

(2013) 08 JH CK 0058
In the Jharkhand High Court
Case No : ABA No. 1051 of 2013

Umesh Prasad Gupta

APPELLANT

Vs

The State of Jharkhand and Birbal Singh Munda

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 438

Penal Code, 1860 (IPC) — Section 504, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3(1)(x), 3(1)(xi)

Citation : (2014) 1 JLJR 187

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and Mr. A.K. Sahani, for the Appellant; Md. Hatim, Addl. P.P. for the State and Mr. Pandey Neeraj Rai, for opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Dhruv Narayan Upadhyay, J.

Heard learned counsel for the parties.

1. Petitioner apprehending his arrest in connection with Protest-cum-Complaint Case No. 704 of 2011 relating to Sadar SC/ST PS case No. 21 of 2010 for offences registered under sections 504 /506 of the Indian Penal Code and section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, has filed this application praying for anticipatory bail. Prosecution case, in brief, is that the complainant happens to be a Junior Engineer in the PHED Department and posted at Sonahatu. It is alleged that the petitioner who happens to be the Executive Engineer in the department concerned had been humiliating the informant considering him to be a member of Scheduled Tribe. He was abused in presence of public and witnesses openly in the office as well as in chamber and he was abused in the name of his caste. He was also compelled

to sign letter no. Zero dated 19.5.2010.

2. It is submitted that no case under the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act) is made out and the ingredients of offences u/s 3(1)(x) of the SC/ST Act is lacking. As a matter of fact, the informant was negligent in his duty and he had been accommodating contractors for getting the bills passed, but the objection raised and action taken by the petitioner caused annoyance to the informant and he has lodged this case with false allegations in order to harass the petitioner.

The Police after due investigation submitted final form which was accepted on 25.4.2011. On the basis of Protest-cum-Complaint filed by the informant, Complaint Case No. 704 of 2011 was registered and the court proceeded for enquiry. After holding enquiry on 28.8.2012, an order was passed by the learned Judicial Magistrate directing the petitioner to face trial for offences punishable under sections 504 /506 IPC and sections 3(1)(x) of the SC/ST Act. Since the petitioner has been apprehending his remand in the present case, he has filed the present application for grant of bail u/s 438 of the Code of Criminal Procedure. It is contended that the person in whose presence the complainant alleged that he was abused has not been examined during enquiry. It is admitted in the complaint that the reason behind institution of this case is nothing, but action taken by the petitioner in his official capacity against the complainant.

3. Learned counsel appearing on behalf of the complainant as well as the State have opposed the prayer and submitted that section 18 of the SC/ST Act creates an absolute bar against exercise of powers conferred upon the Sessions Judge as well as the High Court u/s 438 of the Code of Criminal Procedure (hereinafter referred to as the Code). It is pointed out that the investigating officer has not recorded actual statements of the witnesses and he has submitted the final form in collusion with the petitioner. It was submitted that the learned Magistrate has rightly taken cognizance against the petitioner under the sections referred to above and the petitioner shall not be given benefit of anticipatory bail. He has also relied on the judgments in the case of Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Others, ; (ii) Ashabai Machindra Adhagale Vs. State of Maharashtra and Others, .

4. In reply to the arguments advanced, learned counsel for the petitioner has filed supplementary affidavit and placed reliance on the judgments in the case of Gorige Pentaiah Vs. State of A.P. and Others, (para 9 to 13) (ii) Delhi High Court (Manjit Singh & Ors. Vs. State of Delhi) and (iii) Sri N.B. Gungarakoppa and Others Vs. State of Karnataka, .

5. By referring to the above judgments, it was argued that the privilege granted to a person u/s 438 Cr. P.C. cannot be curtailed only because allegation of commission of offences punishable under the provisions of the SC/ST Act is levelled. The Court has to see whether ingredients of offences punishable under

the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted or not. It was pointed out that the complainant has to disclose the identity and caste of the accused in the complainant and he will have to substantiate the allegation that considering him to be a member of the Scheduled Caste or Scheduled Tribe, he has been humiliated within public view by the accused who is belonging to a caste other than SC/ST. The genesis of the occurrence which the informant/complainant has admitted is the dispute arose between them in discharge of official duty. If any superior officer has taken action against his subordinate and the subordinate belongs to the member of Scheduled Caste or Scheduled Tribe and he files a complaint, the provisions of the SC/ST Act should not create a bar against grant of bail u/s 438 Cr. P.C.

6. Since the parties have raised question whether the provisions contained u/s 438 Cr. P.C. can be exercised or not in a case instituted attracting the offence punishable under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. I would like to refer Section 18 of the Act which reads as follows:

Section 18: Section 438 of the Code not to apply to persons committing an offence under the Act-Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act

In this connection, after perusing the judgments cited above, I have two thoughts in my mind. Firstly, in a police case attracting the provisions of the SC/ST Act, where investigation has commenced, but Charge Sheet has not been submitted, the Court can look into the FIR as well as the evidence collected in the case diary to judge whether prima facie ingredients of offences punishable under the above Act are attracted or not? If the Court considers that the ingredients of offences punishable under the SC/ST Act are not attracted, the provisions of section 438 Cr. P.C. can be invoked for giving relief to the accused. Therefore, what I mean to say is that before cognizance of the offence under SC/ST Act, option is open before the Court to consider whether offence under the said Act is committed or not, but after cognizance of the offence punishable under the Act, the Court has left no option to form opinion whether prima facie offence punishable under the Act is made out or not while considering an application for bail u/s 438 Cr. P.C. Since order of cognizance is a judicial order passed after considering the material available in the case diary and till that order exists, giving any finding that offence punishable under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not attracted, appears unwarranted while dealing with an application for bail u/s 438 Cr. P.C. because any such finding may cause prejudice to either of the party.

The second thought which I have in my mind is that in a case lodged on the basis of complaint in which after holding enquiry, order u/s 204 Cr. P.C. has been passed directing the accused to face trial for offences committed under the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities)

Act, 1989, the Court while considering application for bail u/s 438 Cr. P.C. should not hold that the provisions of the SC/ST Act are not attracted. Again, I am of the view that a judicial order by which cognizance for offence punishable under the provisions of the SC/ST Act has been taken, no further opinion shall be formed whether offences attracting the provisions of the SC/ST Act are made out or not while considering bail application u/s 438 Cr. P.C.

7. The above two thoughts may not be applicable in other cases attracting other penal offences if there shall be no bar, but specifically in a case in which cognizance order attracting offences punishable under the provisions of SC/ST Act has been passed, Section 18 of the Act creates an absolute bar against application of section 438 Cr. P.C. It is further made clear that I am not of the view that in a Police case in which Charge Sheet has been submitted and cognizance has been taken, provision contained u/s 438 Cr. P.C. cannot be invoked; rather, I have restricted my opinion with regard to cognizance taken for offences punishable under the provisions of the SC/ST Act.

8. Now coming to the facts of this case, the informant was abused in the name of his caste and he was humiliated in the office in presence of witnesses and, therefore, learned Magistrate considering aforesaid aspects of the matter has taken cognizance for offences punishable under sections 504 /506 of the Indian Penal Code and Sections 3(i)(x) of the SC/ST Act. The same view has been taken by their Lordship in the case of Vilas Pandurang Pawar (supra). So far as the disclosure of caste of the accused is concerned, their Lordship have made it clear in the judgment of Ashabai Machindra Adhagale (supra) that caste of accused not mentioned in FIR for offence u/s 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989-effect-Not mentioning caste of accused in FIR for offence u/s 3(1)(xi) of the 1989 Act, held not a ground for quashing FIR-Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989-S. 3(1)(xi)-SCs, STs, OBCs and other Minorities-Crimes Against. At the conclusion, it is observed that the Court should refrain from giving any finding that offences under SC/ST Act are not attracted in a case either instituted on the basis of complaint or in a police case, where cognizance has already been taken attracting the offences punishable under the provisions of the SC/ST Act, while considering application for bail u/s 438 Cr. P.C.

In view of the discussions made above, this application for anticipatory bail is not maintainable. Accordingly, this application stands dismissed.