

Archan Markandi Chware vs State Of Maha Thr Pso, Ps Mul on 9 December, 2024

2024:BHC-NAG:13687

47 & 48.apéal.617.618.24.Judgme

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.617 OF 2024

1. Archana Markhandi Chaware,
Age - 47 Years,
Occupation - Housewife.
2. Rahul Markhandi Chaware,
Age - 25 Years,
Occupation - Student,
R/o Ward No.17, Mul,
Tahsil Mul,
District Chandrapur.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Mul,
District Chandrapur.
2. Satyavijay Damaji Walke,
Age - 65 Years,
Occupation - Retired,
R/o Ward No.17, Mul,
Tahsil Mul,
District - Chandrapur.

.... RESPONDENTS

WITH

CRIMINAL APPEAL NO.618 OF 2024

1. Markhandi Patruji Chaware,
Age - 54 Years,
Occupation - Teacher,
R/o Ward No.17, Mul,
Tahsil Mul, District Chandrapur.
2. Ashok Markhandi Margamwar,
Age - 54 years,
Occupation - Upsarpnch,

R/o At Post Chandrapur,
Tahsil Mul, District Chandrapur. APPELLANTS
47 & 48.apéal.617.618.24.Judgment.odt
(2)

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Mul,
District Chandrapur.
2. Satyavijay Damaji Walke,
Age - 65 Years,
Occupation - Retired,
R/o Ward No.17, Mul,
Tahsil Mul,
District - Chandrapur. RESPONDENTS

Mr. R. R. Vyas, Counsel for the appellants.
Mr. H. D. Dubey, APP for respondent No.1/State.
Ms. A. S. Mishrikotkar, appointed Counsel for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09.12.2024

ORAL JUDGMENT :

1. Admit.
2. Heard finally with the consent of learned Counsel appearing for the parties.
3. Both the appeals are filed by the appellants under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, challenging the order passed in Anticipatory Bail Application Nos.617/2024 and 618/2024 by the learned Special Judge, Chandrapur.

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4. The appellants are apprehending arrest at the hands of police as crime is registered against them on the basis of report lodged by Satyavijay Damaji Walke on an allegation that he is residing along with his family members at village Mul, Taluka and District Chandrapur and the appellant Archana Chaware and other appellants are also residing in his neighbourhood. Out of previous dispute between them on 21.09.2024, the appellant Archana has called her son by informing him that the informant is alone standing in front of the house, and her son immediately came by holding wooden log in his hand and at the relevant time, both Rahul and Archana assaulted him by means of that wooden log. The other appellants also assaulted him by means of slipper/footwear. On the basis of

the said report, police have registered the crime against the present appellants.

5. After registration of the crime, the appellants approached to the learned Special Court for grant of bail, however, considering the bar under Section 18-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), their applications are rejected, hence these appeals.

6. Learned Counsel Mr. Vyas for the appellants submitted that there are cross-complaints filed against each other as the informant has outraged the modesty of the appellant Archana and 47 & 48.apéal.617.618.24.Judgment.odt to give a counterblast to the said report, this false FIR is lodged. He further submitted that the appellants were abused in a filthy language and therefore, she lodged the report against the present informant. Thus, out of the previous dispute, the complaints came to be lodged against each other. He submitted that as far as the application of the Atrocities Act is concerned, there is no averment to the extent that either the present appellants have abused on his caste or knowingly they have assaulted and humiliated to him. In view of that, the application of the provisions of the Atrocities Act itself is doubtful and therefore, the interim protection granted to the present appellants deserves to be confirmed.

7. Learned APP for the State and learned Counsel for the respondent No.2 - informant strongly opposed the said prayer and submitted that as far as the one of the appellant Markhandi is concerned, there is criminal antecedent against him. The allegations are serious nature and the bar under Section 18-A of the Act of 1989, is attracted. In view of that, both the appeals deserves to be dismissed.

8. After hearing the learned Counsel for the appellants and learned APP for the State and perused the recitals of the FIR from which, it reveals that since long, there is a previous dispute between the informant and the present appellants being they are residing in neighbourhood. Several complaints are filed against 47 & 48.apéal.617.618.24.Judgment.odt each other. As far as the application of the Atrocities Act are concerned, admittedly, there is no whisper that though the appellants know that the informant belongs to the Scheduled Caste and in order to humiliate or insult them, the present appellants have assaulted them. Admittedly, there are no allegations as to the abuses on the caste.

9. Learned Counsel for the appellants submitted that as far as the bar under Section 18-A of the Act of 1989, is not attracted, considering that there is no prima facie case is made out against the present appellants. Per contra, learned APP submitted that the appellants were aware about the fact that the informant belongs to the Scheduled Caste and therefore, the bar under Section 18-A of the Act of 1989 is attracted.

10. On perusal the recitals of the FIR and the previous FIR, which are lodged against each other, from which it reveals that out of previous dispute, counter complaints came to be lodged. As far as are the intentional insult or intimidation is concerned, which is now clarified by the Hon'ble Apex Court in the case of Shajan Skaria Vs. The State of Kerala and another in Criminal Appeal No.2622/2024 decided on 23.08.2024, wherein it is held that "all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act,

1989 47 & 48.apéal.617.618.24.Judgment.odt unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe."

11. Admittedly, there is no statement to that effect that though the appellants were knowing that they belonged to the Scheduled Castes or Scheduled Tribes, with intention the informant was humiliated and insulted and was assaulted. Thus, considering the same, the bar under Section 18-A of the Act of 1989 will not attract. As far as the contention of the learned APP is concerned that there are criminal antecedents against the appellant Markhandi. Mere criminal antecedents are not sufficient at this stage to curtail his liberty, considering the allegation against him.

12. Considering the manner in which the alleged incident has taken place and as the bar under Section 18-A of the Act of 1989 is not attracted. Both the appeals deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) Both the appeals are allowed.

(ii) The order passed by the learned Special Judge in Anticipatory Bail Application Nos.617/2024 and 618/2024, is hereby quashed and set aside.

(iii) In the event of arrest in connection with Crime No.350/2024 registered with Police Station, Mul, District Chandrapur for the offences punishable under Sections 115(2), 118, 296, 3(5), 351(1), 352, 49, 74 of the Bharatiya Nyaya 47 & 48.apéal.617.618.24.Judgment.odt Sanhita, 2023 and under Sections 3(1)(r), 3(2)(va), 3(1)(w)(i)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, the appellants in Criminal Appeal Nos.617/2024 No.(1) Archana Markhandi Chaware and No.(2) Rahul Markhandi Chaware and the appellants in Criminal Appeal No.618/2024 No.(1) Markhandi Patruji Chaware and No.(2) Ashok Markhandi Margamwar, shall be released on anticipatory bail on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iv) The appellant Rahul Chaware shall produce the wooden log if not produced before the Investigating Officer and the said period will be considered as his custody in view of Section 23 (2) of the Bharatiya Sakshya Adhiniyam, 2023.

(v) The appellants shall attend the concerned Police Station once in a week on Tuesday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.

(vi) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

13. The fees of the appointed Counsel be quantified as per rules.

14. Both the appeals are disposed of.

(URMILA JOSHI-PHALKE, J.

Signed by: Mr. A.R. Sarkate Sarkate.
Designation: PA To Honourable Judge
Date: 14/12/2024 15:46:15