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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 22.06.2020

+ CRL.A. 314/2020

LAL SINGH

..... Appellant

Through

Mr. Shivam Bajaj with
Sandeep Gupta, Advs.

versus

STATE & ANR

..... Respondents

Through

Mr. Amit Chadha, APP for State.
Mr. Gulab Singh, Adv. For
Complainant along with complainant.
Mr. Vijay Singh, ACP/Sub
Division Najafgarh, IO

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. The hearing has been conducted through video conferencing.
2. With the consent of parties, the present appeal is taken up for final disposal today.
3. Vide the present appeal, the appellant seeks directions thereby to allow the present appeal and set aside the order dated 03.04.2020 passed by the Ld. Additional Sessions Judge-02, South West, District Courts, Dwarka, in Bail Application No. 1485/2020. He further seeks directions thereby to grant regular bail to the appellant in the case arising out of the FIR No. 139 dated 05.03.2020, under Sections 3(1)(r)(s)(g)/3(2)(va) of the Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 447/506/34 of the Indian Penal Code, 1860 and Section 65, 66, 66 E, 43 (i) and 43 (j) of the Information Technology Act, 2000 (subsequently added), registered at PS Najafgarh, Dwarka, Delhi.

4. Initially the appellant filed Bail Application No. 779/2020 and for said purpose, the application was listed before this Court on 24.04.2020 wherein learned APP for the State and learned counsel for the complainant had strongly opposed the bail application on the ground that no such application lies against the order of rejection of bail application by the court concerned and only an appeal under Section 14(2) of SC/ST Act lies.

5. Accordingly, counsel for appellant was granted liberty to file an appeal as envisaged under Section 14 (2) of the SC/ST Act before the interim comes to an end.

6. Accordingly, bail application No. 779/2020 was dismissed as withdrawn. Thereafter, the present appeal has been filed.

7. Learned counsel for appellant submits that present FIR is a glaring and shocking example of misuse of a special legislation, enacted with the intention to prevent the commission of offences and atrocities against the members of the schedules casts and scheduled tribes, {i.e. the Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989}, being abused at the hands of the informant/respondent no.2, for unscrupulously settling a property dispute with a non-member, i.e., the appellant which is pending for almost 2 decades and has history of previous litigation between them and to exact vengeance against the appellant. Thus, resulting in the incarceration of the appellant herein, who is a war veteran with the BSF and had proudly served the motherland in the year 1971 war and due to his impeccable service record had subsequently been posted by the Government of India for the protection of the ambassadors and high commissioners in various parts of the world and is now retired senior citizen.

8. Learned counsel further submits that appellant was in custody since 21.03.2020 and has already undergone custody of 38 days.

9. He further submits that adjacent to the informant's/respondent no.2 plot no.32, lies plot no.36, measuring 120 sq. yards and was purchased by the appellant herein from one Smt. Dhanwati in 2004. However, clarified that in earlier Bail Application No. 779/2020, due to typographical error, the year of the purchase of the plot has been inadvertently mentioned as 2006, instead of 2004. He further submits that for the last 14 years, the main

dispute between the parties, is that the informant/respondent no.2, illegality claims title over 42 sq. yards from plot No. 36 owned by the appellant. Several panchayats have been convened to settle the dispute, and 3 earlier FIRs (2 FIRs by the informant/respondent no.2 and 1 FIR by the wife of the appellant) have been registered between the parties over the dispute and trial is underway before the Ld. District Courts at Dwarka.

10. Also submitted that in the FIR, there are two incidents on 04.03.2020, i.e. one at 12:15 PM and the other at 03:20 PM. As per the FIR, the appellant and other accused had made casteist remarks and committed the offence under the SC/ST Act towards the informant/respondent no.2 at 12:15 pm, however, surprisingly, the informant/respondent no.2 did not make a PCR call then and there but waited for more than 3 hours and finally after the alleged 03:20 PM incident made the PCR call. As per the averments made in the FIR, regarding the incident of 03:20 PM, the allegations are of trespass and interference with his rights of land and there is no allegation of any casteist imputations. Had the incident of making casteist remark at around 12:15 PM been true, then the complainant or any other prudent man would have made the PCR call immediately after occurring of the incident, i.e., around 12:15 pm itself and would not have

waited over three hours in reporting the incident.

11. This matter came up before this Court on 02.06.2020 whereby appellant and complainant were directed to file chain of documents of properties bearing plot nos.36 and 32 respectively before the next date of hearing with an advance copy to the other side and to the prosecutor who shall hand over a copy to the IO of the case. Thereafter, on 05.06.2020, learned APP submitted that ACP/IO has received documents from the complainant and statement of the complainant was recorded pursuant to which new sections under the appropriate law were added against the appellant in relation to forging of some documents since there is claim and counterclaim of the appellant and the complainant on the property in question, therefore, this court vide order dated 05.06.2020 directed the IO to file status report after verifying the documents filed by the parties before the next date of hearing and further directed, till then, no coercive steps shall be taken against the appellant.

12. Status report is on record whereby stated as under:-

1. That on 04.03.2020, the complainant, Sh. Jawahar Lal s/o Sh. Nathu Ram, R/o K-38, Angoor Bhawan, Gopal Nagar Najafgarh submitted a written complainant to the SHO Najafgarh for registration of case submitting therein that he belongs to schedule caste community and one of his neighbour La Singh Yadav and his son namely

Pradeep Yadav along with two other persons came at about 12:15 noon and trespassed on the passage of his plot number 32 Gopal Nagar Najafgarh and started measuring it. Thereafter the complainant also came at the spot, where they were measuring the wall on his plot number 32 and when the complainant objected them to do so then the accused Lal Singh Yadav and his son Pradeep Yadav intentionally insulted him with intention to humiliate him in a public view and at the time of leaving from there both of them started abusing him in the name of his cast in the street by addressing him with caste related derogatory remarks. Thereafter at about 03:35 PM the complainant received a call from Sh. Satbir Singh Poonia (the neighbour of the Complainant) from his mobile number i.e. 9811054163 and he informed the complainant that Sh. Lal Singh Yadav again visited the spot/plot with some other persons and are measuring the above said plot the complainant and pursuant to the information, the complainant also saw the accused persons present on the spot from first floor of his house. The accused Lal Singh Yadav was leaving the spot on his white colour scooty and others left walking. Pradeep Yadav and some other persons were also standing on the road.

2. That the accused Lal Singh, his son Pradeep Yadav and others have criminally trespassed upon the land of the complainant and interfered with enjoyment of his rights on his hand. On 05.03.2020 the above said FIR was registered against the accused persons without any inordinate delay and the investigation of the above said case was assigned to ACP Shri Kamal Singh of CAW Cell Dwarka New Delhi, by DCP Dwarka District. During the course of investigation ACP Shri Kamal Singh has written down the statement of the complainant and the witness Shri Satbir Singh Punia was examined and his statement recorded under Section 161 Cr.P.C. on 15.03.2020 who stated that he witnessed the incident whereby Sh. Lal Singh, his son Pradeep and two unknown

persons visited the plot of the complainant and started measuring the same and in the meantime the complainant also came to the aforesaid plot and upon objecting by the complainant, they made caste related derogatory remarks. Shri Ravinder Kumar Yadav who is residing in the neighbourhood of the complainant was also enquired and CCTV footage and DVR was collected from his house. The IO collected the CCTV footage/DVR from various neighbours.

3. That initially the case registered u/s 3(i)(r)/3(i)(s)/3(i)(g)/3(2)(va), SC/ST (POA) Amended Act 1989 read with 447/506/34 IPC and subsequently during the course of investigation Sections 3(2)(VI) SC/ST Act, 204 IPC and 43 (i), 43(j), 65/66 IT Act were added on the basis of the statements of witnesses.

4. That on 04.06.2020 complainant Jawahar Lal further levelled serious allegations of cheating and forgery in his statement recorded u/S 161 Cr.P.C. against appellant Lal Singh and some other persons. Accordingly prime facie sections 3(i)(q)/ 3(i)(z)/3(2)(II)/3(2)/(v)/8b SC/ST (POA) Amended Act 1989 and 109/120-B/195/A/420/463/465/467/468/471/34 IPC were added in the instant case.

5. That in the instant case Section 3(i) (g) of SC/ST (POA) Amended Act 1989 is invoked as the complainant had alleged that appellant Lal Singh alongwith his son Pradeep & two other persons had allegedly trespassed his plot and tried to interfere in his peaceful possession of his 300 Sq. Yard plot approx.. 258 Sq. Yard area covered with boundary wall and a narrow strip of land measuring approx. 42 Sq. yard left uncovered. This vacant strip measuring approx. 42 Sq. yard is the bone of contention between the parties as both claim this 42 Sq. yard land.

6. That following criminal cases are already pending trial between the parties i.e. the complainant Jawahar Lal and appellant Lal Singh.

FIR registered on the complaint of Sh. Jawahar Lal s/o Sh. Nathu Ram:-

(a) Case FIR no. 966/2006 dated 09.10.2006 u/s 451/323/427/34 IPC PS Najafgarh:-

This case was registered on the complaint of Sh. Jawahar Lal s/o Sh. Nathu Ram r/o K-37/38, Angoor Bhawan Gopal Nagar, Khaira Mod Najagarh against Sharda w/o Sh. Lal Singh, r/o RZ-41, K Block, Gopal Nagar Najafgarh and Lal Singh, s/o Sh. Subhash Chand R/o RZ-41, K Block, Gopal Nagar, Najafgarh. After investigation, the case was chargesheeted and is pending trial. The next date of hearing is 10.07.2020.

(b) Case FIR No. 1018/2006 dated 25.10.2006 u/S 3 SC/ST Act, PS Najafgarh:-

As per record available at PS Najafgarh this case was registered on the complaint of Sh. Jawahar s/o Sh. Nathu Ram r/o K-37/38, Angoor Bhawan Gopal Nagar, Khaira Mod Najagarh against Sh. Lal Singh, s/o Sh. Subhash Chand r/o RZ-41, K Block, Gopal Nagar Najafgarh and Lal Singh, s/o Sh. Subhash Chand R/o RZ-41, K Block, Gopal Nagar, Najafgarh. this case was chargesheeted and pending trial in Special Court of SC/ST Act Dwarka Courts, Delhi. The next date of hearing is 10.07.2020.

(c) Case FIR no. 139/2020 dated 05.03.2020 u/s 3(i)(r)/3(i)(s)/3(i)(g)/3(i)(q)/3(i)(z)/3(2)(va)/3(2)(ii)/3(2)(v)/3(2)(vi)/8B SC/ST (POA) Amended Act 1989 read with 447/506/109/120-B/195/A/420/463/465/467/468/471/34 IPC & 65/66/66E, 43(i), 43(ii), I.T. Act, PS Najafgarh, New Delhi:-

- (i) This is the instant case and was registered on the complaint of Sh. Jawahar Lal, s/o Sh. Nathu Ram, r/o K-38, Angoor Bhawan Gopal Nagar, Najafgarh against Lal Singh, s/o Sh. Subhas Chand R/o RZ-41, K Block, Gopal Nagar, Najafgarh, Pradeep Yadav s/o Lal Singh R/O RZ-41, K Blcok, Gopal Nagar Najafgarh and two unknown persons. Initially case was registered u/s 3(i)(r), 3(i) (s), 3 (i) (g), 3 (2) (va) SC/ST POA Act, 1989 read with*

447/506/34 IPC. During the course of investigation complainant further levelled allegations against one neighbour Ravi Shankar s/o Sh. Suresh Kumar r/o RZ-26, Dlip Market, Gopal Nagar Najafgarh and Section 43(i), 43 (j), 65/66/66E IT Act IPC were added along with Section 204 of IPC.

(ii) Besides it during the course of investigation complainant further levelled allegations of cheating, forgery and some additional sections of IPC against Lal Singh, his son Pradeep and (1) Rahgunath s/o Late Tej Singh, r/o C-1677, Police Station Road Najafgarh (2) Dhwanwati w/o Sh. Umed Singh, r/o RZ B-75, Raj Nagar, Palam Colony, Delhi (3) Lal Singh s/o Ram Chander R/o Village Kalaka, PO-Majra Gudash, Tehsil Rewari, District Mohinder Garh, Haryana (4) Deep Chand s/o Hardhyan R/o Village Haasan Pur (5) Uday Ram Yadav, s/o Sh. Khem Singh Yadvu (Parokar) r/o unknown (6) Raj Singh s/o Bhoop Singh R/o VPO Marout, Distt. Jhajjar Haryana. Besides it even names of two advocates namely Anirudh and Chanderjeet Yadav are mentioned in the latest statement of complainant Jawahar Lal recorded u/s 161 Cr.P.C.

(iii) That appellant Lal Singh was arrested in the instant case on 21.03.2020 and he was released on interim bail vide order of Hon'ble High Court dt.24.04.2020. The other Co-accused Pradeep Yadav S/o Lal Singh was arrested on 16.05.2020 when he surrendered before the special SC/ST Court Dwarka. He is also released on interim bail vide order dt.09.06.2020 by Addl. Session Judge Dwarka Courts. Besides these two main accused persons some other alleged persons have also been interrogated and notice u/s 41A CrPC Issued.

FIR registered on the complainant of Smt. Sharda w/o Lal Singh (appellant):-

Case FIRNo.967/2006 dated 09.10.2006.u/s
289/337/323/341/34 IPC PS

Najafgarh:-

This FIR was registered on the complaint of Smt. Sharda w/o Lal Singh R/o RZ-41, Gopal Nagar, K- Block Najafgarh against Jawahar Lal s/o Sh. Nathu Ram (Complainant herein) and his two sons namely Gulab Singh and Gagan. This case is pending trial and NDOH is 10.07.2020 as per available information.

7. That neither complainant Jawahar Lal nor accused Lal Singh has provided the original chain of document of their respective properties.

8. That complainant Jawahar Lal has produced following copies (certified/copy to copy) of chain of documents pertaining to his property plot No. 32, Khasra No. 26/2/3 measuring 300 sq yards situated in Revenue estate of Village Najafgarh and as per copies of documents provided by complainant Sh. Jawahar Lal the chain of documents of Smt. Angoor Devi W/o Jawahar Lal is as under:-

(a) On 16.05.96 Smt. Sushila Devi w/o Bir Singh R/o VPO Rampur Bans Distt. Rewari (HR) had sold plot no. 32 measuring 300 Sq. Yards out of khasra no. 26/2/3 revenue estate of Village Najafgarh to Sh. Jhandu Singh S/o Sh. Har Bhaj Singh R/o VPO Gumenhera, New Delhi.

(b) In October 2001 Sh. Jhandu Singh S/o Sh Har Bhaj Singh R/o Vil. & P.O. Gumenhera, New Delhi had sold the above property to Smt Angoor Devi w/o Jawahar Lal R/o K-37 Angoor Bhawan, Gopal Nagar Najafgarh.

9. That on the other hand the copies of chain of documents provided by appellant Lal Singh on 16.6.2020 in respect of plot no. 36 showing khasra no. 26/13/2 Revenue Estate of Roshanpura is as under:-

a) On 30.08. 1989 Raghu Nath S/o Tej Ram R/o C-1677 Police Station Road, Najafgarh sold the above property to one Shri Lal Singh S/o Ram Chander R/o Vill. Kalaka

Distt. Mahender Garh, Haryana. In this chain area is shown 120 Sq. Yards.

(b) On 18.11.1989 Lal Singh S/o Ram Chander R/o Village Kalaka Distt. Mahender Garh (HR) sold it to Smt. Dhanwati W/o Sh. Umed Singh R/o RZ B-75 Raj Nagar Palam Colony. The area shown is 120 Sq. Yards

(c) On 30.04.2004 Smt. Dhanwati W/o Sh. Umed Singh R/o RZ B-75 Raj Nagar Palam colony sold it to appellant Lal Singh S/o Subash Chand R/o RZ-41 K, Block, Gopal Nagar Khaira road Najafgarh. But in this chain it is mentioned that plot no. 36 area measuring 120 Sa. Yards. Some alteration/deletion appears in the chain. However in the similar documents provided by complainant (claiming that the same was filed in trial Court by the appellant Lal Singh) area was written 120 Sq yard (on the spot area measuring 127 Sq yard).

10. That neither the complainant nor the accused/appellant herein have registered chain of documents. They have only produced copies of GPA agreement to sell, receipts, affidavit etc. These photocopies of documents are also not completely chain starting from original land lord.

11. That verification made so far on the basis of photocopies of incomplete chain of documents in respect of complainant is as under:-

(a) He has provided copy of two chains i.e first where Smt. Sushila w/o Bir Singh sold this plot no.32, khasra no.26/2/3 to Jhanda Singh and second when Jhanda Singh further sold it to Angoor Devi w/o complainant Jawahar Lal. The witnesses and executants in both the chains have identified their signature and admitted these copies to be correct. However in the copies of chain of documents khasra of the plot No. 32 of the complainant is mentioned on 26/2/3 revenue Estate of Najafgarh. But as per demarcation report dated 24.04.2008 the actual Khasra number was found to be 26/23 Revenue Estate Najafgarh.

12. That verification was made on the basis of

photocopies of incomplete chain of documents in respect of appellant accused Lal Singh, but following discrepancies were found in his documents:-

(a) in earlier two chains i.e first when Raghunath s/o Tej Ram sold it to Lal Singh s/o Ram chander and second when Lal Singh s/o Ram Chander sold to Dhanwati w/o Umed Singh the area of land is shown as 120 Sq. yards whereas in the third chain i.e where Dhanwati w/o Umed Singh sold it to Lal Singh s/o Subhash Chand (appellant herein) the area shown is 120 sq yards (127 Sq. yards on the ground).

(b) In the chain of Dhanwati to Lal Singh (appellant) is initial copy provided by complainant and allegedly filed by appellant in trial court in case FIR No.1018/06, there were no witnesses mentioned in the column of witness. But on the same set of documents subsequently name of witnesses Deep Chand is added and even the area (127 Sq. Yard on the ground)is deleted by putting xxxxxxx marks over it. The accused was again interrogated but he could not give any convincing reason for this addition/deletion.

(c) One more discrepancy is noticed that Dhanwati w/o Umed Singh r/o RZ-B-75 Raj nagar Palam Colony Delhi who had allegedly sold plot no. 36 khasra no.26/13/2, Rohanpura was also interrogated and her name as per her ID proof was Dhanpati (not Dhanwati). However, she had explained that she is also known as Dhanpati@Dhanwati, but no such @ is mentioned on her Addhar Card

(d) One more discrepancy was noticed that in 2014 Dhanwati had given an affidavit that revenue estate of the plot no. 36 sold by her was wrongly mentioned as Roshanpura and it is actually Najafgarh. But in this affidavit she has mentioned that she had sold his plot to one Lal Singh S/o Ram Chander whereas name of father of the appellant Lal Singh is Subhash Chand and not Ram Chander.

(e) Even notary namely Sh. Ramesh Chandra Joshi was

interrogated and relevant record seized. Even in his record the address of Lal Singh S/o Ram Chander is wrongly mentioned as H.No. M-404/1, Gopal Nagar Ph-II, Khaira Road, Najafgarh, New Delhi 43 and DL No. DL0919890117207 whereas this address and particulars were of Lal Singh S/o Subhash Chand (the appellant). The Notary also failed to give any reasonable logic behind this discrepancy and simply revealed two persons having similar name Lal Singh and cross mentioned the address of Lal Singh S/o Subhash Chand against the particulars of Lal Singh S/o Ram Chander. However, on verification during Investigation Lal Singh S/o Ram Chander aged 75 year and Dhanwati w/o Umed Singh aged 60 years have admitted that they had executed affidavit. The first executant Raghu Nath who had sold plot initially to Lal Singh S/ Ram chander has since expired on 20.01.2020.

(f) The Khasra number mentioned in the documents of accused Lal Singh in 26/13/2 revenue estate of village Roshanpura. Through Affidavit executant have clarified that it was wrongly mentioned and be read as 26/13/2 revenue estate of village Najafgarh. But as per demarcation report dated 24/4/2008 the actual Khasra of the land in question was found to be 26/23 Revenue Estate of village Najafgarh.

13. That the sections of Law of cheating and forgery were added only on 04.06.2020, when the complainant leveled these specific allegations. These alteration/additions or discrepancies are yet to be investigated further. Besides this in absence of original and complete of chain of documents, it would be difficult to establish the allegation of forgery/cheating.

14. Hence in view of above submissions some more time is required to conclude the investigation of this case involving offences of cheating/forgery besides SC/ST Act. Accused Lal Singh and complainant are residing in close vicinity. Accused may hamper investigation by intimating witnesses. His regular bail is strongly opposed.

13. As per para 12 of the status report mentioned above, verification was done by IO on the photocopies of incomplete chain of documents in respect of appellant/accused Lal Singh and the aforementioned discrepancies were found in his documents.

14. Accordingly, sections of law of cheating and forgery were added on 04.06.2020, when the complainant levelled these specific allegations. These alteration/additions or discrepancies are yet to be further investigated after taking the appellant/accused taking into custody.

15. It is not in dispute that appellant was arrested as mentioned above and thereafter released on interim bail for 45 days vide order dated 24.04.2020 and the said period expired on 07.06.2020, thereafter, he continued to be on interim bail pursuant to the directions passed by this Court as mentioned above.

16. In view of above, the custodial interrogation of the appellant is required. I find no ground in the appeal and the same is accordingly dismissed. Interim order stands vacated.

17. Accordingly, appellant is directed to surrender before the concerned IO for further investigation by 23.06.2020 at or before 04:00 pm.

CRL.M.(BAIL) 6441/2020

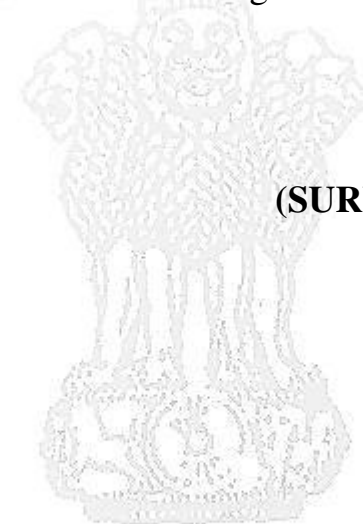
18. In view of the order passed in appeal, the present application has become infructuous and the same is accordingly dismissed.

19. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

20. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

(SURESH KUMAR KAIT)
JUDGE

JUNE 22, 2020/ms



न्यायमेव जयते