

(2022) 06 BOM CK 0018
In the Bombay High Court
Case No : Criminal Appeal No. 4 Of 2022

Dr. Premshankar Vidyadhar Bhatt And Others	APPELLANT
Vs	
State Of Maharashtra And Others	RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 354, 392, 438, 504, 506, 509
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section
3(1), 3(1)(r), 3(1)(r)(s), 3(1)(s), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 18, 18A, 18A(i)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2022) 06 BOM CK 0018

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Mahendra Mukund Agavekar, Shraddha Chavan, Aliabbas Delhiwala,
S. R. Agarkar

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. This appeal is directed against an order dated 23rd December, 2021 passed by the learned Special Judge, Kalyan, in Anticipatory Bail Application No.2124 of 2021, whereby the prayer of the appellants – applicants for pre-arrest bail in connection with CR No.767/2021 registered with Mahatma Phule Chowk Police Station, for the offences punishable under Sections 392, 354, 509, 323, 504, 506 r/w 34 of the Indian Penal Code, 1860 ("the Penal Code") and under Sections 3(1), (r), (s), (w), (w)(i) and (w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the SC & ST Act, 1989), came to be rejected.

2. The background facts leading to this appeal can be stated in brief as under:

(a) The prosecutrix is a member of the Scheduled Castes. She is a Dietitian. Her husband is an Orthopedic consultant. They run a hospital "Kalptaru" at Desai

Shopping Centre, Bail Bazar, Kalyan (West). Desai Shopping Centre is a three storied building comprising "A" and "B" wings. The prosecutrix and her husband have been running Kalptaru Hospital from the ground, first and second floor of the "B" wing of Desai Shopping Centre since the year 2013. In April - 2022 they acquired the third floor as well. Appellant no.1 Dr. Premshankar Bhatt runs a hospital "Sarth Hospital" on the second floor of "A" Wing. He started a franchisee of Metropolis Laboratory thereat. Appellant no.1 has, however, installed the hoardings of the Metropolis Laboratory all over the said building.

(b) On 7th August, 2021 in between 2.00 to 2.30 pm. the prosecutrix was informed by her maintenance supervisor Mr. Dipak Sawant that some persons went to the terrace of the said building to install the hoardings of Metropolis Laboratory and a dispute arose as those persons tried to install the board on the premises in the occupation of the prosecutrix. In the meanwhile, appellant no.1 Dr. Premshankar Bhatt and appellant no.2 Dr. Taranum Sardar passed from in front of the office of the prosecutrix while hurling abuses at the husband of the prosecutrix. Appellant no.1 abused the receptionist and demanded the key. After noticing the prosecutrix threat, appellant no.1 abused her in a filthy language. She was allegedly abused with reference to her caste. Appellant no.1 allegedly stated that the members of her community did not deserve to become doctors. At the instigation of appellant no.2 Dr. Taranum, appellant no.1 allegedly made indecent gesture towards the prosecutrix and thereby outraged her modesty and charged upon the person of the prosecutrix.

(c) After the prosecutrix went back to her office, appellant nos.1 and 2 forcefully barged into her cabin. Appellant no.1 forcefully opened the drawer of her table. When the prosecutrix resisted, appellant no.1 used criminal force with intent to outrage her modesty. Appellant no.2 Dr. Taranum twisted the right hand of the prosecutrix and abused her with reference to her caste and threatened her that she would be assaulted after disrobing her. Appellant no.1 allegedly removed a plastic bag containing key and cash amount of Rs.50,000/-from the drawer. After a while, appellant nos.1 and 2 again came on the third floor and abused the prosecutrix and her husband with reference to their caste. They allegedly humiliated Deepak Sawant and Mr. Bhise, the security guard, who are also the members of scheduled caste, being fully cognizant of the said fact.

(d) The prosecutrix thus approached the police and lodged a complaint in writing on 10th August, 2021. Eventually, after an inquiry, crime came to be registered on 23rd November, 2021 vide CR No.767 of 2021, for the offences punishable under Sections 392, 354, 509, 323, 504, 506 r/w 34 of the Penal Code and under Sections 3(1),(r),(s), (w), (w)(i) and (w)(ii) of the SC & ST Act, 1989.

(e) Apprehending the arrest, the appellants preferred an application for pre-arrest bail before the Special Judge, Kalyan. It was contended that there have been disputes between appellant no.1 and the husband of the prosecutrix leading to lodging of a private complaint and number of NC complaints and the instant prosecution was lodged with a view to wreak vengeance.

By the impugned order, the learned Special Judge declined to exercise the discretion under Section 438 of the Penal Code opining inter alia that the offences punishable under SC & ST Act were prima facie made out and thus the bar under Section 18 of the SC & ST Act became operative. Being aggrieved, the appellants have preferred this appeal.

3. Admit.

4. Heard finally, with the consent of the learned Counsels for the parties.

5. I have heard Mr. Agvekar, the learned Counsel for the appellants, Mr. Agarkar, the learned APP for the State and Mr. Delhiwala, the learned Counsel appointed to espouse the cause of respondent no.2 - prosecutrix. With the assistance of the learned Counsels for the parties, I have perused the material on record including the First Information Report ("FIR").

6. Mr. Agvekar submitted that the instant prosecution is an instance of abuse of the special enactment to wreak private vengeance. It was submitted that there is a delay of almost four months in lodging FIR. This delay has not been properly explained. Secondly, according to Mr. Agvekar, the allegations in the FIR are required to be appreciated in the context of the enmity between the appellants, and the prosecutrix and her husband. In a situation like the one at hand, the Court cannot be swayed solely by the motivated allegations in the FIR so as to arraign the adversary under stringent provisions of law. Laying emphasis on a number of complaints, which clearly establish the inimical nature of the relationship between the parties, Mr. Agvekar would urge that the learned Special Judge committed a manifest error in recording a finding that the offences were prima facie made out. Thirdly, even if the allegations in the FIR are taken at par, the offences under Section 3(1)(r)(s) and (w)(i) (ii) of the SC & ST Act, 1989, cannot be said to have been made out as the prosecutrix was not abused and humiliated in a public view and no case of outraging the modesty of the prosecutrix is even remotely made out.

7. To lend support to these submissions, Mr. Agvekar placed reliance on the judgments of the Supreme Court in the cases of Union of India vs. State of Maharashtra and others, AIR 2019 Supreme Court 4917 Prathvi Raj Chauhan vs. Union of India and others (2020) 4 Supreme Court Cases 727. and Hitesh Verma vs. State of Uttarakhand and another. (2020) 10 Supreme Court Cases 710.

8. Per contra, the learned APP stoutly supported the impugned order. It was urged that there are grave allegations in the FIR of not only humiliating the prosecutrix by hurling abuses with reference to her caste but also intentionally outraging her modesty. In the circumstances of the case, according to the learned APP, it cannot be said that the offences punishable under SC & ST Act, 1989 are not prima facie made out.

9. Mr. Delhiwala would submit that the primary question, in the backdrop of the allegations in the FIR, that wrenches to the fore is of the applicability of the

interdict contained in Section 18 and 18A of the SC & ST Act, 1989. If the Court comes to the conclusion that the interdict operates, further inquiry as to the entitlement of the appellants for pre-arrest bail is wholly unwarranted. Mr. Delhiwala submitted that, in the case at hand, in the light of the specific and grave allegations in the FIR, no other view than that of the offences punishable under SC & ST Act having been prima facie made out, is conceivable. Laying emphasis on the object of SC & ST Act, 1989 Mr. Delhiwala submitted that the grant of pre-arrest bail to the appellant, in the instant case, would frustrate the very object of the special enactment.

10. At the outset, it is necessary to note that the ground of delay in lodging the FIR appears to be not well-grounded on facts. The prosecutrix, as indicated above, had lodged a complaint in writing on 10th August, 2021. The record reveals that as the investigating agency did not act with reasonable dispatch, the prosecutrix and her husband addressed communications to the authorities seeking action on the complaint of the prosecutrix. Eventually, the FIR was registered on 23rd November, 2021. The substance of the prosecution version which finds mention in the FIR was disclosed in the written complaint. In this view of the matter, the appellants can not draw mileage from the fact that the FIR was registered on 23rd November, 2021.

11. On the aspect of the exercise of the jurisdiction under Section 438 of the Code, in the context of the accusation for the offence punishable under SC & ST Act, the legal position is fairly well-recognized. Though Section 18 of the SC & ST Act provides an interdict in the matter of grant of pre-arrest bail where the person is accused of the offences punishable under SC & ST Act, 1989, yet, where no prima facie case for the offence punishable under the said Act, 1989 is made out, the Courts are not denuded of the authority to grant pre-arrest bail. In such an eventuality, it has been consistently held that, the bar under Section 18 of the SC & ST Act, 1989 does not operate as the very premise for its operation namely a prima facie case for the offence punishable under SC & ST Act, 1989 is non-existent. It would suffice to note that in the case of Prathvi Raj Chauhan (supra), wherein the constitutional validity of Section 18A of the SC & ST Act, 1989 was challenged, a Three-Judge Bench of the Supreme Court, inter alia, observed that concerning the applicability of provisions of Section 438 of the Code, it shall not apply to the cases under the SC & ST Act, 1989. However, if the complaint does not make out a prima facie case for applicability of provisions of the SC & ST Act, the bar created by Section 18 and 18A(i) shall not apply.

12. In view of the aforesaid exposition of law, when a Court is confronted with an application for pre-arrest bail of a person, who is arraigned for the offence under SC & ST Act, the primary duty of the Court is to ascertain whether a prima facie case for those offences is made out. Once such a prima facie view is recorded, interdict contained in Section 18 and 18(A) of the SC & ST Act must be allowed to have full play. Lest, the legislative intendment would be defeated.

13. This leads to a further question as to the nature of the inquiry to ascertain the existence of a prima facie case. In the case of *Vilas Pandurang Pawar vs. State of Maharashtra* (2012) 8 SCC 795. the Supreme Court delineated the approach to be adopted in an application for pre-arrest bail where the accusation is of the commission of the offence under SC & ST Act as under:

"9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

(emphasis supplied)

14. A profitable reference can also be made to the observations of Hon'ble Mr. Justice S. Ravindra Bhat, in the concurring opinion, in the case of *Prathvi Raj Chauhan* (supra), which read as under:

"33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

(emphasis supplied)

15. On the aforesaid touchstone, reverting to the facts of the case, I am afraid to accede to the submissions on behalf of the appellants that no prima facie case

for the offences punishable under SC & ST Act, 1989 is made out. The allegations in the FIR, (a gist of which is referred to in the narration of facts above) would indicate that the prosecutrix made specific and concrete allegations of intentional insult and intimidation with a view to humiliate her for being a member of the Scheduled Caste. The allegations are not bald and omnibus. The prosecutrix has adverted to the specific utterance, gestures and acts on the part of both appellant no.1 and appellant no.2. There are allegations to the effect that appellant no.1 outraged her modesty by making indecent gestures, coupled with abusive words, and used criminal force with a view to outrage her modesty. The allegations in the FIR further indicate that the incident in question was not one of a fleeting moment. The prosecutrix was allegedly pursued to her office and intentionally insulted and intimidated in the presence of persons, who were not the staff members and relatives.

16. Mr. Agvekar made an endeavour to demonstrate that the prosecutrix was not abused and/or humiliated in public view. Thus, the offence punishable under Section 3(1)(r) of the SC & ST Act, 1989 according to Mr. Agvekar, is not prima facie made out. Reliance was placed on the following observations of the Supreme Court in the case of Hitesh Verma (supra):

"12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as "1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view".

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors.⁵ The Court had drawn distinction between the expression "public place" and "in any place within public view". It

was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen 5 (2008) 8 SCC 435 by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

17. There can be no qualm over the aforesaid proposition of law, which spells out the ingredients of the offence punishable under Section 3(1)(r) of the SC & ST Act, 1989. However, in the facts of the case, all the elements which constitute the offence punishable under Section 3(1)(r) appears to have been, prima facie, made out. The allegations in the FIR prima facie reveal that the prosecutrix was intentionally insulted and intimidated with a view to humiliate her for being a member of Scheduled Caste. The incident occurred near the lift of "A" Wing of Desai Shopping Centre. It would be difficult to draw an inference at this stage that the incident did not occur in public view.

18. It is true that appellant no.1 and the husband of the prosecutrix appear to be at the loggerheads. Appellant no.1 claimed to have lodged a private complaint against the husband of the prosecutrix and few non-cognizable reports in the year 2016. It is trite, enmity is a double edged tool. On the one hand, it furnishes a ground for false implication. On the other hand, it also constitutes a motive for the crime. In the facts of the case at hand, the inimical nature of the relationship cannot be extolled to such a pedestal as to throw the prosecution case overboard despite there being specific allegations which make out the offences punishable under SC & ST Act, 1989. Moreover, the fact that the appellant no.2 lodged a report against the prosecutrix and her associates, in

respect of the same occurrence on 25th November, 2021, apparently post registration of the instant FIR against the appellants, underscores the fact that, at best, there are two versions of one and same occurrence. Which one of them is correct is essentially a matter for investigation and trial.

19. For the foregoing reasons, I am persuaded to hold that the interdict contained in Section 18 and 18A of the SC & ST Act, 1989 applies with full force and vigour in the facts of the instant case. The learned Special Judge, in the circumstances of the case, thus cannot be said to have committed any error in declining to entertain the prayer for pre-arrest bail. No interference is thus warranted in the impugned order. Resultantly, the appeal deserves to be dismissed.

20. Hence, the following order:

: ORDER:

The Appeal stands dismissed.