

(2024) 09 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 194 Of 2024

Ganesh Sao @ Ganesh Kumar Sao @ Ganesh Sao

APPELLANT

Vs

State Of Jharkhand `

RESPONDENT

Date of Decision : 26-09-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 144, 438, 482

Indian Penal Code, 1860 — Section 323, 354, 379, 452, 506

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(i)(c), 3(1)(v), 3(1)(x), 3(s), 18

Citation : (2024) 09 JH CK 0032

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Lalan Kumar Singh, Arup Kumar Dey, Malsi Pathak, Rohit Ranjan Singh, Amritansh Vats

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Lalan Kumar Singh, learned counsel appearing for the appellants, Mr. Arup Kumar Dey, learned counsel appearing for the State and Ms. Malsi Pathak, learned counsel appearing for respondent no.2 and Mr. Amritansh Vats, learned Amicus Curiae appearing for respondent no.2, who was appointed by the Coordinate Bench vide order dated 22.07.2024.

2. This appeal is directed against the order dated 06.03.2024 passed in A.B.P. No.351/2024 by the learned Additional Sessions Judge-VI, Hazaribag in connection with Ichak P.S. Case No.154/2023, registered under Sections 323, 354, 379, 452, 506 of the Indian Penal Code read with Section 3(i)(c), 3(1)(v), 3(1)(x) of SC/ST Act, pending in the Court of the learned Special Judge, SC/ST Act, Hazaribag.

3. Mr. Lalan Kumar Singh, learned counsel appearing for the appellant submits

that there is land dispute for that Title Suit No.115/2021 is pending before the Civil Judge, Junior Division-I, Hazaribag with regard to Khata No.3, Plot No.640, total area 9 decimals and Plot No.714, total area 61 decimals in which the appellant nos. 1 and 3 are the defendant Nos. 4 and 5 and since 2021, there is a land dispute between the parties and, therefore, the present case has been filed only to take revenge and harass the appellants. He further submits that once proceeding under Section 144 Cr.P.C. was also initiated being Misc. Case No.183/2021 against appellant nos. 1 and 3 with regard to the same Khata, which was also the subject matter in the said title suit. He submits that in view of that, prima facie case not made out under SC/ST Act and, therefore, this appeal is maintainable.

4. Mr. Arup Kumar Dey, learned counsel appearing for the State opposed the prayer on the ground that the allegations are there.

5. Ms. Malsi Pathak, learned counsel appearing for respondent no.2 by way of drawing attention of the Court to the contents of the complaint and submits that the allegations are there of using filthy language and in view of that, this appeal may kindly be dismissed.

6. Mr. Amritansh Vats, learned Amicus Curiae submits that under the SC/ST Act, if prima facie case is made out, anticipatory bail is not maintainable, however, if the case is lodged maliciously, anticipatory bail can be granted. He relied upon the judgment passed by the Hon'ble Supreme Court in the case of Shajan Skaria v. State of Kerala and another, reported in 2024 SCC OnLine SC 2249. He refers paragraph 38 of the said judgment, which reads as under:

"38. It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry of the materials on record. The relevant observations are reproduced hereinbelow:

"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)”

Relying on the above judgment, he submits that it is open to the Court to consider as to whether prima facie case under the SC/ST Act is made out or not.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the contents of the complaint and finds that in paragraph 10 it is disclosed that there is dispute between the parties with regard to the land. For the land in question, one title suit is also pending and further, one proceeding under Section 144 Cr.P.C. was also initiated. Thus, prima facie it appears that maliciously the case has been lodged under the SC/ST Act and if such a situation is there in the case in hand, the judgment passed by the Hon'ble Supreme Court in the case of Hitesh Verma v. State of Uttarakhand, reported in (2020) 8 SCC 770 is attracted. Paragraphs 18 and 19 of the said judgment read as under:

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

19. This Court in a judgment reported as Subhash Kashinath Mahajan v. State of Maharashtra issued certain directions in respect of investigations required to be conducted under the Act. In a review filed by the Union against the said judgment, this Court in a judgment reported as Union of India v. State of Maharashtra reviewed the directions issued by this Court and held that if there is a false and unsubstantiated FIR, the proceedings under Section 482 of the Code can be invoked. The Court held as under: (Union of India case, SCC p. 797, para 52)

“52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the Scheduled

Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care of in proceeding under Section 482 CrPC.”

8. On perusal of the complaint, it transpires that the case was filed stating therein about some dispute with regard to land. It appears that no ingredient under Section 3(s) of the Act has been disclosed in the complaint and it has also not been disclosed that it was in ‘public view’ and in the complaint, it is disclosed that there is dispute with regard to the land and, as such, I am inclined to provide privilege of anticipatory bail to the petitioners.

9. In view of the above facts, reasons and analysis, the order dated 06.03.2024 passed in A.B.P. No.351/2024 by the learned Additional Sessions Judge-VI, Hazaribag in connection with Ichak P.S. Case No.154/2023, pending in the Court of the learned Special Judge, SC/ST Act, Hazaribag is, hereby, quashed. Accordingly, the appellants, above named, are hereby directed to surrender before the learned Court within three weeks from today, and in the event of their surrender/arrest, the appellants, above named, shall be released on bail, on furnishing bail bond of Rs.25,000/-(Rupees Twenty Five Thousand) each, with two sureties of the like amount each, to the satisfaction of learned Special Judge, SC/ST Act, Hazaribagh in connection with Ichak P.S. Case No.154/2023, subject to the following conditions:

(i) The appellants shall not, directly or indirectly, make any inducement, threat undue influence to the prosecution witnesses; and

(ii) The appellants shall appear before the trial court on each and every date given to them by the said Court till disposal of the trial.

10. This appeal is, therefore, allowed in above terms and disposed of.