
(2019) 08 BOM CK 0051
In the Bombay High Court
Case No : Criminal Appeal No. 444 Of 2019

Jyoti

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 156(3)
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 15A

Citation : (2019) 08 BOM CK 0051

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : Vithal M. Dighe, M.M. Nerlikar, V.M. Lomte, S.B. Kadu, R.B. Ade

Final Decision : Dismissed

Judgement

K.K. Sonawane, J

1. Heard. Admit. The present matter is taken up for final hearing on merit with the consent of both sides.

2. The present Criminal Appeal is filed for the relief to quash and set aside the impugned order dated 09-04-2019 passed by the learned Sessions Judge, Dhule, below applications Exhibit-4/D and 6/D in Special Case No. 10 of 2019 for admitting the respondents No. 3 to 8 on bail. The appellant also prayed to get arrested the respondents No. 3 to 8 and put them behind bar into the crime.

3. Learned counsel for the appellant-original complainant submits that the marriage of appellant was solemnized with one Nitin Mandole on 25-11-2007 under the Special Marriage Act. After the marriage, she received proper treatment for some days from the husband and inmates of matrimonial home. Thereafter, she was subjected to mental and physical cruelty by the husband and his relatives. She was also compelled for termination of her pregnancy. The husband deserted the appellant-wife and left her in lurch at the mercy of her

parents. Thereafter, appellant made endeavour to file Police complaint, but did not evoke result. Eventually, she approached to the learned Magistrate and filed the private complaint. Pursuant to order passed by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure, the crime came to be registered against husband and other inmates of matrimonial home at Dhule City Police Station for investigation into the allegation. According to learned counsel, the Investigating Officer (IO) did not apprehend the respondents No. 3 to 8- herein for the sake of investigation. The learned trial Court also did not make any enquiry and without appreciating factual aspect of the matter, granted bail to the respondents No. 3 to 8. The learned counsel raised objection and submits that the impugned order of granting bail to the respondents No. 3 to 8 by the learned Sessions Judge is illegal, imperfect and contrary to law. The opportunity of hearing was not provided to the appellant as prescribed under Section 15-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (Hereinafter, referred to it as, "Act of 1989", for the sake of brevity). Therefore, learned counsel for appellant prayed to revoke the impugned order of granting bail in favour of respondents No. 3 to 8 and they be arrested into the crime registered against them.

4. We have given anxious consideration to the arguments advanced on behalf of learned counsel Mr. Dighe, appearing for the appellant. We have also perused the documents produced on record including the impugned orders passed by the learned trial Court. Admittedly, respondents No. 3 to 6 and 8 are the female members. They all from the family of prime accused Nitin Mandole in this case, except respondent No. 3, who is alleged to be a friend of husband - Nitin.

The respondents No. 7 and 8 are the in-laws of the appellant-original complainant and they are old aged senior citizen residing separate at Pune. Moreover, investigation has already been completed. IO preferred the charge-sheet against accused. In view of nature of subject-matter, IO did not feel it necessary to arrest the present respondents No. 3 to 8 for the sake of investigation, but IO proceed to issue notice under section 41-A of the Cr.P.C. Thereafter, the respondents No. 3 to 8 as per directions of the IO appeared before the learned Sessions Judge and surrendered themselves to the custody of the Court for facing trial. The respondents No. 3 to 8 moved an application seeking bail into the crime. The learned Sessions Judge considered the nature of crime and gravity of allegations nurtured against accused and proceeded to admit them on bail by exercising judicial discretion. In such circumstances, we are not prepared to cause any interference at the behest of appellant in the discretion exercised by the learned trial Court.

5. The learned counsel for the appellant gave much emphasis on provision of Section 15-A of the Act of 1989, which provided right to the victim of the crime under the Act of 1989 for hearing into the matter. It is not in dispute that in absence of hearing to the appellant-original complainant, the learned trial Court was pleased to grant relief of bail in favour of respondents No. 3 to 8. After

scrutiny of attending circumstances on record and nature of offence levelled against respondents No. 3 to 8, we do not find that it would cause great injustice and prejudice to the appellant-complainant. Undisputedly, the provisions of Section 15-A of the Act of 1989 contemplates locus-standi to the victim of the crime to be heard at any proceeding under the Act of 1989 in respect of bail, etc. But, it does not mean that Court can not exercise the discretion in absence of victim of the crime into the matter, if it would not cause any injustice and prejudice to him/her.

6. In the instant case, the learned trial Court after hearing the applicants-accused, as well as learned APP on behalf of prosecution, proceed to pass the impugned orders for enlarge the respondents No. 3 to 8 on bail. Moreover, nature of allegations against these respondents No. 3 to 6, their status being female members as well as respondents No. 7 and 8 are being senior citizens, we do not find that the impugned order would cause any injustice and prejudice to the appellant. Therefore, taking into consideration, the parameter prescribed under the law for cancellation of bail granted earlier in favour of respondents No. 3 to 8, we are of the opinion that there is no merit in the contentions propounded on behalf of the appellant. Hence, the Criminal Appeal being devoid of merit, deserves to be dismissed. Accordingly, the Criminal Appeal stands dismissed. Rule stands discharged. No order as to costs.