

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.858 OF 2022

- 1 Yogesh Laxman Pandav,
Age 34 yrs., Occ. Business,
- 2 Savita d/o Laxman Pandav,
Age 39 yrs., Occ. Private service,
- 3 Laxman Totaram Pandav,
Age 62 yrs., Occ. Retired,

All are r/o Near Pawan Ganpati Mandir,
Newasa Phata, Tq. Newasa,
Dist. Ahmednagar.

... **Appellants**

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Investigation Officer,
Pathardi Police Station,
Tq. Newasa, Dist. Ahmednagar.
- 2 Shailaja w/o Rajendra Kamble,
Age 54 yrs., Occ. Housewife,
R/o Near Pawan Ganpati Mandir,
Newasa Phata, Tq. Newasa,
Dist. Ahmednagar.

... **Respondents**

...

Mr. N.B. Narwade, Advocate for appellants

Mr. A.M. Phule, APP for respondent No.1

Mr. S.D. Kotkar, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 05th JANUARY, 2023

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

1 Since the arguable points are made appeal is **admitted**.

2 Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”) by the original accused persons challenging order dated 09.11.2022 passed by learned Additional Sessions Judge, Newasa/Special Judge under S.C. & S.T. Act in Criminal Bail Application No.399/2022, thereby rejecting the application filed under Section 438 of the Code of Criminal Procedure, 1973 by the appellants.

3 Heard learned Advocate Mr. N.B. Narwade for appellants, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. S.D. Kotkar for respondent No.2.

4 It has been vehemently submitted on behalf of the appellants that perusal of the First Information Report would show that the informant is the neighbour and she alleges that the appellant No.1 used to see towards

her with ill eye or in such a manner which would outrage her modesty. But, at the same time, she says that she used to ignore the act of the appellant No.1. She found the appellant No.1 taking shooting from his mobile standing outside his house, when her husband was near the gate of their house, around 11.00 a.m. on 28.11.2021. According to her, her husband had made complaint against appellant No.1 to the landlord of the appellants, however, the said landlord had abused them on phone. She also states that the appellants had also abused in the name of caste to the informant, at that time. She then states that by taking shooting in his mobile the appellant No.1 was showing the same to the persons in the vicinity and he was defaming the informant and the family. Though there was harassment to them, they were ignoring it. She then states that on 21.03.2022, 22.03.2022 and 23.03.2022 appellant No.1 used to do such acts like whistling from the terrace, making noise with the help of utensils, making different kind of sounds and continuously blowing the reverse horn of the vehicle. Even the CCTV camera from the house of the appellants was placed in such manner so that the informant's house and the activities can be captured in the same. She then states about the alleged incident that had allegedly taken place around 5.46 p.m. on 24.03.2022 which had happened with the Watchman of the informant. She had stated that the appellants had pelted stones on the informant, as a result of which she had sustained injury to her head, so also

their Watchman Gangaram Devre had also sustained the injury. When she went to ask about the incident, at that time also the accused persons abused her in the name of caste and arrogantly told that if she lodges any report, then she would face dire consequences.

5 By apprising of these contents of the First Information Report the learned Advocate for the appellants submits that though the alleged last incident is stated to have taken place on 24.03.2022, the First Information Report has been lodged on 15.06.2022, therefore, there is apparent delay in lodging the report. He has also taken us through the other documents on record which show that the appellants had lodged complaint applications against the informant and her husband and it is going on since 02.06.2022. It is stated by the appellants in all these complaints that even the police persons had not taken cognizance of the offences, though they had gone to lodge the report and, therefore, they were required to file the complaint applications. The First Information Report that has been lodged by the informant is nothing but an act of vengeance. The informant and her husband are desirous of purchasing the house where the appellants are residing from the landlord, however, the landlord is not willing. The appellants have nothing to do with the said property. They are residing there on rent. They have no intention to commit any offence, however, the

informant is misusing her caste. When the First Information Report has been lodged with ulterior motive and even prima facie it is not attracting the provisions under Section 3 of the Atrocities Act, the learned Special Judge went wrong in holding that the application was barred under Section 18 of the Atrocities Act. He has placed reliance on the decision of this Court (Single Bench, which is part of the constitution of the present Division Bench) in **Rajendra Anandrao Bonde and another vs. The State of Maharashtra and another in Criminal Appeal No.164 of 2020 with companion matters**, decided on 27.04.2021, wherein after relying on the observations in **Prathvi Raj Chauhan vs. Union of India, Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020 the appeal came to be allowed.

6 Per contra, the learned APP for the State and learned Advocate appearing for respondent No.2 have strongly objected the appeal. Respondent No.2 has filed affidavit-in-reply which is almost the reproduction of the contents of the First Information Report. However, it will not be out of place to mention here that in paragraph Nos.15 and 16 she has made such statements which were not forming part of her First Information Report. To be precise it can be said that those alleged abuses, which were not forming part of the First Information Report, have been now stated to have been

uttered stating that those abuses were given in public place. By pointing out the said affidavit-in-reply it has been submitted that the contents of the First Information Report disclosed the commission of the offence punishable under Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Atrocities Act and, therefore, the application under Section 438 of the Code of Criminal Procedure was barred under Section 18 of the Atrocities Act. It can be seen from the documents attached along with the affidavit-in-reply that some complaints appears to have been made by appellants on 25.05.2022 with the Police Station against the informant, at that time, the informant has given it in writing that compromise took place and the complaint was kept on hold. Similarly, written assurance was given by appellant No.3 to the same Police Station on the same date. Learned APP as well as learned Advocate for respondent No.2 submitted that no interference is required in the order passed by the learned Special Judge, in view of the bar under Section 18 of the Atrocities Act.

7 As regards the bar under Section 18 of the Atrocities Act for entertaining an application under Section 438 of the Code of Criminal Procedure is concerned, the law has been settled by the Hon'ble Apex Court in **Prathvi Raj Chauhan vs. Union of India** (supra), wherein it has been observed that -

“10. Concerning the applicability of provisions of section 438 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

Therefore, it is required to be seen, as to whether the present First Information Report makes out a prima facie case for the applicability of the provisions of the Atrocities Act. Major portion from the First Information Report has been narrated in the earlier paragraphs and, therefore, it is not repeated. Perusal of the First Information Report would show that though the informant is attributing certain acts, which were to the extent of outraging her modesty by appellant No.1, she says that she used to ignore it. The first alleged incident regarding the abuses in the nature of caste appears to have taken place around 11.00 a.m. on 28.11.2021. It is then stated that all the accused persons in chorus had abused, “तुम्ही घाणेरड्या जातीचे लोक आहात”. It is pertinent to note that what is caste of the informant was not forming part of the abuse. Still if we consider that, that abuse was with an intention to insult the informant; yet, it is to be noted that it is alleged to have been uttered in chorus, which is an unbelievable act. Abuses cannot be given in chorus. Further, she states that when her husband had given a phone call to

landlord Mr. Murlidhar Tantak to apprise him of the behaviour of the tenant, at that time, he had abused as well as in between it is stated that the appellants had also abused. Meaning thereby, those abuses were given on phone. Abuses when given on phone cannot be said to be within the public view or at a public place so as to attract the ingredients of offence punishable under Section 3(1)(r) or 3(1)(s) of the Atrocities Act. Thereafter, the second incident which is stated to have taken place on 24.03.2022 around 5.46 p.m. is concerned, she is not clear about the place where the alleged abuses were given. Though it is stated that when said Gangaram Devre was cleaning the area beyond compound, he gave phone call and told that the appellants are pelting stones on him, as a result of which he has sustained injury, then, the informant and her husband (appears to be a typographical mistake while writing 'patni' in the First Information Report) went outside the house and saw that there was bulge on his head. Then, the informant and her husband went to ask the appellants about the incident and it is stated that at that time the appellants abused - "तुम्ही खालच्या जातीचे लोक आम्हाला काही शिकवू नका तसेच आमचे विरुद्ध कोठे तक्रार दिली तर तुमची काही खैर नाही". As aforesaid, the place where the informant was standing or her husband was standing and where the accused persons were standing is not clarified in the First Information Report. Therefore, these facts also do not attract the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

8 The prosecution has also invoked Section 3(1)(w)(i) of the Atrocities Act and in order to attract this provision the person should intentionally touch a woman belonging to a Scheduled Caste knowing that she belongs to that caste and such touch is of a sexual nature and is without consent. Here, the reading of entire First Information Report will not give any such picture that any of the appellants had in fact touched the body of the informant with sexual intent. Therefore, that offence is also not attracted. Further section in which First Information Report is registered is Section 3(1)(w)(ii) and in order to attract this offence there should be use of words, acts or gestures of a sexual nature towards a woman belonging to Scheduled Caste or Scheduled Tribe knowing that she belongs to such caste or tribe. Perusal of the First Information Report would show that such acts are alleged against appellant No.1 and then it is stated that from terrace he used to do such acts which would cause outraging of modesty of the informant, however, details of those acts are missing, which were prior to 28.11.2021. Admittedly, she had not filed any complaint in the past. Thereafter, she says about the acts alleged to have been committed by appellant No.1 on 21.03.2022, 22.03.2022 and 23.03.2022, however, it is to be noted that all those acts appeared to have been committed from the house of the appellants and it cannot be even prima facie inferred that it was with some such nature. Merely because some sound is created by a person in his

house we cannot directly infer that it is with such an intention that it is with sexual nature towards the informant. Therefore, even prima facie offence under Section 3(1)(w)(ii) of the Atrocities Act cannot be said to be attracted.

9 We cannot ignore the fact that there are complaints by the appellants against the informant and her husband and the writing given to Police Inspector, Newasa Police Station on 25.05.2022 by both the parties would show that some compromise had taken place. Certainly there is delay in lodging the First Information Report. Whether the appellant No.3 was justified in giving it in writing to the Police Inspector that he would vacate the premises need not be gone into, however, certainly Police Inspector of Newasa Police Station has no authority to take such writing from a citizen.

10 Informant appears to be very much concerned about the shooting in mobile, however, the document has been produced in the nature of photograph by the appellants regarding the mobile shooting being taken by the informant and her husband of the house of the appellants also. What was the purpose of the informant to behave in such a manner will have to be explained by her at the time of trial. Sufficient material is before this Court to infer that the First Information Report has been lodged with ulterior motive and, therefore, the ratio laid down in **Prathvi Raj Chauhan** (supra)

will have to be brought in. The learned Special Judge totally erred in not considering all these aspects. It appears that the learned Judge has not considered the scope and object of anticipatory bail and also the ratio laid down in **Prathvi Raj Chauhan** (supra). No doubt, the power of releasing the accused under Section 438 of the Code of Criminal Procedure is exceptional in nature and will have to be used sparingly; yet, when a law abiding citizen is adopting legal procedure and had gone to the Police Station to lodge the report, but his report has not been taken, then, such person/s deserve to be protected. When prima facie the offences are not attracting the provisions under the Atrocities Act, there was no question of bar under Section 18 of the Atrocities Act. The conclusion by the learned Special Judge to that extent is improper. As regards the offence under the Indian Penal Code is concerned, the physical custody of the appellants is not required and, therefore, the appeal deserves to be allowed. Accordingly, appeal is allowed as follows.

ORDER

- 1 The appeal is hereby allowed.
- 2 The order passed by learned Additional Sessions Judge, Newasa/ Special Judge, under The SC & ST (POA) Act, Newasa, Dist. Ahmednagar in Criminal Bail Application No.399/2022 dated 09.11.2022, is hereby set aside. Said application stands allowed.

3 The interim protection, granted by this Court earlier to appellants vide order dated 18.11.2022, is hereby confirmed and made absolute. In other words, if the appellants are not formally arrested, in the event of arrest of the appellants viz. **1) Yogesh Laxman Pandav, 2) Savita d/o Laxman Pandav and 3) Laxman Totaram Pandav**, in connection with Crime No.501/2022 dated 15.06.2022 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 143, 147, 149, 354, 354-D, 436, 504, 506 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 66(e) of the Information Technology Act, 2008, they be released on P.R. of Rs.15,000/- (Rupees Fifteen Thousand only) each with one solvent surety of Rs.15,000/- (Rupees Fifteen Thousand only) each.

4 Appellants shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

5 They should cooperate with the investigation.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)

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