

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 2097 OF 2015.

TUKARAM KONDIBA MUNDHE & ORS.

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Appearance =>

Mr. B.R. Waramaa, Advocate for the Applicants.

Mrs. S.G. Chincholkar, Additional Public Prosecutor for the State of Maharashtra.

Mr. M.B. Sandanshiv, Advocate for the First Informant.

CORAM : V.M. Deshpande, J.

DATE : 25th June, 2015.

Per Court :-

Present Criminal Application is filed by the Applicants for grant of anticipatory bail, since they are apprehending their arrest in connection with CR No. 94/2014 registered with Police Station, Parali (Rural), District - Beed for the offences punishable under Section/s 143, 147, 149, 447, 504, 506 of the Indian Penal Code and under Section 3(1)(x) of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] Heard Mr. B.R. Waramaa, learned counsel for the Applicants, Mrs. S.G. Chincholkar, learned Additional Public

Prosecutor for the State and Mr. M.B. Sandanshiv, learned counsel for the First Informant, extensively

[3] According to learned counsel, the present case is having long history.

Shivaji Pandit Kamble – First Informant had executed registered sale-deed in favour of Applicant No.1 on 19th June, 1998. By the said sale deed, the complainant sold 40 Are portion of his land from Gat No.323 situated at village Ladzhari, Taluka – Parali Vaijinath, District – Beed.

Remaining land from the said Gat Number was sold by the complaint to Damu Kishan Kamble on 20th August, 2003, who is one of the close relative of the complainant.

Adjacent to this Gat No.323 there exists land Gat No.319, which is admittedly in possession of the complainant.

[4] The complainant was obstructing the possession of Applicant No.1 in respect of land Gat No.323. That necessitated Applicant No.1 - Tukaram Munde to instituted Regular Civil Suit for perpetual injunction in the court of the learned Joint Civil Judge, Junior Division, Parali. Said suit was registered as Regular Civil Suit No.174/2001. He submitted that, following two issues were framed in the said suit.

(i) Does plaintiff prove his possession over the suit land with referable to field title.?

(ii) Does Defendant No.1 (complainant) prove that he executed nominal sale-deed in favour of plaintiff with respect to the suit land by way of security of loan amount of Rs.15,000/- incurred from him.?

From the aforesaid two issues, it is crystal clear that it is the case of the complainant that the sale deed dated 19th June, 1998 was nominal sale deed and no title was transferred in favour of Applicant No.1.

[5] He further submitted that, the learned Joint Civil Judge, Junior Division, Parli, vide his Judgment and order dated 20th March, 2002 decree Regular Civil Suit No.174/2001. The learned Judge of the trial court recorded the findings in affirmative in respect of the aforesaid two issue. At the same time, he recorded negative finding to the issues as to whether the plaintiff has proved obstructions at the hands of all the defendants.

[6] Being dis-satisfied with the Judgment and Order dated 20th March, 2002 passed in Regular Civil Suit No.174/2001, Regular Civil Appeal was preferred by the present complainant. It was registered as Regular Civil Appeal No.126/03. The learned Ad Hoc District Judge – 1 Ambajogai, District Beed vide his Judgment and Order dated 12th June, 2007 dismissed said Regular Civil Appeal.

[7] It is submitted at bar by the learned counsel for the Applicants that being aggrieved with said Judgment and Order, no second Appeal was preferred before this court, by the aggrieved party. Said statement of the learned counsel for the Applicants is not at all

disputed by the learned counsel for the First Informant - Mr. M.B. Sandanshiv, Advocate.

[8] Thus, it is crystal clear that findings recorded by the learned Civil Court in respect of contention of the complainant that the sale deed dated 19th June, 1998 was nominal one, has negatived and has reached its finality.

[9] He invited my attention on another aspect is that on the basis of First Information Report lodged by present Applicant No.1 Regular Criminal Case No.304/2003 was initiated against the complainant – Shivaji. In the said Regular Criminal Case the learned Judicial Magistrate, First Class, Parali Vaijinath vide his judgment and order dated 31st August, 2004 convicted the complainant for the offences punishable under Sections 323, 447 and 506 of the Indian Penal Code. Criminal Appeal was carried out against the said Judgment and Order of conviction however, the learned Sessions Judge, dismissed the said Criminal Appeal on 7th March, 2014.

Being aggrieved by such concurrent findings, Criminal Revision Application is filed before this court, and it is reported that, said Cri. Revn. Application is already admitted by this court and the complainant and other are already released on bail.

[10] Thus according to learned counsel the present First Information Report against them is nothing but an abuse of process of law. In this background, complaint was lodged in the Court of the learned Judicial Magistrate, First Class under Section 156(3) of the Cri.P.C. The learned Magistrate directed the Police Official and accordingly present First Information Report is registered.

[11] According to the complaint, the present Applicants entered into the field Gat No.319. At that time, the complainant was preparing his field for cultivation. That time, according to the complaint, the present Applicants used the offensive words in the name of caste and also gave threat. The another incident which is narrated in complaint is dated 21st June, 2013 i.e. when complainant was in court that time also he was abused in the name of caste.

[12] Investigation papers shows that in respect of the incident dated 19th May, 2013 statement of one Shivaji is recorded. This witness does not belongs to the caste to which the complainant belongs. He hails from higher caste. His statement would reveal that present Applicant entered into the field Gat No.319. That time first informant was preparing the field for cultivation. His statement would further discloses that this witness is independent witness, who fully corroborated the version of the complainant.

[13] To criticize this, it is the submission of Mr. Warmaa learned counsel that this witness - Shivaji hails from Latur District. Therefore, presence of this man itself is in doubt therefore, it is his submission that aforesaid statement of this man i.e. Shivaji has to be kept besides the purview, while appreciating the case of the Applicants. Statement of Shivaji would reveals that he is resident of village Manusmarwadi, Taluka – Renapur, Distirct Latur.

[14] Surely this is not stage wherein statement of learned counsel Mr. Waramaa has to be appreciated in respect of presence of this witness. At the relevant time, said will be considered. At present,

it is to be seen whether the statement of fact which is asserted by the complainant in his complaint is having any independent corroboration; especially when it is the statement of the learned counsel for the Applicants that present case is nothing but false case because of earlier litigation which this court has elaborately discussed in foregoing paragraphs.

[15] Statement of Shivaji undoubtedly discloses that in his presence, present Applicants have used abusive words in the name of caste of the complainant in a public view.

[16] In that view of the matter, there is bar in respect of the consideration of the application for anticipatory bail under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, I pass the following order :-

ORDER

- (i) Criminal Application is rejected.
- (ii) Interim order dated 20th April, 2015 granted by this court stands vacated.

(V.M. DESHPANDE, J.)