

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1386 OF 2016

1. Raosaheb Balaji Jadhav,
Age: 65 years, Occ: Agri.,
2. Sainath Raosaheb Jadhav,
Age: 32 years, Occ: Agri.,
3. Santosh Raosaheb Jadhav,
Age: 28 years, Occ: Agri.,

All r/o Davala, Tq. Vaijapur,
Dist. Aurangabad.

...Applicants

versus

1. The State of Maharashtra
2. Sakhahari Kisan Padwal,
Age: major, Occ: Agri.,
R/o. Davala, Tq. Vaijapur,
Dist. Aurangabad.

...Respondents

.....
Mr. N.D. Sonavane, Advocate for applicants
Ms. R.P. Gour, A.P.P. for respondent No. 1
.....

CORAM : N.W. SAMBRE, J.

DATE : 6th APRIL, 2016

ORAL ORDER :

In Crime No. 27 of 2012 registered at the behest of complainant-respondent for an offence punishable under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, upon investigation it was noted from the statement of

the complainant that no case against present applicants-accused cognizable in nature was brought to the notice of this Court. The report of the Police Officer is based on the statement given by the respondent No.2-complainant absolving the present applicants of the offence punishable under Section 3(1)(x) of the Atrocities Act.

2. After report was received by the Court, the Court refused to accept the report for an offence under Section 506 read with Section 34 of the Indian Penal Code and directed the accused to proceed with the matter treating the case as instituted otherwise than on police report. While objecting the order dated 16/01/2016 passed by Judicial Magistrate, First Class, Court No. 3, Vaijapur in Regular Criminal Case No. 104 of 2013, below Exhibits-1 and 9, Mr. Sonavane, learned Counsel for the applicants, relying upon the judgment of the Apex Court in the matter of ***State of Gujrat vs. Girish Radhakrishnan Varde*** reported in ***(2014) 3 SCC 659*** would submit that the option that was available for learned Magistrate was either to agree with the report submitted by the Police Officer, close down the case and discharge the accused or to ask the police authorities to carry out further investigation in the matter. According to him, the magistrate by ordering the complainant to lead further evidence in support of the case by treating the same to be a case otherwise than on police report, has committed an error.

3. Learned A.P.P. pursuant to the provisions of Sections 190 and 200 of the Code of Criminal Procedure, would submit that the approach of learned Magistrate is in tune with the provisions of Code of Criminal Procedure.

4. Having perused the order impugned, it is noted that it was well within knowledge of learned Magistrate that the case in question was initially registered as police case and after receipt of the report from police, it was noted that the applicants-accused cannot be prosecuted for the offence punishable under Section 3(1) (x) of the Atrocities Act, in view of the statement given by the complainant. So far as the offence under Section 506 read with Section 34 of the Indian Penal Code is concerned, the Investigating Officer has submitted report that the same is non-cognizable.

5. The Magistrate, having noted the same and with intent to give chance to the complainant, had asked him to come forward by placing on record the additional information/material by treating the case as one instituted otherwise than on police report. In my opinion, in the background of factual matrix as narrated herein above, approach of the Magistrate appears to be in tune with provisions of Sections 190 and 200 of the Code of Criminal Procedure. Though

learned Counsel for the applicants has relied upon the judgment of the Apex Court in the matter of **State of Gujrat** (supra), the factual matrix of that case is based on police report, on which the cognizance was taken by the Magistrate, is altogether different than the factual matrix of the present case, as such, the same could hardly be any assistance.

6. In view of above, no case for interference is made out. As the criminal application fails and stands dismissed.

[N.W. SAMBRE, J.]