

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 42 OF 2015

State of Goa
(Through Mapusa Police Station) **... Petitioner**

Versus

- 1] Satyawan Kandolkar, (Major)
s/o Monohar Kandolkar,
aged 40 yrs., Male,
Indian National,
r/o H. No.1164, Newwado,
Volvonem, Thivim.
- 2] Mrs. Sarita Monohar Kandolkar, (Major)
@ Mitali Parulekar,
w/o Mohan Parulekar,
aged 39 yrs., female,
Indian National,
r/o New Waddo, Volvonem,
Thivim, Bardez-Goa @ Podwal,
Khorjuvem, Aldona,
Bardez-Goa. **... Respondents**

Mr. S. R. Rivankar, Public Prosecutor for the petitioner.

Mr. V. A. Lawande, Advocate for the respondents.

Coram : C. V. BHADANG, J.

Date : 3rd July, 2015.

ORAL ORDER :

By this revision application the petitioner – State is challenging the order dated 16th January, 2015 passed by the learned Special Judge, Panaji, in Special Case No.1/2013. By the impugned order, the learned Special Judge has discharged the respondents from the offences punishable under Section 3(i)(v) and (x) of the

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as to 'the Act') and Section 342 of the Indian Penal Code.

2] The brief facts are that the complainant Santosh Khajnekar had lodged a report with the Collector, North Goa, on 28th May, 2012. It was alleged that on 28th November, 2011, the complainant was allotted a plot bearing No.18 admeasuring 100 sq. mts., out of survey No.10/1 of village Thivim, District North Goa. That plot was allotted by the Revenue Authorities under Section 21 of the Goa, Daman and Diu Land Revenue Code, 1968. It was alleged that when the complainant had visited the said plot for inspection, he noticed that there was a wooden fencing in the said plot, which was allegedly erected by the respondent/accused Satyawar Kandolkar and his sister Sarita Kandolkar @ Mitali Parulekar. He further claimed that when he requested the respondents to remove the wooden fencing, the respondents said that they won't allow the complainant to stay in the said plot as a neighbour as he is belonging to scheduled caste. Thereafter on 28th May, 2012 the complainant approached the Mamlatdar, Bardez-Goa with a written complaint against the respondents. It appears that in pursuance thereof, Talathi Mr. Sandeep Kankonkar and a Surveyor Mr. Riyaz Ahmed along with the

complainant had visited the spot on 25th April, 2012 for demarcation of the said plot. According to the complainant, the respondents/accused obstructed the said work and uttered some derogatory words based on the caste of the complainant. It was claimed that the respondents have encroached on the Northern side of plot No.18 by putting up a wooden fencing. It appears that on the basis of the said complaint an offence came to be registered. On investigation a charge-sheet was filed before the Special Court at Panaji. The learned Special Judge by the impugned order has discharged the respondents from the offence as alleged. The learned Special Court has found that although there was an order dated 28th November, 2011, under which the plot is allotted to the complainant by Collector, North Goa, there was nothing on record to show that the actual possession of the plot was handed over to the complainant. The learned Special Court found that there was no document placed on record to show that prior to 28th March, 2012 the said plot of land was possessed by the complainant. The learned Special Judge was of the opinion that, an offence under Section 3(i)(v) of the Act, which contemplates interference with the possession, would presuppose that the plot was actually in possession of the complainant. Thus no offence could be said to have been made out under Section 3(i)(v) of the Act. Insofar as the offence under Section 3(i)(x) of the Act is concerned the

learned Special Court has found that there was no material to show that the alleged words attributed to the respondents, were uttered in public view, which is the requirement of the said section. The learned Special Judge also found that there was inordinate delay in filing the complaint and the Talathi and Surveyor, who were admittedly present at the time of alleged incident, did not support to the complainant. It was also found that there was no material on record to show the ingredients of offence punishable under Section 342 of Indian Penal Code was made out. In that view of the matter, the respondents, came to be discharged.

3] It is submitted by Mr. Rivankar, the learned Public Prosecutor that at the stage of framing of charge, the Court is not required to embark upon detailed enquiry into the material. It is submitted that Section 3(i)(v) of the said Act, has two ingredients. The second part of Section 3(i)(v) pertains to interference with the rights of the person belonging to the scheduled caste and scheduled tribe. The submission is that this part of the Section would not require that the complainant is actually put in possession. It is submitted that the material would clearly show that the respondents have interfered with the assertion of the right of the complainant, over the said plot. As far as the offence under Section 3(i)(x) of the Act is

concerned, it is submitted that one Pralhad Jadhav, who happens to be the brother-in-law of the complainant, is shown to be present at the spot. It is submitted that this would be sufficient at this stage to show that the words were uttered in public view. It is submitted that the learned Special Court has not adverted to this aspect. He therefore submitted that the impugned order be set aside.

4] On the contrary, it is submitted by Mr. V. Lawande, the learned counsel for the respondents that the complainant has to allege in the complaint that the respondents / accused are not belonging to the scheduled caste and scheduled tribe. It is submitted that the complaint is lacking in this regard. Reliance is placed in this regard on the decision of the Hon'ble Supreme Court in the case of ***Gorige Pentaiah Vs. State of Andhar Pradesh & others reported in (2008) 12 SCC 531***, in which it is held that such a foundation has to be laid in the complaint. The learned counsel would next submit that the complainant hails from Sawantwadi, Maharashtra. He has referred to a certificate dated 12th September, 1996, which is a caste certificate issued by the competent authority in Maharashtra. He has then referred to a certificate dated 3rd August, 2009, issued by the Deputy Collector and Sub Divisional Magistrate, Mapusa-Goa, which clearly mentions that the said certificate shall not entitle the complainant to

any benefits in the State of Goa. He therefore submitted that the respondents cannot take the benefit of the said certificate to claim that they belong to the scheduled caste. He therefore submitted that no offence could be made out.

5] It is next submitted that on the complainant's own saying, he was not aware where actually the plot was located and that is why the Surveyor and the Talathi had visited the spot for demarcation and handing over the possession of the plot to the complainant. He therefore submitted that the allegation that the respondents interfered with the assertion of the rights or possession of the said plot, which is requirement of Section 3(i)(v) of the Act, is not made out in this case. As regards, the offence under Section 3(i)(x) of the Act is concerned, it is submitted that the requirement of the utterances being in a public view, would presuppose that the member/s of the public are belonging to a caste other than the scheduled caste and scheduled tribe. He also submitted that while framing the charge, the Court has to look into entire material produced along with the charge-sheet and the learned Special Court has rightly considered the statements of Riyaz Ahmed and Sandeep Kankonkar, who have clearly stated that nothing of the sort as alleged by the complainant had happened. He therefore submitted that the impugned order does not need any interference.

6] On hearing the learned counsel for the parties and on perusal of the record produced, I do not find that any case for interference is made out. It cannot be disputed that at the stage of framing of charge the Court is not required to scrutinize the material in details, which can only be done at the trial. Under Section 227 of the Criminal Procedure Code, the Court has to find that there are sufficient grounds for proceeding against the accused.

7] Turning to the present case, admittedly the actual possession of the said plot No.18 was not handed over to the complainant. It appears that, on the date on which the incident is alleged to have occurred, the Talathi and the Surveyor had visited the spot for measurement and demarcation of the same. Thus, the exact location of the plot was ascertained as on that date. Thus, interference with the rights of the complainant with reference to the said plot also cannot arise. Insofar as the second part of the Section 3(i)(v) of the Act is concerned, it is not even the case of the prosecution that the complainant was put into possession of the said plot, as such no question of interference with the possession of the plot can arise.

8] The incident/s in this case are of March / April 2012. The complaint is lodged on 29th May, 2012. The learned Special

Judge has also noticed that the complainant had given supplementary statement on 28th July, 2012 i.e. after a period of two months from lodging of the complaint. It has been found, and to my mind rightly so that there is no independent witness, who is stating about the utterance of alleged derogatory words, which are attributed to the respondents. The witnesses, which can strictly be said to independent and were in fact Government Officers Mr. Riyaz Ahmed and Mr. Sandeep Kankonkar have stated that nothing of the sort as alleged by the respondents had occurred.

9] Insofar as the offence under Section 342 of I.P.C. is concerned, it speaks about punishment for wrongful confinement. Wrongful confinement is defined in Section 340 of the I.P.C, as under :

Wrongful confinement : Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.

A bare perusal of the said section, if seen in the context of the allegations in the complaint, would show that no offence under said Section can even prima facie be made out. On a careful consideration

of the impugned order, I do not find that the same shows exercise of jurisdiction with material irregularity requiring interference by this Court.

10] In the result, the revision application is hereby dismissed.

C. V. BHADANG, J.

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