

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 513 OF 2022

Dr. Lekha Rajesh Visaria

.. Appellant

Versus

The State of Maharashtra and Ors.

.. Respondents

.....

- Mr. Rishi Bhuta a/w. Ms. Ankita Bamboli i/by Mr. Sagar Shahani, Advocates for the Appellant
- Ms. Rutuja Ambekar, APP for the State
- Ms. Rekha Musale, Advocate for Respondent No.3

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : MAY 20, 2022.

PRONOUNCED ON : MAY 27, 2022.

(Vacation Court)

P.C.:

1. Heard.

2. The Appellant is apprehending arrest in C.R. No.7 of 2022 registered at Nehru Nagar Police Station for the offence punishable under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "**Atrocities Act**").

3. The first informant-complainant is a school teacher, serving in Swami Vivekanand School (for short "**the said school**"). The Appellant is Head Mistress / Principal of the said school. The First Information Report (for short "**FIR**") has been lodged on 09.02.2022.

It is stated in the FIR that in the year 2021 several mistakes were found in the marksheets and evaluation of students of 10th standard; that the Appellant therefore sought explanation from all teachers; that except two teachers rest of the teachers did not submit their explanation; that after going through the explanation all teachers were asked to give a letter of apology. It is alleged that on 15.08.2021 after the flag hoisting ceremony the Appellant scolded some teachers for not submitting the apology letter and insulted the complainant by stating that she was unfit to teach English subject. It is alleged that the complainant approached the school trustee Shri. Asrani of 17.08.2021 with a written complaint about the incident of 15.08.2021, but was orally told that the Appellant shall be issued a strict warning.

4. It is alleged that on 18.08.2021, a notice was served upon the complainant citing several instances about her derelictions and also warning her about her aggressive behaviour. On the next day the complainant wanted to give a written reply to the notice, but the reply was not received by the Appellant.

5. Thereafter it is alleged that on 05.10.2021, between 12 noon and 12.30 p.m. the complainant was summoned in the cabin of the Appellant and informed that she had not given the apology letter; that she had made several mistakes in English Teaching; that she belongs

to a lower caste and therefore she is fit to teach the lower classes in the said school. It is further alleged that thereafter two other teachers namely Mr. Bhagwan Patil and Mr. Ravi Mishra were also summoned into the cabin by the Appellant and in their presence the Appellant continued her tirade against the complainant in the same manner. However, it is stated that the complainant at that time did not take this incident seriously. On 29.10.2021, a memo was issued to the complainant informing that her explanation was not satisfactory and further mistakes on her part will not be tolerated.

6. On 01.12.2021, a letter was issued to the informant on the instructions of the trustees of the said school stating that the informant was never insulted; that in fact her work as an English teacher was not satisfactory and therefore she was being transferred to teach the 5th and 6th Standards. Being aggrieved the informant lodged a report on 23.12.2021 about the above incidents. On the basis of the report the police registered the FIR on 09.02.2022.

7. As seen the actual incident which forms the basis of the FIR has been stated to have occurred on 05.10.2021 between 12 noon and 12.30 p.m. in the cabin of the Appellant. Admittedly, there is a substantial delay in lodging the report as also the FIR which can be ascertained from the dates of various incidents. Perusal of the FIR

shows that there is no specific casteist remark attributable to the complainant about her caste.

8. Mr. Bhuta, learned counsel appearing for the Appellant has placed before me a copy of the reasoned order dated 09.05.2022. It was received on 18.05.2022. He submits that if the chain of events narrated in the FIR are perused it is obvious that the actual incident stated in the FIR pertaining to 05.10.2022 cannot be the reason for filing the FIR. He submits that the FIR was lodged on 23.12.2021 i.e. after a substantial delay. He submits that the report has been filed only due to vengeance and vendetta. He submits that the complainant was serving as an English teacher initially for 9th and 10th standards. Pursuant to her evaluation as a teacher as also her performance level which was evaluated over a period of time, the complainant was issued the letter on 01.12.2021, inter alia, informing her that she would have to take English classes of 5th and 6th standards. He submits that it is only after the issuance of this letter that the complainant has filed the report of the incident of 05.10.2021. He submits that the complainant has also published a public banner seeking arrest of the Appellant photo of which is produced at page 153 of the Appeal proceedings. Mr. Bhuta has laboriously argued with reference to the FIR and the documentary evidence appended to the Appeal proceedings to drive home the point that there is no personal

animosity or acrimony of the Appellant with the complainant; that based on the evaluation of the performance of the complainant a conscious decision has been taken to ask the complainant to teach the 5th and 6th standards and this has irked the complainant. That apart, Mr. Bhuta submits that there is no reference whatsoever to the caste of the complainant in the alleged utterance narrated in the FIR which is attributable to the Appellant. Further in so far as the issue of eye witness to the incident is concerned, admittedly the two teachers were never present in the cabin when the first incident between the Appellant and complainant took place and later when they were present, the report lodged by the complainant does not mention the specific utterance by the Appellant. He submits that custody of the appellant is not required as the Appellant being the Head mistress of the school has willingly cooperated with the investigation. He submits that the learned Trial court in paragraph No.8 has come to the conclusion that the actual caste of the complainant was not referred to by the Appellant and only on the basis of assumption that the incident took place in the presence of two eye witnesses the learned Trial court has rejected the Anticipatory Bail Application of the Appellant. He submits that while arriving at the conclusion that the actual caste of the informant was never referred and assuming that there were eye witnesses, it is erroneously held that the Appellant has insulted the complainant. On the contrary it is to be seen that according to the

complainant's version, when the alleged incident took place, only the Appellant and complainant were present in the cabin. Even if this is taken to be true which the Appellant denies, it cannot be held that the Appellant has insulted the complainant on the basis of her caste which never finds mention in any of the pleadings. He therefore submits that the Appellant deserves mercy of this Court and appropriate relief be granted in accordance with law.

9. Ms. Musale, learned counsel appearing for the complainant has vehemently opposed grant of any relief to the Appellant. She submits that the complainant for the first time approached the management on 05.10.2021 and lodged an oral complaint. Thereafter on 20.11.2021 the complainant lodged her first written complaint with the management, *inter alia*, stating that the Appellant was repeatedly misbehaving with her and taunting her on the basis of her caste. She submits that thereafter on 03.12.2021 the complainant filed her written complaint with the Education Department against the Appellant, *inter alia*, stating that the Appellant was repeatedly using improper words against her about her caste, and only thereafter the complainant lodged the report in December 2021 and the FIR was registered on 09.02.2022. She submits that in so far as the incident in question is concerned, there are two eye witnesses namely Mr. Bhagwan Patil and Mr. Ravi Mishra and their testimony of what

transpired on 05.10.2021 should be considered by this Court. She submits that the Appellant is guilty of repeatedly insulting the complainant on the basis of her caste and therefore the present Appeal deserves to be rejected.

10. Ms. Ambekar, learned APP appearing on behalf of the prosecution has supported the submissions advanced by Ms. Musale and in addition thereto submits that in the present case as recorded in the FIR there have been series of incidents during which the Appellant has been repeatedly insulting the complainant on the basis of her caste and this Court should take cognizance of the same while deciding the present Appeal.

11. I have heard the learned counsel appearing for the respective parties and perused the material on record. Submissions made by the learned counsel are on pleaded lines. In the FIR it is stated that on 05.10.2021 between 12.00 noon and 12.30 p.m. the complainant was called inside the cabin of the Appellant and the Appellant stated as under:-

“तू सॉरी लेटर दिले नाही व तू इंग्रजी मध्ये चुका करते, तसेच तू लोअर कास्ट आहे, तुला लोअर क्लासला शिकवायला पाठवते.”

11.1. That apart it is alleged that thereafter two other teachers were called inside the cabin and in front of those two teachers, the Appellant has repeated the same tirade against the complainant.

Prima facie it is seen that there is no reference to the caste of the informant by the Appellant in the statement which has been alleged to be insulting according to the complainant. What is pertinent to note is the fact that though it is claimed that there were two eye witnesses to the incident, what was stated in front of the eye witnesses is not stated / narrated or complained of in the FIR. Save and except the incident on 05.10.2021, there is no other specific incident about which the informant has made a grievance and which could remotely attract the provisions of the Atrocities Act.

11.2. Perusal of the material on record however suggests that the complaint letters addressed by the informant between August 2021 and December 2021 are however interspersed with several letters addressed by the management of the said school and the Appellant as Headmistress of the said school to the complainant on the basis of her evaluation and performance as an English teacher. Just as the complainant has referred to the aforementioned complaints, the letters addressed by the management to the informant about her performance, mistakes committed by her in her work are also important and cannot be lost sight of. The mistakes committed by the complainant and the letters addressed by the management and the Appellant to the complainant are annexed to the present Appeal. Reading of the letter dated 18.08.2021 (on page No. 123), letter

dated 29.10.2021 (on page No. 136), show-cause notice dated 18.07.2014 (on page 137) and letter dated 01.12.2021 (on page No. 144) clearly show that the performance of the complainant with respect to her work was not satisfactory. Hence on 01.12.2021 the complainant was asked to teach the lower standards (5th and 6th standards). It is only after this, that the complainant has reacted and filed the report with the police. If the complainant was genuinely hurt on 05.10.2021, she would have immediately lodged the complaint as any prudent person is expected to do, if she was right in her complaint.

11.3. At this stage, I need not detain myself with going into the nittygritty of the specific complaints against the complainant but a reasonable case is made out by the Appellant that the report filed by the complainant may be an outcome of vengeance and vendetta against the Appellant and the management of the school on the basis of reasons stated hereunder.

11.4. I am *prima facie* convinced to make this observation because there is adequate material placed on record to show the indictment and action being initiated against Mr. Bhagwan Patil and Mr. Ravi Mishra, the two teachers by the management of the said school and the Appellant for their derelictory performance also. The letters are

on record from page No. 146 to page No. 151 in respect of several lapses on their part. The case of the complainant is heavily reliant on these two teachers as eye witnesses to the incident on 05.10.2021. However from the material placed on record and the statement recorded in the FIR it is clear that when the Appellant had uttered the objectionable utterance to the complainant both the aforesaid two teachers were not present in the cabin. The informant has not specifically stated in the report as to what was uttered by the Appellant when the above two teachers were summoned and entered into the cabin. Material in the form of muster roll / attendance sheet has also been produced on record to show that the complainant has never attended the school between 04.10.2021 and 09.10.2021. There is a clear ambiguity about the signature of the complainant on the muster roll produced on record.

12. In the pleadings however there is one consistency i.e. about the performance of the complainant as an English teacher which has been repeatedly taken cognizance of by the said school on various dates. *Prima facie*, it appears that because of the issue of performance of the complainant in delivering and teaching English subject to the higher classes (9th and 10th standard) she has being repeatedly censured by the said school. Perusal of the order passed by the learned Trial court dated 13.02.2022 reveals that the complainant had

published a banner for seeking arrest of the Appellant and that is how the Appellant had knowledge about her prosecution. This approach of the informant in publishing a banner certainly would emanate from the thought for seeking vengeance against the Appellant. The date of publication of this banner which is at page No. 153 of the Appeal proceedings is not known. Probably it could be around 14.04.2022. Once the complaint is lodged, FIR registered, the publication of the banner is uncalled for. Complainant cannot seek extra judicial remedies to pressurize the prosecution. Prosecution will carry out the investigation on the basis of cogent material on record and its investigation process. Parties should desist from such acts and allow the prosecution to do its duty in accordance with law.

13. It is an admitted position on the part of the complainant that the objectionable / insulting statement was spoken to the complainant when she was alone in the cabin of the Appellant and no one else was there. The prosecution has stated that thereafter because of the verbal altercation between the Appellant and the complainant, the two eye witnesses teachers entered into the Appellant's cabin and the Appellant repeated the same words in the presence of the eye witnesses. In this context, the FIR therefore needs to be seen carefully. The FIR states that after the two eye witnesses entered the cabin, the Appellant spoke to the complainant in the

similar manner. It is extremely critical that what was uttered ought to have been stated in the FIR.

14. What is further interesting to note from the pleadings is that the Appellant has pleaded that on the date of the incident no such incident in fact occurred or took place. The Appellant has stated that the the said school had commenced physical classes from 04.10.2021 with strict adherence to Government Rules after the Covid-19 pandemic. In fact it is the Appellant's case that the complainant did not attend the said school for her duty and has not signed the muster roll between 04.10.2021 to 09.10.2021. The copy of the attendance muster is placed at Exhibit "T" (page No. 265 of the appeal proceedings). It shows that between 4th October and 12th October, the timing on the muster roll pertaining to the complainant is absent. Even the signature on 4th, 5th and 6th October differ from the signatures made on 7th to 30th October. This aspect needs proper investigation. Save and except the above discrepancies observed in respect of the complainant in the muster roll, the muster roll has been signed by all other teachers by putting the incoming time and signature and outgoing time and signature.

15. In view of the above discussion and findings, I am of the considered opinion that the Appellant has made out a case for grant of

anticipatory bail. Hence, the following order is passed:-

- (i) In the event of arrest in connection with investigation of C.R. NO. 7 of 2022 registered with Nehru Nagar Police Station, the Appellant be released on bail on executing a P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- (ii) The Appellant shall attend the concerned Investigating Officer as and when called for;
- (ii) The Appellant shall co-operate with the Investigating Agency and shall not tamper with the prosecution evidence / witnesses.

16. In view of the above directions, the Criminal Appeal stands disposed of.

[MILIND N. JADHAV, J.]

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