

(2024) 04 KAR CK 0038
In the Karnataka High Court
Case No : Criminal Appeal No. 516 Of 2024

Hemantha S/O. Krishnamurthy L.N & Others

APPELLANT

Vs

State Of Karnataka Lingadahalli Police Station Rep. By State
Public Prosecutor High Court Building Bangalore-01 & Others

RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 323, 324, 354, 354(B), 504, 506
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Amendment Act,
2015 — Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(va), 18(A)

Citation : (2024) 04 KAR CK 0038

Hon'ble Judges : Mohammad Nawaz, J

Bench : Single Bench

Advocate : H.B. Rudresh, Rahul Rai K

Final Decision : Partly Allowed

Judgement

Mohammad Nawaz, J

1. This appeal is preferred against the order dated 22.02.2024 passed by the Court of the I Additional Sessions and Special Judge at Chikkamagaluru in Crl.Misc No.55/2024, dismissing the petition filed under Section 438 of Cr.P.C.

2. The appellant/accused Nos.1 to 4 are seeking to set aside the impugned order and to grant them anticipatory bail in Crime No.6/2024 of Lingadahalli Police Station, Chikkamagaluru, registered for the offences punishable under Section 323, 324, 354(B), 354, 504, 506 r/w 34 of IPC and Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. Heard the learned counsel for appellants, learned High Court Government Pleader for the State.

4. Respondent Nos.2 and 3 are served but unrepresented.

5. Respondent No.2 lodged a complaint with the police alleging that on 23.01.2024 at about 8.30 p.m., the accused persons have forcibly entered her house, abused her in filthy language referring to her caste, tore her dress and outraged her modesty, assaulted with hands and with a sickle causing injuries to her neck etc. Further, dragged her husband to the road and abused and assaulted him indiscriminately. It is alleged that the offence was committed on account of previous enmity and since the complainant belong to scheduled caste. In the complaint she sought protection for herself, her husband and her son aged about 1 year 9 months.

6. The petition seeking anticipatory bail filed under Section 438 of Cr.P.C., was dismissed by the learned Sessions Judge on the ground that respondent Nos.2 and 3 have sustained injuries as shown in the out patient slips. At this stage, prima facie case is made out and therefore, Section 18(A) of SC & ST (POA) Act prohibits grant of anticipatory bail. The learned Sessions Judge has also taken into consideration that the investigation is in progress and observed that if anticipatory bail is granted, there are chances of commission of similar offence by the accused or threatening the prosecution witnesses.

7. It is contended by the learned counsel for the appellants that in view of the civil dispute between the parties, a false case has been foisted against the appellants after an inordinate delay of three days. He contended that respondent No.3 is the brother of appellant No.1. His marriage with the complainant/respondent No.2, belonging to scheduled caste was celebrated by the family members and subsequently respondent No.3 sought for partition in the joint family and filed a partition suit. Appellant No.1 and 3 had obtained a temporary injunction against respondent Nos.2 and 3 not to disturb the peaceful possession and enjoyment of the house property. To derail the proceedings of the suit, a false and fictitious case has been filed to harass the appellants. It is further contended that the injured were not even admitted in the hospital and therefore, the entire allegations are false. It is contended that there is no prima facie case made out against the appellants under the SC/ST (POA) Act and therefore, the learned Sessions Judge was not proper in dismissing the prayer for anticipatory bail on the ground that Section 18(A) of the Act prohibits grant of anticipatory bail.

8. The learned High Court Government Pleader has sought to dismiss the appeal, contending that there is a prima facie case against the appellants, in view of the specific averments in the complaint, which are serious in nature. He contended that the complainant belong to scheduled caste against whom the offences are committed. She has taken treatment and the wound certificate further confirms the occurrence. He contended that the Sessions Court has rightly dismissed the prayer seeking anticipatory bail, observing that in view of Section 18(A) of the Act, it has no jurisdiction to entertain a petition under Section 438 of Cr.P.C.

9. I have heard the rival contentions and perused the material available on record.

10. The parties are closely related to each other. Complainant/respondent No.2 is the wife of respondent No.3. Appellant No.1 and respondent No.3 are brothers. Appellant Nos.3 and 4 are the uncles of appellant No.1 and respondent No.3. Appellant No.2 is the son of appellant No.3.

11. It appears that respondent No.3 married the complainant/ respondent No.2, belonging to scheduled caste and it was a love marriage. There is a civil suit pending between the parties in respect of the house property, wherein appellant Nos.1 and 3 had obtained temporary injunction against respondent Nos.2 and 3. The suit was instituted by their grandmother. The question is as to whether on account of the said civil dispute, a false case was filed against the appellants and as to whether there is a prima facie case against the appellants attracting the provisions of the SC/ST Act, which would disentitle them the relief of anticipatory bail.

12. One of the contentions raised by the learned counsel for the appellants is that there is an inordinate delay in lodging the complaint and therefore, the entire allegations are false. The delay in setting the law into motion itself cannot be a ground at this stage to disbelieve the case of prosecution. Even accepting that there is a civil dispute between the parties or the incident did not take place only because the complainant is a member of the scheduled caste or scheduled tribe, the nature of allegations in the complaint have to be looked into before considering the prayer for anticipatory bail.

13. A careful perusal of the complaint averments would indicate that on 23.01.2024 at about 8.30 p.m., when the complainant was cooking, accused Nos.1 and 2 entered the kitchen and held the complainant and threatened her with dire consequences saying that if she raises an alarm she and her child will be killed. Further, telling that the SC/ST community girls are very beautiful, they harassed her. Accused No.2 tore her clothes and held a chopper to her neck and threatened her. Accused No.1 caused injury to her neck with the chopper. Further allegations are that the said accused called accused Nos.3 and 4 and all of them pushed her inside and assaulted her with hands, abused in filthy language referring to her caste etc. It is also alleged that after an hour when her husband came, she revealed the entire incident to him. When he questioned the accused, he was also abused and assaulted etc.

14. In so far as, accused Nos.1 and 2 are concerned serious allegations are made. There are materials to show that the injured have taken treatment, though as out patients. The learned Sessions Judge has considered the out patient slips of both the injured wherein, the complainant has sustained cut injury over her neck and her husband has sustained cut injury over his left hand finger and tenderness over the left arm.

15. Initially, it was accused Nos.1 and 2 who entered the house of the complainant, abused and outraged her modesty and caused injury to her neck with a chopper. Allegations against accused Nos.3 and 4 are omnibus in nature.

Such allegations are not sufficient to hold that there is a prima facie case against them for having committed an offence under the SC/ST Act. The same have to be proved in due course.

16. In the light of the above discussion, the dismissal of the petition filed by appellant Nos.1 and 2 under Section 438 of Cr.P.C., by the learned Sessions Judge, cannot be interfered with. The prayer of appellant Nos.3 and 4 can be granted by imposing necessary conditions. Hence, the following:

ORDER

Appeal is partly allowed.

The order dated 22.02.2024 passed by the Court of the I Additional Sessions and Special Judge, Chikkamagaluru In CrI.Misc No.55/2024 is set aside in so far as dismissing the petition preferred by appellant Nos.3 and 4/accused Nos.3 and 4 are concerned.

Appellant Nos.3 and 4/accused Nos.3 and 4 are ordered to be released in the event of their arrest in Crime No.6/2024 of Lingadahalli Police Station, Chikkamagaluru, subject to following conditions:

1. They shall appear before the jurisdictional Court within a period of one week and shall execute a bond in a sum of Rs.1,00,000/- (Rupees one lakh only) each, with two sureties for the likesum.
2. They shall furnish proof of their residential address and shall inform the Court, if there is any change in address.
3. They shall not directly or indirectly tamper with the prosecution witnesses/evidence.
4. They shall not leave the jurisdiction of the trial Court without the prior permission of the learned Sessions Judge.
5. They shall appear before the trial Court regularly without fail.
6. They shall not indulge themselves in any criminal activities.