

Chattisgarh High Court

Abdul Abbas vs State Of Chhattisgarh on 13 April, 2005

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.No.139 of 2005

Abdul Abbas

...Petitioner

Versus

State of Chhattisgarh

....Respondent

! Shri Manoj Paranjpe, counsel for the applicant.

^ Shri Arun Sao, Deputy Govt. Advocate for the State.

HON'BLE SHRI JUSTICE SUNIL KUMAR SINHA.

Dated: 13/04/2005

: O R D E R

The applicant has preferred this anticipatory bail application apprehending his arrest in Crime No.17 of 2004 of Police Station A.J.K., Ambikapur, Distt. Sarguja for the offences punishable under sections 294, 506 read with section 34 IPC and Sections 3(1)(v) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

(2) The case of the prosecution is that the complainant, who belongs to Special Caste (Uraon) is having a piece of land admeasuring 0.026 Ars. bearing Khasra No.205/4 at Nawagarh near Kharsia Road, Ambikapur. The applicant alongwith some other persons started some construction over the said land and when the same was resisted, the applicant and other persons abused the complainant by using filthy language relating to his caste. The First Information Report is a written document.

(3) Learned counsel for the accused applicant argues that there is no positive evidence on record which may attract the provisions of Section 3(1)(v) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He further submits that except the offence under the Special Act, other offences are bailable.

(4) On the other hand, learned Deputy Govt. Advocate for the State opposed the bail application and argued that in view of the bar under section 18 of the Act, the bail application should be rejected. (5)

The law in relation to entertaining the application under section 438 Cr.P.C. in such offences is well settled. The point raised by the State and learned counsel for the applicant is no longer res- integra. It has been held that if the contents of the F.I.R. or the complaint disclose the commission of offence under the special Act, the Courts would not be justified in entering into a further enquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability for commission of such an offence. At this stage, the Court cannot examine and scrutinize the record of the case in order to ascertain the veracity of the F.I.R./complaint. The provisions of section 18 of the Act, 1989 put a complete bar against the entertainment of an application for anticipatory bail where prima facie the contents of the FIR disclose the ingredients of the commission of the offence under the Act of 1989 which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the F.I.R itself with a view to find out if the facts emerging there-from taken at their face value disclose the existence of the ingredients constituting the alleged offence, then the Court would not be justified in entering into an enquiry as to the reliability or a genuineness or otherwise of the allegations made in the F.I.R. or the complaint. (Please see 2004(1) C.G.L.J. 162 - Satya Prakash -Vs- State of C.G).

(6) It has also been held by High Court of Madhya Pradesh in the matter of Dule Singh -Vs- State of M.P. through Police Rajgarh reported in 1993(1) MPJR 223 that a strict construction should be placed on the word "accusation" within the meaning of Section 18 of the Act. As such the 'intention' or 'intent' which is material ingredient of the offence under section 3(1)(x) of the Act not being clearly stated by the witnesses and there being no statement that the offence was committed because the complainant belonged to Scheduled Caste, it cannot amount to an 'accusation' of an offence within the meaning of Section 18 of the Act so as to bar an application u/s 438 Cr.P.C.

(7) The High Court of Orissa has also held in the matter of Ramesh Prasad Bhanja -Vs- State of Orissa reported in 1996 Cr.L.J. 2743 that if no prima facie case under section 3 of the Act has been made out, it cannot be said that there is an "accusation of commission of an offence under the Act" and in that case there can be no hesitation to say that the applicability of the provision of Section 438 of the Code is not excluded.

(8) If we analyze the FIR on the above principles of law then we find that a written (typed) report has been lodged by the complaint about erection of a well on a piece of land which according to him is the land of his ownership and possession. The ingredients of the offence of 'wrongful dispossession' for enjoyment over the land and 'intentional insult' or 'intimidation' with an intention to humiliate the members of the Scheduled Castes or the Scheduled Tribes, by the applicant cannot be discovered from the FIR. The offence is also not said to have been committed on account of the complainant being the member of Special Caste. The written complaint dated 19.1.2004 does not contain the name of the applicant though the names of three other persons are mentioned in it. It is in the form of an application which has been received by the Police Station vide Rojnamcha Sanha No.344 dt.19.1.2004. The allegations made in the complaint are specific and referable to the said three persons only.

(9) The case submitted by the applicant is that some agreement has been entered into between the brother of the applicant and the complainant for purchase of the agricultural land belonging to the complainant. It is stated that in pursuance of the said agreement, the complainant received some amount and when the applicant is insisting to perform the agreement, the First Information Report has been lodged. A document (Annexure A-1) is there to show that some amount is received by the complainant from the owner/brother of the applicant.

(10) In view of the above facts and circumstances of the case, particularly in view of the First Information Report and the nature of allegations made in the FIR, I am of the opinion that the prima-facie requirement in relation to attraction of the offences alleged under the Special Act are not fulfilled and a bar u/s 18 would not be attracted. Consequently, this application is allowed. It is directed that in the event of arrest, the applicant shall be released on bail provided he furnishes a personal bond in sum of Rs.10,000/- with two sureties in the like amount to the satisfaction of the Investigating Officer. He shall abide by all the conditions provided under section 438 of Cr.P.C.

(11) This order shall remain in force for a period of two months from today, during this period the accused applicant may apply for regular bail. (12) It is made clear that the above discussions are limited to the decision of the present petition and this Court has not expressed any view on the merits of the matter which shall be decided in accordance with law by the trial Court without being influenced by any observations/remarks made in this order by this Court for the purpose of analyzing the attraction and application of section 18 of the Act in this Case.

The application is allowed.

C.C. as per rules.

JUDGE