

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

Criminal Application No. 4472 of 2016

District : Jalgaon

1. Bhagwat s/o. Shankar Shukla,
Age : 64 years,
Occupation : Agriculturist,
R/o. At Sangavi,
Post : Kurhad,
Taluka : Pachora,
District : Jalgaon.

 2. Maltibai w/o. Bhagwat Shukla,
Age : 57 years,
Occupation : Agriculturist and
Housewife,
R/o. At Sangavi,
Post : Kurhad,
Taluka : Pachora,
District : Jalgaon.

 3. Kishor s/o. Bhagwat Shukla,
Age : 26 years,
Occupation : Agriculturist,
R/o. At Sangavi,
Post : Kurhad,
Taluka : Pachora,
District : Jalgaon.
- .. Applicants.

versus

The State of Maharashtra,
Through Police Inspector,
Pimpalgaon Hareshwar Police
Station, Pimpalgaon Hareshwar,
Taluka : Pachora,
District : Jalgaon.

.. Respondent.

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Mr. Bipinchandra K. Patil, Advocate, for applicants.

Mr. S.J. Salgare, Addl. Public Prosecutor, for the respondent.

Mr. Surendra V. Suryawanshi, Advocate, for the original complainant.

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CORAM : A.M. BADAR, J.

DATE : 26TH AUGUST 2016

ORAL ORDER:

Applicants / accused in Crime No. I-35/2016, for offences punishable under Sections 324, 447, 109, 120B, 323, 504, 506(2) read with Section 34 of the Indian Penal Code and under Section 3(1)(iv)(viii) (ix)(x)(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [**For short, "Atrocities Act"**], by this application, are praying for releasing them on bail, in the event of their arrest by Police Station, Pimpalgaon (Hare), Taluka Pachora, District Jalgaon.

2. Heard the learned Counsel for applicants / accused. He submitted that considering the fact that applicants are protected tenants, as reflected from several documents of Revenue Department, FIR in question should be considered and except the so called offences under the Atrocities Act, rest of the offences are bailable in nature.

3. I have also heard the learned Addl. Public Prosecutor for the respondent. He submitted that in view of bar of Section 18 of the Atrocities Act, application under Section 438 of the Code of Criminal Procedure, 1973, is not maintainable. The learned Addl. Public Prosecutor drew my attention to statements of witnesses as well as on the FIR and submitted that the crime in question is serious.

4. The learned Counsel appearing for the informant, by placing reliance on documents annexed to his application, submitted that the informant is having threat from applicants and this fact is reported by Premchand Thakre to Asst. Police Inspector of Pimpalgaon (Hare) Police Station on 24.07.2016. The learned Counsel reiterated the submission of the learned Addl. Public Prosecutor and submitted that the application for pre-arrest bail is not maintainable.

5. Averments in the FIR lodged by Mangalabai Shivnekar on 29.06.2016 against present applicants are to the effect that she had purchased field Gut No. 104 admeasuring 11.75 Acres from Ramrao Anandrao Deshmukh vide sale deeds dated 23.08.2015, 01.01.2016 and 24.06.2016. The informant Mangalabai averred that present applicants are not having legal right over the field property purchased by her but they had filed a Civil Suit bearing No. 82/2016 claiming

injunction against the informant. The informant further averred that on 25.06.2016, she came to know that applicant no.1 Bhagwat Shukla trespassed in her field and, therefore, she along with her family members and friend went to the field. She saw applicants cultivating that field. Upon being questioned, applicant no.1 Bhagwat Shukla threatened them by means of axe; applicant no.3 Kishor Shukla assaulted her by stick and applicant no.2 Maltibai Shukla had uttered that "तुम्ही चमट्यांनी या जमिनीत यापुढे पाय ठेवायचा नाही".

6. At the outset, it is necessary to reproduce the relevant provisions of the Atrocities Act which are invoked against present applicants. They read as under :-

"Punishments for offences of atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i)

(ii)

(iii)

(iv) Wrongly occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v)

(vi)

(vii)

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii)

(xiii)

(xiv)

(xv)

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. "

7. So far as casteist abuses are concerned, whether "चमट्या" belongs to Scheduled Caste or Scheduled Tribe is a question which is not answered

in papers of investigation. Then the next question whether applicants were knowing that the informant was belonging to the Scheduled Caste or Scheduled Tribe. The informant claims to have purchased land from Deshmukh family. They are residents of different villages. How applicants came to know about caste of the informant is not clarified either in the FIR or in papers of investigation.

8. It is not averment in the FIR that sale deeds in favour of the informant were executed within knowledge of present applicants. In this context, the offence punishable under Section 3(1)(iv) of the Atrocities will have to be examined.

9. Documents annexed with the application contains record of right which shows that on 18.06.1947, Shankar Ganesh Shukla, father of applicant no.1 Bhagwat Shukla became protected tenant under Bombay Tenancy & Agricultural Lands Act. 7/12 extract of the agricultural land shows Shankar Ganesh Shukla as protected tenant from 1945-46. There is litigation amongst Deshmukh family and present applicants. The informant is claiming right over the agricultural land through Deshmukh family. The Agricultural Tribunal, Pachora, has declared Bhagwat Shukla as protected tenant by order dated 11.08.2001 in respect of the said agricultural land. Even the Maharashtra Revenue Tribunal had observed that

applicant no.1 Bhagwat Shukla was tenant of land in question and his name is duly recorded in the revenue record though his petition was dismissed because of earlier litigation filed by his deceased father which was abated. With this evidence, prima facie it cannot be said that applicants were wrongfully occupying or cultivating the land owned or allotted to a member of Scheduled Caste or Scheduled Tribe. There is no material on record to infer commission of offence punishable under Section 3(1)(viii) of the Atrocities Act as the Civil Suit is still pending. Papers of investigation do es not show any false or frivolous information by applicants to the public servant.

10. In this view of the matter, no prima facie case for offences punishable under the Atrocities Act is made out. So far as offences under the Indian Penal Code are concerned, considering the nature of allegations, custodial interrogation of the applicants is not warranted. Liberty of the citizen is of paramount consideration as arrest brings humiliation not only to the accused but to his all family members.

11. Hence, I pass the following order :-

(a) The Application is allowed.

(b) In the event of arrest of applicants / accused, in the above crime, they be released on bail on their executing P.R. Bond in the sum of Rs. 15,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) As a condition of this order, applicants / accused shall attend concerned Police Station on 4th September 2016, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation. They shall cooperate the Investigating Officer in investigation of the crime in question.

(d) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(e) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, if any.

(f) Applicants shall not repeat commission of similar type of offences in future.

12. The Application stands disposed of in the
aforesaid terms.

(A.M. BADAR)
JUDGE

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