

(2020) 02 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 1163 Of 2019

Vijaymala And Ors

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(2)(va), 14A(2), 18, 18A(1)
Indian Penal Code, 1860 — Section 34, 143, 146, 147, 148, 188, 323, 324, 341, 379, 504, 506
Maharashtra Police Act, 1951 — Section 135
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2020) 02 BOM CK 0062

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : Sudarshan J. Salunke, BV Virdhe, VB Deshmukh

Final Decision : Partly Allowed

Judgement

1. Present appeal has been filed under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after

referred to as the Atrocities Act) to challenge order passed by learned Additional Sessions Judge/Special Court, rejecting the Criminal Bail Application

Nos.405/2019, 406/2019 and 407/2019, thereby rejecting their prayer for anticipatory bail.

2. Admit.

3. With the consent of learned Advocates for the parties, taken up for final disposal at the stage of admission.

4. The appellants are apprehending their arrest in CR No. 273/2019 dated 15.10.2019 lodged by present Respondent No.2, contending that the present

appellants have committed the offences punishable under Sections 379, 323, 504, 506, 143 of Indian Penal Code and Section 3(1)(r)(s) and 3(2)(va) of the Atrocities Act.

5. Learned Advocate appearing for the appellants submitted that, perusal of the FIR lodged by the informant â?" Respondent No.2, would show that

the alleged incident had taken place on 13.10.2019, however, he has lodged the report on 15.10.2019. The delay that has been caused has not been

properly explained. The informant has stated in the FIR that agricultural land bearing Gut No. 258 situated at village Kasbe Talwade, Tq. And District

Osmanabad, was owned by one Shashikant Kashinath Hogale and he was looking after the field where soybean crop was harvested. The real fact is

that, originally the said field was belonging to one Godabai Dagadu Kamble and she had entered into an agreement to sale the said land with present

appellant No.3. Issar Pawti was executed on 20.12.2020 between them and as per the said agreement, possession of the land was given to appellant

No.3. Unfortunately, before the sale-deed could be executed, said Godabai expired. Said Godabai was sister of the informant. Taking dis-advantage of

the said fact of death of Godabai, the informant sold the agricultural land to Shashikant Hogale by registered sale-deed dated 12.8.2011. Appellant

No.3 had filed RCS No.44/2012 (Old Special Civil Suit No.122/2011) on 20.11.2011 for specific performance of contract and for perpetual intonation

against the informant and said Shashikant Hogale. The said suit came to be decreed in favour of appellant No.3 on 22.4.2015 and defendant No.1, i.e.

informant, was directed to execute the sale-deed in favour of the plaintiff, i.e. appellant No.3. The appellant was cultivating the suit land and when his

possession was disturbed, he lodged the FIR on 17.6.2019 against four persons including the informant, stating that they have committed the offences

punishable under Sections 188, 341, 504 read with 34 of IPC. Even prior to that, he had also lodged a report on 5.10.2011 against Shashikant Hogale,

informant and some other persons. Even at that time, the threat was given by the informant and one Datta Shahu Kamble as well as Satish Shahu

Kamble that case under the Atrocities Act would be filed against appellant No.3. That offence was registered under Sections 143, 146, 147, 148, 324,

323, 504, 506 of IPC and Section 135 of the Maharashtra Police Act. Therefore, there are documents with the appellants to show that the possession

of the disputed land is with them and no such incident would have taken place on the date, as alleged. Further, the contents of FIR would show that all

the accused persons had given alleged abuses in the name of caste in chorus, which cannot be a real fact.

6. The learned Advocate placed reliance on the decision in Shashikant Ramhari Tambe and Ors. Vs. State of Maharashtra â€" 2008 ALL MR(Cri.)

2132, wherein it has been observed, after relying on the decision in Mukesh Kumar Saini Vs. State (Delhi Administration) â€" 2002 ALL MR(Cri.)

Journal 41, wherein it is observed that, there must be specific accusations against each of the accused and Section 34 of IPC cannot be pressed into

service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In that case also, on the basis of those

observations, when allegations were that all the accused had made abuses and there was no specific accusation against each of the accused,

anticipatory bail was granted when the offence was under the Atrocities Act. Same decision in the case of Shashikant Tambe (supra) was considered

by this Court in Sugriv Prakash Garde and Ors. Vs. The State of Maharashtra and Anr. (Criminal Application No. 2848 of 2016 decided on 9.6.2016).

In that case also, the offence was under the Atrocities Act.

7. Further reliance has been placed on Vishwanath Kisan Jadhav vs. The State of Maharashtra (Criminal Application No.2734 of 2012 decided on 9th

July, 2012), wherein this Court has observed that, â€"Considering earlier events and the nature of accusations, even if it is stated that the complainant

was insulted, however, it has colour of earlier events and, prima facie, a cloak is created. Consequently, the bar of Section 18 of the Atrocities Act,

will not operate.â€"

8. Per contra, learned APP as well as learned Advocate, representing the informant â€" Respondent No.2, submitted that in view of Section 18-A of

the Atrocities Act, prima facie facts are required to be considered. The FIR discloses that the offences under the Atrocities Act have been made out

against all the appellants and, therefore, there is specific bar. Reliance was also placed on the recent decision in the case of Prithviraj Chouhan Vs.

Union of India and Ors. (Writ Petition (Civil) No.1015 of 2018, decided by the Honâ€"ble Apex court on 10.2.2020, wherein, it has been specifically

observed that, - â€"Considering the applicability of the provisions of Section 438

of Cr.P.C., it shall not apply to cases under the Act of 1989.

However, if the complaint does not make out a prima facie case, the applicability of the the bar created under Section 18 and 18-A(1) of the Act of

1989, shall not apply. Thereby it was considered that if the FIR prima facie discloses the commission of the offences, then definitely the bar is created

and, therefore, the learned Special Court was justified in rejecting the application filed by the present appellants. The documents, which the appellants

intend to rely on, cannot be considered since prima facie they are on record that the incident had taken place on 13.10.2019 and the abuses were

given.

9. At the outset, only on the point of delay in lodging the FIR, it cannot be said that the appellants would be entitled to get pre-arrest bail. The

Honâ??ble Supreme Court in the case of Prithviraj Chouhan (supra) has considered the earlier decisions of the Honâ??ble Apex court and

reiterated the decision in the case of State of M.P. and Anr. Vs. Ram Krishna Balothia and Anr. - 1995 3 SCC 221, in which, the Honâ??ble Apex

court had upheld the validity of Section 18 of the Act of 1989. It has been thereafter specifically observed and clarified that, if the complaint does not

make out prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18-A(1) thereof shall not apply.

Therefore, it is necessary to consider as to whether the offence has been made out against the appellants in the FIR registered by Respondent No.2,

vide CR No.273/2019?

10. The informant had contended that when he was working in the field of Shashikant Hogale as watchman, at about 10.00 am on 13.10.2019,

appellant Nos.1 & 2, went to the field to take away the soybean crop, he had restrained them, appellant Nos.1 & 2 caught hold of his collar, abused

and assaulted him. It will not be out of place to mention here that the FIR does not specify as to which abuses were given by appellant Nos.1 & 2.

But, then he says that they both had assaulted him by means of fists and blows on his chest, private part, left hand and it has caused him covert injury.

He further says that thereafter appellant No.3 came at the spot and started saying that, said soybean crop belongs to him. He started abusing. Then

appellant Nos..4 & 5 came. All of them assaulted him and appellant No.3 abused him in the name of caste by saying that, â??

â? Thereafter he had slapped him and thereafter all others abused him as,â?? , -
, â?. He given threat to kill and then he had made phone call to one Gajanan
Mali. Thereafter, Gajanan Mali and Shashikant Hogale

came in the field and separated them. Thus, it has to be noted that the FIR
discloses specific abuses given by appellant No.3. As regards the others

are concerned, it is stated that all of them had abused. Therefore, as regards
others are concerned, definitely, it could not have been in chorus and

they can be given benefit of the decision in Shashikant Tambeâ??s case (supra)
as well as Sugriv Gardeâ??s case (supra). When the abuses

cannot be in chorus, prima facie, it will have to be observed that, the offences
under the Atrocities Act are not made out against those appellants and,

therefore,for their applications, there was no bar under Section 18 of the
Atrocities Act.

11. Now, as regards appellant No.3 is concerned, he is relying on the earlier
events as well as the litigation. At the outset, it is to be noted that the

copy of the agreement to sale would show that it was a notarized document.
Though recitals about handing over of possession are mentioned therein;

yet perusal of the judgment in RCS No.44/2012 would show that the learned
Civil Judge, Junior Division, had not accepted the contention of the

plaintiff, i.e. appellant No.3 herein that, possession of the land has been handed
over to him. The prayer for permanent injunction was then rejected. It

is not shown by the appellant that he has challenged the said decree before the
appellate court and then in that appeal, he has obtained any interim

relief to protect his so-called possession. Orally it has been submitted by learned
Advocate for Respondent No.2 that the decree that has been passed

in RCS No.44/2012 has been stayed by the appellate court in the appeal, which
has been filed by the defendants. Therefore, the same decree on

which appellant No.3 is relying here to show that there were earlier incident or
litigation, that is not in his favour to show that the possession of the

land is with him. These observations can definitely be made, even at this prima
facie stage, when the contents of the FIR specifically state that,-â??

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Therefore, prima facie offence under the Atrocities Act has been made out

against appellant No.3. Therefore, as regards his application, definitely there was bar under Section 18 of the Atrocities Act.

12. Taking into consideration the above discussion, the appeal deserves to be partly allowed. Hence, the following order, -

ORDER

i. The orders rejecting the bail applications of appellant Nos.1, 2, 4 and 5, i.e. Criminal Bail Application Nos.405/2019 and 406/2019, passed by the

learned Additional Sessions Judge, Osmanabad, dated 4.11.2019, are hereby set aside.

ii. The appeal in so far as it challenges the order passed by the learned Additional Sessions Judge on 4.11.2019, thereby rejecting the Criminal Bail

Application No.407/2019, stands rejected.

iii. In the event of arrest of appellants Nos.1, 2, 4 and 5 in CR No.273/2019 dated 15.10.2019 registered with Dhoki Police Station, District

Osmanabad, for the offences punishable under Sections 379, 323, 504, 506, 143 and 147 of IPC and Section 3(1)(r)(s) and 3(2)(va) of the Atrocities

Act, they be released on PR and SB of Rs.15,000/-each. These appellants shall not commit any offence and shall not tamper with the evidence of

prosecution.