

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

CRIMINAL WRIT PETITION NO.66 OF 2006

- 1) Vinayak s/o Vasant Papinwar
Age: 25 years, Occu.: Business,
R/o.Bhavani Nagar, Kandhar,
Kiroda, Tq.Loha, Dist.Nanded.
- 2) Vishal s/o Vasant Papinwar
Age: 22 years, Occu.: Business,
R/o.Bhavani Nagar, Kandhar.
- 3) Shilpatai w/o Govindrao Rahatkar
Age: 26 years, Occu.: Household,
R/o.Bhavani Nagar, Kandhar. ..Petitioners

VERSUS

- 1) The State of Maharashtra
- 2) Sau.Kasturabai w/o.Prabhakar Jondhale
Age: 32 years, Occu.: Agri. Household,
R/o.Kiroda, Tq.Loha, Dist.Nanded. ..Respondents

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Advocate for Petitioners : Mr.S.V.Kurundkar
APP for Respondent No.1 : Mr.G.O.Wattamwar
Advocate for Respondent No.2 : Mr.P.S.Anerao

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CORAM : PRAKASH D.NAIK, J.

RESERVED ON : 20th NOVEMBER, 2017

PRONOUNCED ON : 20th DECEMBER, 2017

JUDGMENT:-

- 1) The petitioners are challenging the criminal

proceedings arising out of Regular Criminal Case No.99 of 2002 filed before the Court of Judicial Magistrate First Class, Kandhar, Dist.Nanded.

2) The respondent No.2 is the complainant. The learned Magistrate took cognizance of the complaint filed by the said respondent for the offence punishable u/s 3(1) (iv) (v) (ix) (xv) and Section 3(2)(v) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as Section 468 r/w Section 34 of the Indian Penal Code. The cognizance was taken against the petitioners and the complaint against other accused was dismissed.

3) The brief allegations made in the complaint are as follows:-

(a) The complainant is a member belonging to Scheduled Caste and is the resident of Kiroda. The accused are not members of Scheduled Castes and Scheduled Tribes and are residents of Kandhar. The accused Nos.1, 2 and 4 have purchased the

complainant's land. The accused No.3, 4, 5 and 9 are relatives of accused Nos.1, 2 and 4. Accused Nos.6, 7, 8, 10, 11 and 12 are the servants of accused Nos.1 and 2.

(b) The husband of the complainant Mr.Prabhakar s/o Sambhaji Jondhale is having ancestral landed property in Gut Nos.91/1, 92, 105/7, 105/08, 105/9 to the extent of 10 Acres, 4 Gunthe at village Kiroda, Tq.Loha. The accused took advantage of alcoholic addiction of husband of complainant and under the pretext of offering consideration, they acted in furtherance of common intention and by playing fraud and forcing the husband of complainant to consume Alcohol got executed the Sale Deeds in respect of ancestral property in the share of husband of complainant and transferred the same in the names of accused Nos.1, 2 and 4 from 11.6.2001 to 21.5.2004. The forged Sale Deeds came to be executed before Sub-Registrar, Kandhar by giving false and frivolous

information.

c) The accused Nos.1, 2 and 4 have transferred house property No.634 in the precincts of Municipality Kandhar by way of forged Sale Deed. The accused Nos.3,5,6,7,8,9,10,11,12 and 13 assisted in executing the said transaction in favour of accused Nos.1, 2 and 4. The action of the accused falls within the purview of offences described under the Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act r/w Sections 34 and 468 of the Indian Penal Code.

d) The complaint was made to the Police Station, Kandhar, however, the Police refused to take cognizance. Subsequently, the complaint was sent by registered Post to the Police. The complainant also approached several authorities for taking action against the accused, but no action was initiated against them. Hence, private complaint was filed on

13.7.2005.

4) The learned counsel for the petitioners advanced following submissions:-

(i) The complaint is false and frivolous. The complaint does not make out any offence.

(ii) The petitioners have purchased the house by registered Sale Deed on 11.6.2001. The executant of the Sale Deed is husband of respondent No.2, who has delivered the possession of the house in favour of petitioner No.1. The consideration was paid while executing the Sale Deed. After execution of the Sale Deed, the petitioners had applied for mutation of property in the office of the Municipal Council. The copy of the Sale Deed has been annexed to the petition.

(iii) The application for mutation of property was allowed and the name of the petitioner No.1 was

recorded in the Municipal record. The petitioner No.1 has paid the non-agricultural charges, which is evident from the receipt. The petitioner No.1 is paying municipal taxes, which is also supported by the receipts issued by the Municipal Council. These documents are annexed to the petition.

(iv) The petitioner has purchased house and lands and house property from the husband of respondent No.2 and in all nine Sale Deeds were executed. Copies of the Sale Deeds are annexed to the petition. The first Sale Deed in respect of house property was executed in the year 2001. The complaint was filed in 2005. It is submitted that the proceedings are initiated with a view to cause harassment to the petitioners.

(v) Out of the nine Sale Deeds, six are of agricultural lands and one is of house property, which is the subject matter of the complaint. The Sale Deeds were executed at different times.

(vi) The allegation of the complainant that her husband was induced to execute the Sale Deeds under the influence of liquor has no basis. The fact that the Sale Deed in respect of the house property was executed in the year 2001 and the complainant was silent for all these years shows that the complaint is false and frivolous.

(vii) The provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are not applicable in the impugned complaint. The petitioner No.1 has lawfully purchased the house property. The executant has executed Sale Deeds after receiving consideration and the name of the petitioner No.1 was recorded in the Municipal record. The transactions were executed in accordance with the provisions of the Transfer of Property Act, and therefore unlawfully dispossessing the owners of the property does not arise. The complaint therefore does not make out any offence under the Atrocities

Act.

viii) The entire transaction is of civil nature and no offences under the Indian Penal Code can be made out. The transactions were executed with the husband of the complainant and complaint was filed belatedly with malafide intentions. The petitioner No.1 was put into possession after executing Sale Deed. The complainant started obstructing the peaceful possession of the petitioner No.1. The respondent No.2 and others opposed the petitioner No.1 and his son unlawfully tried to enter in the property by assaulting them. Complaint was filed with the Police station Loha and the offence was registered vide Crime No.56 of 2004 for the offences punishable u/s 341, 147, 148, 149, 323, 504, 506 of the Indian Penal Code. The complainant retaliated by filing a cross complaint vide Crime No.57 of 2004 for the offences punishable u/s 143, 147, 148, 149, 342 of the Indian Penal Code. The ingredients of Section

468 of the Indian Penal Code are not attracted at all. The respondent No.2 had raised objection about mutation entries in favour of the petitioners in respect of agricultural lands by Revenue Authority. The objections were over-ruled. The appeals filed by respondent No.2 and her husband are dismissed.

5) The learned counsel for the respondent No.2 submitted that the learned Magistrate had issued the process against the accused on averments made in the complaint and the material on record. No interference is warranted in the order of process. It is further submitted that the complaint makes out the offences and the Trial Court has rightly issued the process. The husband of the complainant was induced to execute the Sale Deeds under intoxication and several properties were alleged to have been sold to the accused. The transactions were doubtful and there is reason to believe that the documents were forged. The complainant belongs to Schedule Castes and Petitioners are deliberately

dispossessing the complainant or her husband of the property amounts to the offences stated in the complaint. It is submitted that the complainant must be given an opportunity to lead evidence before the Trial Court and the proceedings should not be quashed at this stage. Prima-facie case is made out for the issuance of process. The petitioners are relying upon several documents as a matter of their defence, which cannot be looked into now and it would be open to them to lead appropriate defence at the time of trial. It is further submitted that the averments made in the complaint prima-facie makes out a case for issuance of process. The Trial Court has considered the fact that the complainant has examined witnesses in support of her complaint. The said witnesses examined by the complainant were independent persons and after relying upon the evidence of the said witnesses, process was issued. The statement of the complainant was recorded, which was also supported by other witnesses namely Prabhakar Jondhale, the husband of the complainant, witness No.3 Pandit Jadhav and said

witnesses have supported the prosecution's case. In view of the above, no case is made out to quash the proceedings.

6) The complaint was filed on 13.7.2005. The complainant alleges offences u/s 3(1) (iv), (v), (ix), (xv) & 3(2) (v) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act and Section 468 r/w Section 34 of the Indian Penal Code. The Trial Court took cognizance of the complaint and issued summons to the accused. The dispute relates to the property, which was in the name of the complainant's husband. The allegation is that the documents were prepared by inducing the husband of the complainant under the influence of liquor. The Sale Deed was executed on 11.6.2001. The complaint was filed after about four years. The petitioners' contention is that the property was purchased by executing the Sale Deed on 11.6.2001. The executant of the Sale Deed is husband of the complainant. The possession is with the petitioners. It

appears that the petitioners had applied for mutation of the said property. The Sale Deed is apparently signed by the husband of the complainant in the presence of the witnesses. The property is house premises referred to therein which was sold for consideration of Rs.1,00,000/-. The consideration is also reflected in the Sale Deed. The name of the petitioner No.1 is recorded in the Municipality record, which is fortified by the mutation entry, which has been annexed to the petition. The petitioner No.1 has also paid the non-agricultural charges and he has been paying the municipal taxes, which is supported by the receipts. It also appears that other than the property, which is the subject matter of the complaint, the petitioners have also purchased other landed properties by executing documents. The said Sale Deeds were executed at different times. The allegations of the complainant that the husband was induced to execute the documents under the influence of liquor speaks volumes of doubt. It is therefore, apparent that there is a sale transaction

between the parties. It is open to the owner of the property to challenge the execution of documents by initiating civil proceedings. Hence, looking into the documents of the Sale Deeds, it cannot be said that the accused have committed offence under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act or under Penal Code. To constitute the said offences prima-facie, there has to be material to show that owner of the property has been unlawfully dispossessed.

7) In the aforesaid circumstances, no case for issuance of process was made out for the said offence. The documents speaks for itself and as long as the documents are in existence and has sanctity of law, the genuineness cannot be disbelieved. The evidence of the witnesses examined by the complainant at the time of issuance of process is not sufficient to issue process because Sale Deed is executed between the petitioner No.1 and the husband of the complainant, which is signed by the owner

and the witnesses of the purchaser of the property. There is no evidence of forgery. There is no declaration by any Court that the document is illegal or forged. The criminal proceedings initiated against the petitioners therefore requires to be quashed and set aside. Hence, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.66 of 2006 is allowed.

(II) The criminal proceedings arising out of Regular Criminal Case no.99 of 2002 pending before the Court of Judicial Magistrate First Class, Kandhar, Dist.Nanded, alongwith order issuing process dated 15.10.2015 are quashed and set aside.

(III) The petition stands disposed of.

[PRAKASH D.NAIK, J.]