

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.334 OF 2001

Mahendrasingh D. Mukne,
Adult, Occupation Agriculturist,
Residing at Post Taluka Jawhar,
District Thane. ... Petitioner.

vs.

- 1) The State of Maharashtra.
- 2) Shri.Ashok Shaniwar Mali,
Adult, Occupation Business/
Agriculturist, residing at
Parnaka, Dahanu, Dist. Thane.
..Respondents.

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vs.

- 1) The State of Maharashtra.
- 2) Shri.Mohan Shaniwar Mali,
Adult, Occupation Business/
Agriculturist, residing at
Parnaka, Dahanu, Dist. Thane.

..Respondents.

None for the Applicants.

Mr. A.R. Patil, APP. for the State.

CORAM : C.V. BHADANG, J.

DATE : 27th April , 2015

ORAL JUDGMENT:

Both these revision applications involve common and connected question of law and fact and as such, they are being disposed of by this common Judgment.

2) These revision applications are by the original complainant Mahendrasingh Mukane resident of Jawhar, District Thane. It appears that on the basis of the complaint lodged by the applicant an offence under Section-447 of the Indian Penal Code read with Section-3(iv) of the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act of 1989 for short) was registered with Police Station, Dahanu, District Thane.

3) According to the prosecution, the incident had occurred on 22 February 1997 in which it was alleged that the accused Ashok Mali (Special Case No.64/1998) had trespassed on the land bearing Survey No.167/1/1/3-B of Dahanu belonging to the applicant. In Special Case NO.65/1998, it was alleged that the accused Mohan Mali who is brother of Ashok Mali had trespassed on the land out of Survey No.133 of Village Dahanu belonging to the applicant. As the incident related to trespass by Ashok Mali and Mohan Mali in two different lands of the applicant, two separate cases bearing Sessions Case No.64/21998 and 65/1998 were initiated on the file of the learned Special Judge, Thane.

4) It appears that the original accused filed application before the learned Special Judge for discharge on the ground that the investigation of the matter was carried out by one Mr. P.U. Kohinkar, Police Inspector. It was contended that Section 9 of the Act of 1989 read with Rule-7 of the Scheduled Castes

and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short Rules of 1995) require that the investigation shall be carried out by Police Officer not below the rank of Dy. Superintendent of Police. Reliance was placed on the decision of this Court in Ramnath Sadashiv Koltharkar vs. State of Maharashtra reported in 1995(5) Bom. C.R. 255 in order to submit that the said requirement was mandatory in nature and the fact that the investigation was carried out by an officer below the rank of Deputy Superintendent of Police, the prosecution is vitiated.

It appears that the learned Special Judge accepted the contention and proceeded to discharge the accused by order dated 29 February 2000. It was held that the prosecution to the extent under Section 3(1) (iv) of the Act, 1989 cannot proceed. In view of the fact that the offence punishable under Section 447 of the I.P.C. was triable by the Judicial Magistrate First Class, the

same was transferred to the chief Judicial Magistrate at Thane in view of the provisions of Section 228(1)(a) of the Code of Criminal Procedure.

Feeling aggrieved, the complainant has filed this Criminal Revision Application.

5) There is no appearance on behalf of the applicants or the respondent No.2 in both the revision applications. I have heard Shri. Patil, learned APP for the respondent State. These being Criminal Revision Applications, I have perused the record and the same are being disposed of on merits.

6) It is not in dispute that the State has not chosen to challenge the order of discharge. At this distance of time, it is also not readily possible to ascertain what is the fate of prosecution under Section 447 of the I.P.C., which was relegated to the Court of Chief Judicial Magistrate, Thane. Be that as it may. The only question is whether

the impugned order discharging the 2nd respondent of the offence punishable under Section 3(1)(iv) of the Act of 1989 needs interference.

My answer is in the negative for the following reasons.

7) Section 9 of the Act of 1989 and Rule 7 of the Rules of 1995 which are relevant for the purpose, read as under:-

“9. Conferment of powers -(1)
Notwithstanding anything
contained in the Code or in any
other provision of this Act, the
State Government may, if it
considers it necessary or
expedient so to do,-

- (a) for the prevention of and
for coping with any
offence under this Act, or
- (b) for any case or class or
group of cases under this ?

Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any special court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section(1).

Rule-7(1)-Investigating Officer -
An offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

8) It can thus be seen that the requirement of Rule 7 of the Rules of 1995 is mandatory in nature. This Court in the case of **Ramnath Sadashiv Koltharkar** (supra) has held that the provisions being mandatory in nature, the prosecution on the basis of the

investigation carried out by an Officer below the rank of Deputy Superintendent of Police cannot be permitted to continue. In that view of the matter, I do not find that there is any perversity in the impugned order. The impugned order does not show exercise of jurisdiction with material irregularity. In the circumstances, there is no merit in the revision applications. They are accordingly, dismissed.

(C.V. BHADANG, J.)