

(2020) 10 JH CK 0062

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 278 Of 2020

Rakesh Ranjan Shrivastava

APPELLANT

Vs

State Of Jharkhand & Anr.

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 417, 504, 506

Arms Act, 1959 — Section 25(1A)

Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(1)(x), 3(2)(va), 18

Code Of Criminal Procedure, 1973 — Section 438

Citation : (2020) 10 JH CK 0062

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Anil Kumar, V.K. Vashistha, Ajit Kumar

Final Decision : Dismissed

Judgement

Heard the parties through video conferencing. This appeal has been preferred by the appellant being aggrieved by the order dated 22.02.2020 passed by the learned Additional Sessions Judge-I-cum-Special Judge-cum-F.T.C., Bokaro, in connection with Sector-4 SC/ST P.S. Case No.08 of 2018, corresponding to G.R. No.766 of 2018 registered under Sections 417/504/506/34 of the Indian Penal Code, under section 25 (1-A) of the Arms Act and under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby and whereunder the learned court below rejected his prayer for anticipatory bail.

Learned Senior Advocate appearing for the appellant submits that earlier during the pendency of the investigation, the prayer for anticipatory bail of the appellant was rejected by the learned Special Judge and Criminal Appeal (S.J.) No.1158 of 2018 was preferred against the said order and this Court relying upon the Judgment of Manju Devi vs. Onkarjit Singh Ahluwalia alias Omkarjeet Singh and Others reported in (2017) 13 SCC 439 and also the judgment of Vilas Pandurang

Pawar and Another vs. State of Maharashtra and Others reported in (2012) 8 SCC 795 and after observing that there is serious and specific allegation against the appellant of not only abusing and threatening the informant within the premises of a club but even using criminal force against him by threatening him at the point of fire arms with attempt to impede him from approaching the police; dismissed the said appeal. It is next submitted by the learned Senior Advocate appearing for the appellant that the appellant preferred a fresh anticipatory bail before the learned Special Judge with the fresh ground that after completion of investigation, the police submitted final form and did not send up the appellant for trial but the learned Special Judge vide order dated 24.09.2019, in SC/ST No.12 of 2018 has found prima facie case punishable under Sections 417/504/506/34 of the Indian Penal Code as well as under Section 3 (1) (r) (s) and Section 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and ordered for issuing summons against them.

It is next submitted by the learned Senior Advocate appearing for the appellant that the appellant is innocent and the dispute is basically because of partnership business between the parties. It is also submitted that the learned court below failed to consider that during investigation, police found that the appellant being member of the club was present there but the informant being not the member of the club was the guest of Prabhash Chandra on the date of relevant occurrence and this shows that the implication of the appellant in this case was at the behest of Prabhash Chandra and the real dispute is between the appellant and Prabhash Chandra. It is further submitted that the learned court below has failed to consider the materials collected during investigation, it is amply clear that the witnesses have not fully supported about the alleged abuse in the caste name of the informant so no prima facie case is made out against the appellant. Hence, it is submitted that the impugned order of learned court below be set aside and the appellant be given the privileges of anticipatory bail.

Mr. Ajit Kumar, the leaned senior counsel appearing for the respondent on the other hand defended the impugned order passed by the learned court below and relied upon the paragraph no.9 and 10 of Manju Devi vs. Onkarjit Singh Ahluwalia alias Omkarjeet Singh and Others reported in (2017) 13 SCC 439 (supra) which reads 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 an 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. The 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."

And also paragraph no.23 in the case of Manju Devi vs. Onkarjit Singh Ahluwalia alias Omkarjeet Singh and Others (Supra) which reads as under :-

"23. In view of the above discussion and in the light of the specific averments in the complaint made by the complainant, we are of the considered opinion that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code and the High Court has committed grave error in granting anticipatory bail to the respondents. Accordingly, the order dated 3-12-2014, passed by the High Court, is set aside."

And submits that the Bar under Section 438 Cr.P.C. is attracted in the facts of the case as well as prima facie there is sufficient material in the record to suggest commission of offences punishable under Section 3 (1) (r) (s) and Section 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is evident from the fact that the Criminal Miscellaneous Case filed by the appellant challenging the said order of the learned Special Judge ordering issue of summons has to be withdrawn from the co- ordinate bench of this case as after some argument the co- ordinate bench was not inclined to allow the same. Hence, the learned court below has rightly rejected the prayer for anticipatory bail as such application is not maintainable in law. Hence, it is submitted that this appeal being without any merit be dismissed.

Having heard the submissions made at the Bar and after perusal of the record, I find that during the stage of investigation, the prayer of appellant has already been rejected by the learned Special Judge and the appeal was dismissed by this Court and though, after conclusion of the investigation final form was submitted by police but the learned Special Judge has ordered for issue of notice against the appellant for facing the trial inter alia for the offences punishable under the penal provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 also and though the appellant filed Cr.M.P. No.4113 of 2019 but after some arguments, the same was withdrawn by the appellant resulting the same being dismissed as withdrawn so the said order of the learned Judge of issuing summons after finding prima facie case has sustained finality having not been challenged anywhere thereafter. Thus, in view of the serious and specific allegation against the appellant of abusing and threatening the informant within the premises of the club and even using criminal force against him by threatening him at the point of fire arms with attempt to impede him from approaching the

police and considering the involvement of offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellant, this Court is of the considered view that the learned court below has rightly rejected the prayer for anticipatory bail. Hence, there is no merit in this appeal. Accordingly, the impugned order dated 22.02.2020 passed by the learned Additional Sessions Judge-I-cum-Special Judge-cum-F.T.C., Bokaro, in connection with Sector-IV SC/ST P.S. Case No.08 of 2018, corresponding to G.R. No.766 of 2018 is confirmed and this appeal being without any merit is dismissed.