

**(2014) 11 CAL CK 0084**

**Calcutta High Court**

**Case No:** CRM No. 15765 of 2014

Reba Ray

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Nov. 14, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 323, 325, 34, 379, 397
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 18, 3, 3(1)(x)

**Citation:** (2015) 5 CHN 225

**Hon'ble Judges:** T. Sen, J; Indrajit Chatterjee, J

**Bench:** Division Bench

**Advocate:** Samaraditya Pal, Sr. Adv., Soumapriya Roychoudhury and Arnab Sinha, Advocate for the Appellant; Rudradipta Nandy and Sibaji Kumar Das, Advocate for the Respondent

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**Judgement**

Indrajit Chatterjee, J.

The petitioner in this CRM has approached this Court with an apprehension of her arrest in connection with Bidhannagar (North) Police Station Case No. 232 of 2014 dated 2nd November, 2014 under Sections 498A/ 323/ 397 of the Indian Penal Code and Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter called the said Act) and is seeking anticipatory bail under Section 438 of the Code of Criminal Procedure (hereinafter called the said Code).

2. It is submitted by the Learned Senior Advocate Mr. Pal on behalf of the petitioner that the petitioner is a widow and comes from an esteemed family and her husband was an IAS Officer and ex-Chief Secretary of Tripura and ex-Chairman of the Calcutta Port Trust. It is also the case of the petitioner that she is an ex-Legal Officer of Coal India Limited and ex-Legal Advisor of Damodar Valley Corporation Limited and the

petitioner has three children two sons and a daughter who are all in Indian Civil Services, and the present informant's husband (that is another son of the present petitioner) is now posted as Inspector General of Police (Border).

3. It was also contended that the present petitioner has a fixed residence in Salt Lake within the said police station. She is a widow and her age is 67 years. It has also been submitted that the present informant is an IAS Officer. There is dispute in between mother and the son regarding her residential property and the present informant has been pressurising the petitioner to gift her residential property in favour of her husband to which the present petitioner did not agree and ultimately the informant along with her husband left that house on 13th September, 2014.

4. One case was filed before the Executive Magistrate, Bidhannagar and other case was filed before the Learned Civil Judge, Senior Division, 2nd Court at Barasat within the district of North 24 Parganas both by the present petitioner. The present petitioner got an order of status quo from the Civil Court at Barasat regarding that residential house.

5. It is also the case of the petitioner that she lodged a written complaint on 1st November, 2014 giving rise to Bidhannagar (North) Police Station Case No. 231 of 2014 under Sections 447/ 325/ 397/ 506/ 34 of the Indian Penal Code against her own son Anirban Ray, who is husband of the informant, with two others. In that First Information Report she alleged several allegations including assault on her. It has been claimed by the petitioner that the present case which has been filed by the informant on 2nd November, 2014 is one counter blast of that case.

6. It was the submission of Mr. Pal by taking us to the First Information Report of the present case that is "Annexure P-3" to convince this Court that the entire allegation is false. He further submitted that Section 18 of the said Act cannot be a bar in this case as there is no prima facie case against the present petitioner under Section 3 of the said act.

7. On behalf of the State Mr. Nandy submitted by taking us to the Case Diary and Section 3(1)(x) of the said Act to convince this Court that Section 18 is a clear bar to entertain such an application under Section 438 of the said Code.

8. Regarding Section 18 of the said Act we are apprised of two decisions of the Apex Court as reported in [Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Others](#), and [Swaran Singh and Others Vs. State through Standing Counsel and Another](#), and a single bench decision which bench acted as a third judge in an application under Section 438 of this Hon'ble Court as reported in [Parimal Maity Vs. State of West Bengal](#), . We have gone through the First Information Report and on perusal of the same we are constrained to say that there is no specific allegation as to how she was insulted being a member of Scheduled Caste Community. We are not unmindful of the fact that in the Case Diary the IO recorded the statement of the informant and her husband including two maidservants. Two maid-servants have

not supported the story to the effect that the informant was abused as being a member of the Scheduled Caste or Scheduled Tribe Community. On reading and re-reading the statement of the informant and her husband it appears that whatever happened did not happen "in any place within public view".

Section 3(1)(X) of the said Act reads as follows:--

3. Punishments for offences atrocities:--(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(x) "Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view".

9. Thus, the main ingredients of Section 3(1)(x) of the said Act are four:--

- "1. The accused is not a member of a Scheduled Caste or Scheduled Tribe;
2. The accused intentionally insults or intimidates a member of a Scheduled Caste or Scheduled Tribe;
3. Such act is committed with the intention to humiliate the victim; and
4. at a place within public view."

10. We are not unmindful of the bar of Section 18 of the said act which runs thus:--

18. "Section 438 of the code not to apply to persons committing an offence under the Act.- Nothing in section 438 of the code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

11. In the decision of Vilas Pandurang Pawar and Anr., (Supra) the Apex Court ruled that when an offence is registered against the person under the provision of said Act no Court shall entertain the application for anticipatory bail unless it prima facie finds that such an offence is not made out.

12. We are not unmindful of the decision of our Hon"ble Court Parimal Maity @ Parimal Maiti and Anr.,(Supra) wherein the Hon"ble Single Judge taking the ratio of Pawar"s case ruled "the aforesaid ratio makes it patently clear that in the event of specific averment in the First Information Report with regard to insult or intimidation by the accused with the intent to humiliate by calling with caste name of the aggrieved person, the statutory bar is attracted. It is impermissible for the Court in such cases to critically examine such allegations by evaluating the materials on record.

The first Information Report in the instant case categorically states that the accused persons came in front of the house of the victim and abused them in filthy language and also insulted them by calling their caste name, namely, "Dhopa" in order to

humiliate them".

13. Unfortunately, in the instant case before us the First Information Report is totally silent as to in what manner the present petitioner humiliated the informant branding her as a member of the Scheduled Caste or Scheduled Tribe Community. The First Information Report is also silent as to where the incident took place and naturally, we cannot say that the said alleged act (if any) was done at a place within public view.

14. Thus, we are of the opinion that no prima facie offence under the said Act has been made out. The bar under Section 18 of the said Act is not a fetter. Thus, we reiterate that no act was committed by the present petitioner that can be said to come within the forefold of Section 3 of the Act.

15. Regarding the sections 498A/ 323 and 379 of the Indian Penal Code, we are of the view that such sections cannot be a bar for the exercise of our discretion in favour of the petitioner under Section 438 of the said Code. We have kept in our mind the filing of the criminal case, civil suit etc., by the present petitioner showing the ill-feelings between the parties. The petitioner is a senior citizen and has a fixed residence.

16. Considering the aforesaid discussion we are inclined to exercise our discretion granted under Section 438 of the said Code. For the reasons we allow the CRM and direct that in the event the petitioner is arrested in connection with the above mentioned case she shall be released on bail on a bond of Rupees 5000/- with one surety and other conditions as mentioned in Sub-section 2(i, ii & iii) attached to Section 438 of the Code.

I agree: