

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 396 OF 2017

Sanjay Dnyandeo Ranpise	...	Appellant
Vs.		
State of Maharashtra & Ors.	...	Respondents

Mr.A.M.Saraogi, for the appellant.
Mr.Y.M.Nakhwa, APP, for the State.
Mr. R.D.Dave for respondent Nos. 2 to 5.

**CORAM: RANJIT MORE &
SMT.SADHANA S.JADHAV, JJ.**
DATE : 23rd AUGUST, 2017.

P.C.

Heard the respective learned counsel.

2. By the present Appeal, the appellant, who is the original complainant, is challenging the order dated 6.4.2017 passed by the learned Addl. Sessions Judge, Sessions Court, Greater Mumbai, whereby the respondent Nos. 2 to 5 were granted anticipatory bail in respect of MECR No.1/2007 registered at the instance of the appellant with the J.J. Marg Police Station for the offences punishable under Sections 406, 420 of the Indian Penal Code and under Sections 3 and 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the Atrocities Act).

3. As far as the allegations under the Atrocities Act are concerned, the learned Addl. Sessions Judge held that the incident in question had not occurred within a public view and, therefore, the offence under Section 3(1)(s) of the Atrocities Act is not made out. We do not find any error in this finding.

4. So far as the offence under Sections 406 and 420 of the IPC is concerned, earlier, the petitioner approached this Court by filing Writ Petition No.3420 of 2016. By this Petition, the petitioner made a grievance that despite his complaint disclosing a cognizable offence, the J.J. Marg Police station has not registered the offence. A statement was made by learned APP that preliminary enquiry was held and it was found that no case is made out for registration of the offence. In the light of this statement, we granted liberty to the petitioner to file a private complaint. The appellant accordingly filed private complaint and thereafter the learned Magistrate passed an order directing investigation under section 156(3) of Cr.P.C., on the basis of which subject MECR No.1 of 2017 is registered.

5. The grievance of the appellant is that his brother-in-law, late Dr.Sanjay Jagtap had given an amount of Rs.45,00,000/- and gold weighing 1634 grams to the respondent for the purpose of safe custody. The sister of the present appellant i.e. wife of late Sanjay Jagtap had filed S.C. Suit

No.2269 of 2016 in the Bombay City Civil Court against respondent Nos.2 to 5 under Section 38 of the Special Relief Act and under Order XXXIX of the Code of Civil Procedure, 1908. The suit was filed for simplicitor injunction restraining the respondent Nos. 2 to 5 from creating any third party rights in respect of the premises, being Shop No.4, Abdulla Building No.2, Dr. B.A. Road, Parel, Mumbai 400 012. In para 1 of the plaint, the plaintiff has made the following averments :-

“1. The Plaintiff states that the Plaintiff is filing the present suit for the limited relief as prayed for by way of injunction and seeks liberty of this Hon'ble Court to file appropriate suit for recovery of the amounts and as also for recovery of the Gold as at present, the same is not due and the same shall become due only on 30th September, 2016 and accordingly, reserves her rights to file appropriate suit as and when need so arises.”

This suit was dismissed as not maintainable and the Revision is pending. Perusal of the averments made by the appellant in the suit along with the observations made by the learned Judge in the order dismissing the suit makes it abundantly clear that the dispute between the parties is of a civil in nature.

6. In the light of the above, we do not find any perversity in the impugned order. The Appeal is dismissed.

7. The observations made hereinabove are for the disposal of this Appeal and the investigating agency shall not be influenced by the same.

[SMT. SADHANA S.JADHAV, J.]

[RANJIT MORE,J.]