



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

CRIMINAL APPEAL NO.390 OF 2024

BETWEEN:

1. RAMANJANEYULU

2. BHASKAR NARASIMHAIAH,



...APPELLANTS

(BY SRI.ARUN SHYAM, SR.COUNSEL FOR
SRI. MATTAD CHIDANANDASAWMY, ADVOCATES)



AND:

1. STATE OF KARNATAKA
BY KENGERI POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING
BENGALURU-560 001.
2. K.S.RAVI KUMAR

RESPONDENTS

(BY SRI.VINAY MAHADEVAIAH, HCGP FOR R1;
SRI.K.S.RAVI KUMAR, PARTY-IN-PERSON FOR R2)

THIS CRL.A IS FILED U/S.14(A)(2) OF SC/ST (POA) ACT 1989, PRAYING TO SET ASIDE THE ORDER PASSED BY THE HONBLE LXX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE AT BENGALURU IN CRL.MISC.NO.686/2024 WHICH IS IN SPL.C.2230/2023, TO ENLARGE THEM ON BAIL IN THE EVENT OF THEIR ARREST, WHO ARE ACCUSED NO.1 AND 2, IN CRIME NO.6/2022 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 109, 153-A, 500, 501, 504, 506, 120-B R/W 34 OF IPC AND SECTIONS 3(1)(X) OF SC/ST (PREVENTION OF ATROCITIES) ACT,1989 AND NOW PENDING ON THE FILE OF SPL.C.2230/2023.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY PRONOUNCED THE FOLLOWING:

DATE OF RESERVED THE JUDGMENT : 14.03.2024
DATE OF PRONOUNCEMENT OF THE JUDGMENT : 19.03.2024



JUDGMENT

This appeal is directed against the order dated 9.2.24 passed by the Court of LXX Additional City Civil and Sessions Judge and Special Judge, Bengaluru, whereby Crl.Misc.No.686/24 preferred by the appellants herein under Section 438 of Cr.P.C. has been rejected.

2. Heard both the sides and perused the material on record.

3. Respondent No.2/complainant filed a complaint under Section 200 of Cr.P.C. on the file of the Court of City Civil and Sessions Court (Special Court) at Bengaluru, against the appellants/accused Nos.1 and 2 alleging commission of offences under Section 504, 506, 153(A), 109, 500, 501 and 120B r/w Section 34 of IPC and Section 3(i)(x) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST (PoA) Act'). The learned Sessions Judge referred the matter to ACP, Kengeri Gate Sub-Division, Bengaluru, for investigation.



Upon conducting the investigation, a 'B' report was submitted. The complainant filed a protest petition. The learned Sessions Judge, by an order dated 10.10.2023, proceeded to take cognizance of the offences alleged and issued summons to the accused. Further, by an order dated 28.11.2023, issued NBW to the accused.

4. The learned Sessions Judge, while rejecting the petition filed under Section 438 of Cr.P.C., has observed that in the present case already cognizance has been taken by the Court, under such circumstances, anticipatory bail of the accused cannot be considered.

5. The learned Senior counsel appearing for the appellants has pressed into service the decision of the Hon'ble Apex Court reported in **(2003) 8 SCC 77** in the case of '**Bharat Chaudhary and anr. v. State of Bihar and anr.**' to contend that the mere fact of taking cognizance or filing of charge sheet is not by itself a bar against grant of anticipatory bail. He contended that the police on a thorough investigation has filed a 'B' report



concluding that the entire allegations are baseless and the learned Sessions Judge initially issued summons on the protest petition, however, in spite of non-payment of process fee to issue summons, proceeded to issue NBW against the accused. He contended that the entire allegations made against the appellants are false and frivolous and the complainant is in the habit of filing false complaints. He contended that the ingredients of the offences alleged against the appellants are not made out and there is no *prima facie* case attracting the provisions of the SC/ST (PoA) Act.

6. The respondent No.2/complainant has filed statement of objections. He would contend that the appellants are very well aware of his caste and under Section 8(c) of the SC/ST (PoA) Act, if the accused is having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim. He contended that he being a member of the Scheduled Caste and a resident



of Flat No.404 of one Kailash Apartment has been deprived of his legal and fundamental rights by the appellants, on the ground that he is a member of the Scheduled Caste. It is his contention that the jurisdictional police have failed to register a case against the accused and as no action was taken in spite of filing complaints to the higher officers, he filed a private complaint, but the police conducted a tainted investigation and filed a false 'B' report. He further contended that on his protest petition the learned Sessions Judge has taken cognizance of the offences under IPC as well as under the SC/ST Act and therefore, there is a *prima facie* case made out against the appellants.

7. In the private complaint filed by respondent No.2 he has alleged that the appellants/accused Nos.1 and 2 have committed offences under Section 504, 506, 153(A), 109, 500, 501 and 120B r/w Section 34 of IPC and Section 3(i)(x) of SC/ST (PoA) Act.



8. It is averred in the complaint that the complainant belongs to Scheduled Caste (Adi Karnataka) and he has been residing in Flat No.404, B-8 of one Kailash apartment complexes, purchased and registered in the name of his wife, since March, 2015. He has alleged that he started facing trouble after 3-4 months of occupying the flat, problems like frequently motorcycle tyres are inflated, the dustbin contents are scattered all around the front door, switching of the tubelight in front of the flats main door, removing and disconnecting wires to the spark plug of his motorcycle etc. He has alleged that the residents of the Kailash apartments are criminally conspiring and instigating others to pick unnecessary quarrel with him to show him in bad light and as a bad person. Further, he did not get BSNL connection in spite of several oral requests and reminders and his request was disregarded and someone had intentionally disconnected the wires from the coil to the spark plug of his motorcycle and in spite of an e-mail to the Kailash BDA



Apartment Owners Welfare Association (for short 'KBAOWA'), no action was taken. The further allegations in the complaint are that the Brahmins have formed a group of their own by themselves to elect and select the position of office bearers of KBAOWA etc.

9. In the complaint, various allegations are made against the unnamed residents of the Kailash apartments that they are criminally conspiring and instigating to pick unnecessary quarrel with the complainant and some of them have portrayed him in a bad light. He was being harassed like deflating his motorcycle tyres, scattering the dust bin contents all around the front door, switching of the tube light in front of his flat. Further, the BSNL internet communication was not provided and some of the flat owners formed a Brahmins group and not allowing them and thereby made a social boycott.

10. Insofar as the allegations against the appellants are concerned, it is alleged in the complaint that on 1.1.2018 at around 9.33 a.m., the complainant called



accused No.1, President of KBAOWA and persuaded him to make rules or take action against the parking problem, but accused No.1 instead of finding solution to the long pending problem faced by the complainant started abusing and showing his frustrations on the complainant etc. He spoke in an arrogant manner and shouted at him to get out of the KBAOWA office and insulted him in front of several others present at the office, knowing very well that he belongs to Scheduled Caste community. It is alleged that the accused has chosen to insult the complainant and in the name of bylaws he is behaving in a highhanded manner and threatened him etc.

11. It is alleged that accused No.2 has come to complainant's home and tried to compromise the matter and pressurized the complainant's wife to come to the police station and threatened the complainant of dire consequences. It is alleged that the said accused being a servant and an employee of the KSFC, sending the meeting invitations only to selected few and not informing



the decisions taken in the meetings conducted with regard to the apartments.

12. The complainant has alleged that some persons of the police department are criminally conspiring with some residents of the Kailash Apartments to cause harassment to the complainant and to show the complainant as a bad person. Further allegations are that the complainant's motorcycle is pushed to a corner in the parking lot, blocking its way and the police have intentionally did not respond to his complaints and on the other hand, they have scolded him etc.

13. On a careful perusal of the averments in the complaint, protest petition and the allegations made against the appellants herein, at this stage, it cannot be said that a *prima case* is made out against them which would disentitle their prayer seeking anticipatory bail. There is no *prima facie* material against the appellants, except the bald allegations. Undisputedly, a 'B' Report was filed upon investigation. On the protest petition, initially



summons were issued to the appellants. The order sheet would disclose that the process fee was not paid, but the learned Sessions Judge proceeded to issue NBW. Hence, the appellants have a reasonable apprehension of their arrest.

14. The learned counsel appearing for the appellants would contend that the complainant has been filing similar complaints and in one of such cases, this Court in WP No.13059/2019 c/w WP No.27468/19 vide order dated 12.9.2022 has quashed the complaint, imposing a cost of Rs.25,000/-. He submits that the Special Leave Petition (Criminal) Diary No.40397/22 preferred by the complainant before the Hon'ble Supreme Court was dismissed imposing further cost of Rs.30,000/-.

15. Be that as it may, this Court having carefully perused the entire material on record is of the considered view that the specific allegations made against the appellants are not sufficient to show a *prima facie* case for the offences alleged, particularly under the provisions of



the SC/ST (PoA) Act. It cannot be said the appellants have committed any such atrocities against the complainant on the ground that he is a member of the Scheduled Caste. Hence, Section 18 or 18A of the said Act, will not come in the way of considering the prayer of the appellants, seeking pre-arrest bail.

16. In **Hitesh Verma v. State of Uttarakhand** reported in **(2020) 4 SCC 710**, the Hon'ble Apex Court has observed that all insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe.

17. The learned Sessions Judge was not proper in rejecting the petition filed under Section 438 of Cr.P.C., observing that in the present case already cognizance has been taken, as such anticipatory bail of the accused cannot be considered. It is relevant to extract para-7 of the judgment of the Hon'ble Apex Court in



Bharat Choudhary's case (supra), which is extracted hereunder:

"7. From the perusal of this part of Section 438 of Cr.P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or a charge-sheet is filed. The object of Section 43 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet, would not by itself, in our opinion, prevent the Courts concerned from granting anticipatory bail in appropriate cases. The Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of Cr.P.C. even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so."

18. For the forgoing reasons, I proceed to pass the following:

ORDER

- i. Appeal is **allowed**.



- ii. The order dated 9.2.2024 passed by the Court of LXX Additional City Civil and Sessions Judge and Special Judge, Bengaluru, in Crl.Misc.No.686/2024, rejecting the petition filed under Section 438 of Cr.P.C. is hereby **set aside**.
- iii. The appellants/accused Nos.1 and 2 in Spl.CC. No. 2230/23 on the file of the LXX Additional City Civil and Sessions Judge and Special Judge, Bengaluru, are ordered to be enlarged on bail in the event of their arrest subject to following conditions:
 1. They shall appear before the jurisdictional Court within a period of 15 days and shall execute a Bond in a sum of Rs.1,00,000/- (Rupees one lakh only) **each**, with two sureties for the likesum.
 2. They shall furnish proof of their residential address and shall inform the Court, if there is any change in address.



3. They shall not directly or indirectly tamper with the prosecution witnesses/evidence.
4. They shall appear before the trial Court regularly without fail, unless exempted from appearance for genuine reasons.

I.As., if any, shall stand disposed of.

**SD/-
JUDGE**

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