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

CRIMINAL APPEAL NO.70 OF 2017

1. Laxman Tukaram Nimbalkar
Age. 54 years,
Occ.: Business.
2. Amol Ramdas Nimbalkar
Age. 23 years,
Occ.: Education,
Both are R/at – Sayali Apartment,
Kakartale, Mahad,
District - Raigad ...Appellants

Versus

The State of Maharashtra,
Through Mahad Taluka Police
Station, Tal.Mahad, District – Raigad. ...Respondent

Mr.A.S.Shitole, for the Appellants

Ms.G.P.Mulekar, A.P.P for the Respondent-State

**CORAM : SMT.V.K.TAHILRAMANI &
REVATI MOHITE DERE, JJ.**

DATE : 25th JANUARY, 2017

ORAL JUDGMENT (Per Smt. V. K. Tahilramani, J.) :

1. Heard both sides.

2. This appeal has been preferred by the appellants being aggrieved by the order dated 12th January, 2017 passed by the learned Additional Sessions Judge, Mangaon-Raigad in Criminal Miscellaneous Application No.3 of 2017, preferred by the appellants seeking anticipatory bail in C.R.No.1 of 2017 registered with the Mahad Taluka Police Station, District - Raigad. The said C.R. is under Sections 384, 386, 420, 427, 467, 468, 471, 447, 448, 506 r/w Section 34 of Indian Penal Code and under Section 3(1)(m) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984.

3. The complainant in the present case is Smt.Kunda Shrirang Jagtap. She was the Sarpanch of Grampanchayat Mandle, Taluka-Mahad. The appellant no.1 had sought permission to construct a school in Survey No.3/3B-28, Hissa No.7 in village Mandle. The application of the appellant no.1 was rejected and the decision was informed to appellant no.1 by the Grampanchayat. On 16th August, 2016 at about 10.00 a.m. the appellant no.1 came to the house of the complainant Smt.

Jagtap and asked her to issue a Residence Certificate in relation to the education of his child. The complainant cannot read and write and she can only sign, hence she informed the appellant no.1 that she cannot issue a blank certificate. Thereupon appellant no.1 threatened the complainant whether she wants to continue as a Sarpanch or not and whether she wants to reside in the village or not. On threatening in this fashion, the appellant no.1 told the complainant to sign on the blank letter head and put a seal and told the complainant that he would write the contents on the letter head. Believing the appellant no.1, the complainant signed on the said paper and put a seal thereon. After 15 days, the appellant no.1 came to the house of the complainant and gave a xerox copy of the document on which she had put her signature and seal. The complainant kept the same in the cupboard. After some time the husband of the complainant came home. She showed the document to her husband. On going through the document her husband informed her that in the said document it is stated that the complainant had given a NOC to the appellant no.1 for construction of a school. It is at that time that the complainant realised that the

document on which she had put the signature and seal was not used for a Residence Certificate of the child of the appellant no.1 but it was used to say that the complainant gave NOC for construction of a school. The complainant has stated all these facts in her complaint.

4. It is further stated in the complaint that based on this NOC, the appellant nos.1 and 2 without taking non-agricultural permission started construction and in the process they demolished the wall of the house of deceased soldier Suresh Dagadu Sutar. They also demolished a portion which was in the front of the house of Smt. Saraswati Jadhav and created such a situation that rain water as well as other flowing water would enter in the house of Saraswati Jadhav. In addition, both the appellants dug the Grampanchayat road in front of the land by JCB machine and thereby damaged the public property. Thus, these are the allegations made by the complainant in the FIR.

5. As far as appellant no.1 is concerned, Section 3(1) (m) of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (for short 'the Act') is clearly attracted. Section 3(1) (m) speaks of force or intimidation or obstructing a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat, from performing their normal duties and functions. The complainant had clearly stated in her FIR that on 16th August, 2016 at about 10.00 a.m. the appellant no.1 entered into her house and he asked her to give her signature on Residence Certificate of his child. When the complainant raised doubt about giving her signature on the blank paper, at that time the appellant no.1 intimidated the complainant by shouting in a loud voice whether she wants to remain Sarpanch or not and whether she wants to reside in the village or not. After saying so, he obtained the signature of the complainant. It is an admitted fact that the complainant belongs to Scheduled Tribe and both the appellants belong to Maratha caste. It is also not in dispute that the complainant was the Sarpanch of the village and an application was filed by the appellant no.1 before the Grampanchayat for permission to construct a school in Survey No.3/3B-28, Hissa No.7 in village Mandle. According to

the prosecution, the said permission was refused by the Grampanchayat. The appellant no.1 thereafter obtained the signature of the complainant on a blank letter head after intimidating her. Hence, Section 3(1) (m) of the Act is attracted. Hence, anticipatory bail cannot be granted to the appellant no.1. Hence, this appeal cannot be allowed as far as appellant no.1 is concerned.

6. The learned counsel for the appellants submitted that the appellants had good intention of constructing a school in the land, however, the villagers started to harass the appellants. Therefore the appellants have lodged N.C. no.158 dated 7th November, 2016, N.C. no.166 dated 19th November, 2016, N.C. no.167 dated 21st November, 2016, N.C. no.87 dated 25th December, 2016 and N.C. no.89 dated 27th December, 2016. It is seen that none of these NCs are lodged against the complainant in the present case, nor the FIR is lodged against the complainant. The issue relating to the complainant and the issue relating to the villagers is a completely different aspect. The case of the complainant is that she was intimidated by the

appellant no.1 and her signatures were obtained on a blank paper and her signature was misused.

7. In any event, it is also seen that the appellant no.1 is not only implicated under Section 3(1) (m) of the Act but also for the offences of forgery and other Sections of Indian Penal Code. The forgery is of serious nature. As far as appellant no.1 is concerned, it is further seen that he is involved in other cases which relate to forgery i.e. CR No.99 of 2015 of Mahad City Police Station, which is under Sections 406, 420, 467, 468 etc of Indian Penal Code and C.R. No.2 of 2013 and C.R.No.4 of 2013 of Poladpur Police Station, which is under Sections 420, 467 and 468 of Indian Penal Code. In this view of the matter, as far as appellant no.1 is concerned, no case is made out to grant anticipatory bail to him. Hence, the appeal is dismissed as far as appellant no.1 is concerned.

8. As far as appellant no.2 is concerned, the FIR does not show any offence committed by him under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,

1989. No material is pointed out to us to show that as far as appellant no.2 is concerned, his acts attract the provisions of the said act. In case of appellant no.2, *prima facie*, we are of the opinion that his acts do not fall within the purview of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Hence, we grant liberty to appellant no.2 to prefer an application for anticipatory bail before the concerned Sessions Court, under the other sections mentioned in the FIR i.e. under Indian Penal Code and under Prevention of Damage to Public Property Act. To enable the appellant no.2 - Amol Ramdas Nimbalkar to prefer the necessary application for anticipatory bail before the concerned Sessions Court, we grant protection to the appellant no.2 in relation to arrest for a period of 8 days. The learned Sessions Judge to consider the said application for anticipatory bail without being influenced by any observations made in the order dated 12th January, 2017.

9. The appeal is disposed of in above terms.

(REVATI MOHITE DERE, J.)

(V.K.TAHILRAMANI, J.)