

Karnataka High Court
Sri. N. Srinivas vs State Of Karnataka on 1 June, 2021
Author: S.Sunil Dutt Yadav

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL APPEAL No.422/2021

Between:

Sri. N. Srinivas
S/o. Late Narayanappa
Aged about 51 years
Editor: Bangalore
Express Newspaper
R/at No.1684, 6th Cross,
Robertsonpet,
KGF - 563 122.

... Appellant

(By Sri. S. Balakrishna, Adv.)

And:

1. State of Karnataka
State by BEML Nagar Police Station
Represented by SPP,
High Court Building,
Bangalore 560 001.
2. Sri. S. N. Narayanaswamy K. M
MLA, Bangarapet Constituency,
Bangarpet 563 114.

... Respondents

(By Sri. S. Rachaiah, HCGP for R1
R2-served)

This Criminal Appeal is filed under Section 14(A) of SC/ST (POA) Act paying to direct respondent No.1 to release him on bail in the event of arrest in Crime No.33/2020 for the offence

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p/u/s 384, 506, 501 and 511 of IPC and Section 3(1)(r)(s) of SC/ST (POA) Amendment Act, 2015.

This Criminal Appeal coming on for orders this day, the Court, delivered the following:

JUDGMENT

Appellant has filed the present appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST Act') and has sought for setting aside of the order of the trial Court rejecting his application filed under Section 438 of Cr.P.C. in Crl.Misc.No.59/2021 and seeks to be enlarged on anticipatory bail.

2. The case that is made out by the complainant is that on 05.12.2020, complaint has been made to the jurisdictional police stating that the appellant herein had abused him "×Ã£ÉÆ§â °ÉÆ®AiÄÄ ±Á, ÀPÀ£ÉAzÄÄ eÁw ×AzÀ£É aÀiÁr £À£ÀUÉ C£ÉÄPÀgÄÄ ``ÉA§® EgÄÄvÁÛgÉ". It is further stated that the appellant was making defamatory statements about the complainant in media and accordingly, complaint has been filed. It is further made out in the said complaint that the appellant had stated that he was running YouTube Channel and was incurring expenditure and that he would not publish anything about the complainant if funds are provided and it is submitted that said incident occurred on 26.11.2020 at about 5.30 p.m. when the complainant saw the appellant near BEML Nagar officers' quarters. The FIR came to be registered in Crime No.33/2020 for the offences punishable under Sections 384, 506, 501 and 511 of IPC and Section 3(1)(r), 3(1)(s) of the SC/ST Act.

3. The petition filed before the trial Court came to be rejected as per the order dated 06.02.2021 wherein the learned District and Sessions Judge has remarked that prima facie case is made out and accordingly, it is stated that the limited jurisdiction of entertaining 438 petitions as regards the offences under the special statute would be permissible only if no prima facie case is made out and in light of prima facie case being made out, appellant was not entitled for bail.

4. Learned counsel appearing for the appellant submits that the incident occurred near the officers' quarters in BEML Nagar when the complainant was travelling and saw the accused and that there is no evidence of others being present. Hence, it was not a place of public view. It is further contended that the allegations made do not create nexus between the caste of the 2nd respondent - complainant and the abuse and accordingly, no prima facie case is made out, and custodial interrogation as such may not be required. It is submitted that looking into the nature of offence, case is made out for enlarging the appellant on anticipatory bail. It is further submitted that he undertakes to furnish all necessary material regarding publications made in the YouTube channel as regards the complainant and would co-operate in all manner with respect to the investigation.

5. Sri. S. Rachaiah, learned High Court Government Pleader appearing for the State submits that custodial interrogation may be required to find out as to the various other incidents wherein the appellant has made defamatory statements and the same would come out only during investigation and FIR as such is not conclusive as regards to offences as made out and that further information may be revealed during investigation. It is submitted that for the purpose of eliciting the other incidents wherein defamatory statements have been made in the media, i.e., YouTube channel of the

appellant, custodial interrogation is required. It is also contended that addressing the complainant by his caste is by itself defamatory and constitutes an offence under the statute as the utterance of the caste in the context of the complainant's position was a clear attempt to humiliate the complainant in the context of his caste.

6. Heard both sides.

7. It is noticed that the trial Court has rejected the application primarily on the ground that prima facie case regarding the commission of offence is made out and hence, question of entering into the other aspects relating to the anticipatory bail petition did not arise. A close perusal of the order, however, would indicate that the approach of the court ought to have been to elicit the nature of statement made and to find out whether such statement or abuse relating to the caste has been made only by virtue of the complainant belonging to such caste. The ingredients of the offence as are required to be established has been brought out clearly in the judgment in the case of HITESH VERMA VS. THE STATE OF UTTARAKHAND AND ANOTHER in Criminal Appeal No.707/2020 wherein the Apex Court has adverted to the two main ingredients that need to be established which are that, firstly the statement must have been made in any place within public view and secondly, the statement is to be made only because the complainant belongs to that caste. Insofar as the first ingredient is concerned, prima facie it appears to be made in public place. However, as regards to the second ingredient, it is to be noticed that the statement made was that he belongs to a particular caste and that he is a legislator from that caste. It is a matter of trial and also demonstration by the complainant that such statement was made reference to the caste by the appellant in order to humiliate him as he was a legislator belonging to that caste and that further it is in that context the statement was made. It is a matter that is to be established during trial and after evidence looking into the statement of other witnesses and the context in which such statement was made.

8. Insofar as the prima facie case is concerned as regards the two ingredients, it appears that the matter is to be established during trial. It could also be stated that while considering the present appeal, taking note of the nature of proceedings, it could be stated that prima facie commission of offence with reference to the second ingredient appears to be absent as observed above. Insofar as the requirement of custodial interrogation is concerned, as pointed out by the learned counsel for the appellant while taking note of the undertaking referred to above and the undertaking to co-operate with the investigation including furnishing of all other reports relating to his statements made in the YouTube channel, the necessity of custodial interrogation may not arise.

9. Accordingly, in light of the discussions made above, while putting the appellant on terms to ensure that he does not repeat such statement which may have the effect of hurting sentiments of the complainant which may constitute an offence and while observing that the appellant as a journalist needs to be cautious insofar as his professional work is concerned so as not to trample upon the right of others, case is made out for enlarging the appellant on bail.

10. The appeal filed by the appellant under Section 14A of the SC/ST Act is allowed and the appellant is enlarged on bail in the event of his arrest in Crime No.33/2020 for the offences punishable under Sections 384, 506, 501 and 511 of IPC and Section 3(1)(r), 3(1)(s) of the SC/ST

Act, subject to the following conditions:

(i) The appellant shall appear in person before the Investigating Officer in connection with Crime No.33/2020 within one week from the date of lifting of the lockdown and shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with a surety for the likesum to the satisfaction of the Investigating Officer.

(ii) The appellant not to make any statement against the complainant which may constitute an offence.

(iii) The appellant shall not tamper with evidence, influence in any way, any witness.

(iv) The appellant shall physically present

himself and mark his attendance before the concerned Station House Officer once in fortnight between 10.00 a.m. and 5.00 p.m., till filing of the final report.

(v) In the event of change of address, the appellant to inform the same to the concerned SH0.

(vi) Any violation of the aforementioned

conditions by the appellant, shall result in cancellation of bail.

Any observation made herein shall not be taken as an expression of opinion on the merits of the case.

Sd/-

JUDGE VP