat		RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(x), 18

Citation : (2019) 12 GUJ CK 0046

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Urmila N Desai, Monali Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

1. Mr.Aamir S.Pathan, learned advocate states that he has received instructions to appear on behalf of respondent no.2 and he will file his Vakalatnama in the Registry forthwith. Registry is directed to accept his Vakalatnama.
2. The appellants have filed Criminal Misc. Application No.356 of 2019 before the Court of 3rd Additional District and Sessions Judge, Limdi u/s 438 of the Code of Criminal Procedure, 1973 requesting to enlarge the appellants on anticipatory bail in the event of their arrest on account of offence being registered vide II - C.R. No. 79 of 2019 with Panshina Police Station, Surendranagar for the offence punishable u/s 323 and 114 of the Indian Penal Code and also u/s 3(1)(r)(s) and 3(2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (for short "the Atrocity Act"), wherein 3rd Additional District and Sessions Judge, Limdi rejected the said application.
3. Feeling aggrieved by the said order, the appellants preferred said appeal u/s 14A of the Atrocity Act.

4. Heard learned advocate Ms.Urmila Desai for the appellants, learned advocate Mr. Aamir S. Pathan for the respondent no.2 and learned APP Ms.Monali Bhatt for the respondent no.1- State.

5. Learned advocate for the appellants has submitted that in the entire complaint, it is nowhere mentioned by the complainant that present appellant has insulted or intimidated with an intention to humiliate in a place within public place. It is further submitted that basic ingredients of the offence are missing in the complaint and no offence under the Atrocity Act is committed by the present appellants. That, specific role of the present appellants were not disclosed in the complaint. That, the present appellants are unnecessarily dragged into the present offence. It is further submitted that though offence is alleged to have occurred on 10.11.2019, FIR is registered only on 12.11.2019 i.e. after two days. It is further submitted that there is no reasonable explanation for the said delay. It is further submitted that as per the case of the complainant, two persons from the complainant side had tried to settle the dispute. If the incident as alleged in the FIR had in fact taken place, there was no reason for the complainant to try to settle the dispute. Hence, it was requested by learned advocate for the appellants to enlarge the present appellants on anticipatory bail in the event of their arrest.

6. Per contra, learned APP for the respondent no.1-State as well as learned advocate for the respondent no.2-complainant have strongly objected the submissions made by learned advocate for the appellants and argued that as per the FIR, role of the appellants is clear as one of the appellants viz. Dalsukhbhai Meghabhai Handa assaulted with a stick and blowed on the forehead of the complainant, and therefore, he has received injury. That it is clear case of using words of intimidating by present appellants to the complainant. It is further submitted that whatever words are used in the complaint are clearly attributing the provisions of the Atrocity Act, prima facie. Under the provisions of Section 18 of the Atrocity Act, anticipatory bail cannot be allowed in this case. The complainant was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. Referring the statements of the witness, it is submitted by learned APP that wife of the complainant was also assaulted by three accused. That out of three accused, original accused Hakabhai Harjibhai Bagodariya was arrested. It is further submitted that prima facie an offence committed by present appellants is established by the prosecution. Hence, it is requested by them to dismiss the appeal.

7. Having considered the facts of the case, submissions made by learned advocate for the respective parties as well as learned APP for the respondent-State, it appears from the complaint that there were three persons, who immediately got annoyed and the complainant was assaulted by the applicant no.1 with a weapon stick and injury was caused to the complainant on his forehead. From the police papers, no medical certificate of the complainant is available. As per further allegations made in the complaint, wife of the

complainant intervened in the incident, and therefore, she was also beaten by all the three accused. No medical certificate of her treatment is available with the prosecution. The statement of the wife was also recorded by the prosecution. It further appears that the complainant was treated in the Civil Hospital at Limbdi and he was discharged from the Civil Hospital immediately after taking outdoor treatment. If we consider the complaint, there is complete absence of intention of intimidating or insulting the complainant in the public place or within public view. Basic ingredients of the offence, as alleged are missing in the complaint.

8. In the case of *Gorige Pentaiah v. State of Andhra Pradesh and Ors*, reported in (2008)12 Supreme Court Cases 531, it was held that according to Section 3(i)(x) of the Atrocity Act, the complainant ought to have alleged that the appellants-accused were not a member of the Scheduled Caste or a Scheduled Tribe, he was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. Prima facie the bar under Section 18 of the Atrocity Act would not be applicable in present case as held by the Supreme Court in the case of *Gorige Pentaiah* (supra). Basic ingredients of the offence, as alleged are missing in the complaint. In fact, no specific role was attributed against the present appellants, and therefore, objection raised by learned advocate for the respondent no.2 cannot be sustained.

9. Therefore, considering decision rendered in the case of *Gorige Pentaiah* (supra), present appeal deserves consideration.

10. In the result, present Criminal Appeal is allowed and the impugned judgment and order dated 16.11.2019 passed in Criminal Misc. Application No.356 of 2019 by the Court of 3rd Additional District and Sessions Judge, Limdi is hereby quashed and set aside. Prayer-7(A) and (B) shall be granted. The appellants are ordered to be enlarged on bail in the event of their arrest on furnishing a bond of Rs. 10,000/- each with surety of like amount on the following conditions that the appellants.

(a) shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 30.12.2019;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change their residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the Trial Court and if having

passport shall deposit the same before the Trial Court within a week; and

(g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

11. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the appellants. The appellants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand.

12. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the appellants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

13. At the trial, the trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellants on bail.

Direct service is permitted.