

(2017) 07 BOM CK 0189
In the Bombay High Court
Case No : 523 of 2017

Mahadev Titthal Jagadale

APPELLANT

Vs

The State of Maharashtra & Anr.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 145](#), [Section 145](#) - Procedure where dispute concerning land or water is likely to cause breach of peace - Procedure where dispute concerning land or wa

Citation : (2017) 07 BOM CK 0189

Hon'ble Judges : V.K. Tahiramani, Sandeep K. Shinde

Bench : DIVISON BENCH

Advocate : Abhijeet A. Desai, Vrushali Maindad, Ajinkya Badar, H.J. Dedhia, Ravi G. Shinde

Judgement

1. Heard Learned Counsel for the appellant, Learned Counsel for the complainant and Learned APP.

2. The appellant, original accused no.1 has preferred this Appeal against the order dated 4th May, 2017 passed by the Learned Sessions Judge, Pune in C.R. No. 214 of 2016 of Wanavari Police Station which is under Sections 448, 354, 380, 342, 427 and 504 read with Section 34 of the Indian Penal Code (IPC) and under Sections 3(1)(g), (r), (s), (w), (ii), and (z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "The Atrocities Act"). By the said order, the anticipatory bail application of the appellant in C.R. No. 214 of 2016 came to be rejected.

3. At the outset, it needs be stated that, the appellant had earlier approached the Sessions Court seeking anticipatory bail by preferring Criminal Bail Application No. 1911 of 2016. The said application came to be rejected. Being aggrieved thereby, the appellant preferred Anticipatory Bail Application No.1175 of 2016 before this Court. This Court (Coram : A.M. Badar, J) by detailed order

dated 20th July, 2016 rejected the application for anticipatory bail.

4. Thereafter, the appellant again approached the Sessions Court seeking anticipatory bail and as stated earlier, the Sessions Court by order dated 4th May, 2017 rejected the application for anticipatory bail. Perusal of the FIR clearly shows that, the appellant abused the mother of the complainant in relation to her caste. In addition, the appellant put his hand on the chest of the mother of the complainant and pushed her into a corner and held her there. In view of the allegations made in the FIR, Sections 3(1)(r) and 3(1)(s) of the Atrocities Act, are attracted. Hence, Section 18 of the said Atrocities Act would come into force.

5. The Learned Counsel for the appellant, submitted that, there is inordinate delay in lodging the FIR which shows that the complainant has falsely implicated the appellant in this case. Hence, anticipatory bail ought to be granted to the appellant. In support of his contention that on account of delay in lodging the FIR, anticipatory bail can be granted, he has placed reliance on the decision of the Learned Single Judge of this Court in the case of Pravin S/o. Shrimant Bhutekar v. State of Maharashtra & anr. reported in 2010 All MR (Cri) 1223 : 2010 (3) Bom.C.R. (Cri) 678 . We have gone through the said decision. In relation to this decision, it is seen that, the incident therein occurred on 4th January, 2010 and FIR was lodged on 7th January, 2010. The FIR, itself shows that, the delay in lodging the complaint was caused due to consultation with the senior political leader of the area. It is in these circumstances, that anticipatory bail was granted to the accused therein. In the present case, it is seen that the incident occurred on 15th May, 2016 at 4.45 p.m. and the FIR is lodged on the very next day i.e. 16th May, 2016. Looking to the facts of this case, it cannot be said that the delay is such, as would lead us to the conclusion that the appellant has been falsely implicated in this case. The delay in the case of Pravin Bhutekar (supra) was 3 days. Moreover, it is seen that the FIR in the case of Pravin Bhutekar was lodged only after consultation with senior political leader of that area which was evident from the FIR itself. The facts in the present case, are entirely different. Hence, this decision cannot be made applicable to the present case.

6. Thereafter, the Learned Counsel for the appellant, submitted that, the incident has not taken place within public view. Hence, Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are not attracted. To buttress his submission, he has placed reliance on a decision of the Learned Single Judge of this Court in the case of Mahesh Sakharam Patole and Ors. v. State of Maharashtra reported in 2010 (1) Crimes 673 (Bom). The Learned Counsel for the appellant pointed out, that in the said case, the accused persons entered into the courtyard of the house of the complainant and in the presence of his family members and resident servants, gave abuses to the complainant in relation to his caste. The Learned Counsel for the appellant, pointed out, that in the present case also, the incident has occurred inside the house. Hence, it cannot be said that the incident took place within public view. On perusal of the decision in the case of Mahesh (supra), we

find that it is observed therein that, if words were audible and/or members of public had viewed the incident even if incident occurred in a private place, it would attract the offence. No doubt, in the present case, the incident has taken place inside the flat but the FIR itself shows that 18 to 20 boys had also entered into the flat. Thus, the incident of the appellant abusing the mother of the complainant, has taken place in public view, hence, Section 3(1)(r) & 3(1)(s) are attracted.

7. The Supreme Court in the case of Swaran Singh & Ors. v. State through Standing Counsel & anr. reported in 2008 (Cri.) L.J. 4369 has observed that "place within public view" must not be confused with the expression "public place". It has further been observed that, in the case of Swaran Singh (supra) that, abusing a person of schedule caste in relation to his caste, within public view, is certainly an offence under the Atrocities Act. As stated earlier, the Supreme Court has observed that the expression "place within public view" must not be confused with "public place". A place can be a private place but yet be within public view. In the present case, about 18 to 20 boys were present in the flat when the incident occurred, hence it can certainly be said to be a place within public view. Hence, Sections 3(1)(r) and 3(1)(s) would be attracted.

8. Thereafter, the Learned Counsel for the appellant submitted that there must be specific accusation alleged against each of the accused and Section 34 of IPC cannot be pressed into service. On perusal of the FIR, it is seen that the word "Tyane" in marathi is stated in reference to the appellant alone. This word, in the context of the FIR, does not mean that, all the persons who were present in the room had abused the mother of the complainant in relation to her caste. Thus, as there is specific allegation against the appellant of having abused the mother of the complainant in relation to her caste, again Section 3(1)(r) and Section 3(1)(s) would be attracted.

9. Thereafter, the Learned Counsel for the appellant, submitted that this FIR has been lodged as a counter-blast on account of a property dispute between the complainant and the appellant. He placed reliance on the proceedings under Section 145 Criminal Procedure Code ("Cr.P.C." for short) which was initiated by the mother of the complainant. He pointed out, that in the said proceedings, the application of the mother of the complainant under Section 145 Cr.P.C. came to be rejected and it is observed in the said order that it cannot be stated that, she was in possession of the property. As stated earlier, the application of the appellant for anticipatory bail came to be rejected by this Court, by order dated 20th July, 2016. No change in circumstances has been brought to our notice, except that, the application under Section 145 Cr.P.C. preferred by the mother of the complainant came to be rejected. Only because application under Section 145 Cr.P.C. filed by the mother of the informant came to be rejected by the Sub-Divisional Magistrate, it cannot be said to be change in the circumstances and cannot be a ground to grant anticipatory bail.

10. Perusal of the FIR, clearly makes out an offence under Sections 3(1)(r) and

3(1)(s) of the Atrocities Act. Hence, anticipatory bail cannot be granted to the appellant. The Appeal is dismissed.