

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 650 OF 2017

Mrs. Shayarabi Maula Mulani and ors.	...Appellants
Versus	
State of Maharashtra and anr.	..Respondents

Mr. Rahul S. Kate, advocate for the appellants.
Mr. A. R. Kapadnis, APP for the State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, J J.**

DATE : 14th NOVEMBER, 2017.

P. C. :

By an order dated 10th August, 2017, we permitted the appellants to amend the cause-title of the appeal so as to implead original complainant as party respondent. We also issued notice to the original complainant/newly added respondent and continued the ad-interim relief which was granted earlier. The record shows that the complainant is served with the notice, however, nobody has appeared on his behalf and, therefore, we are constrained to dispose off the appeal after hearing learned counsel for the appellants and learned APP for the State.

2. The appeal arises out of an order dated 25th July, 2017 passed by the learned Additional Sessions Judge at Barshi in criminal M.A. No.224 of 2017. By the said order, the appellants' application for

anticipatory bail in CR No.10 of 2017 registered Karmala Police Station for offences punishable under Sections 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short “the IPC”) and under Section 3(1) (f) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Atrocities Act”) came to be rejected. The appellants being aggrieved by the said order are before this Court by way of aforesaid appeal.

3. The allegations made in the FIR in short are as follows:

The respondent No.2/original complainant belongs to Mahar Community and is residing along with his family members. It is alleged that the appellants/accused are Muslims and they were aware that the respondent No.2 belonged to Mahar Community. It is further alleged that the complainant owns land bearing gat No.425/3/B at Kandara, Taluka – Karmala. However, the possession of the said land is taken by the appellants/accused illegally and they are not allowing the complainant to enter in the said land. The FIR disclosed that the appellants claim that the said land is purchased by them through the father of the complainant. However, 7/12 Extract still stands in the name of the complainant. The FIR further disclose the allegation that when the complainant went to the said land, at that time, the appellants opposed him on the ground of his caste and threatened him.

4. At page 24 to 33, the appellants have annexed sale deed dated 22nd January, 1998. The registered sale deed shows that the appellant Nos. 2 to 5 have purchased land admeasuring about 81 R from gat No.425/3/B at Kandar, Taluka – Karmala from the father of the complainant. There is one more sale deed at page 34. Perusal of the same discloses that this sale deed is executed on 30th June, 2004 by the father of the complainant in favour of the appellant No.1. By this sale deed, the appellant No.1 purchased 88 R of land from gat No.425/3/B at Kandar, Taluka – Karmala. Thus , the sale deeds show that the appellants are the owners of the subject property.

5. The appellants have also annexed copy of the letters dated 2nd September, 2016, written to SP, Solapur Rural, Solapur and Police Inspector, Kalmara. In these letters, the appellants expressed their apprehension that there is a likelihood of filing false case under Atrocities Act by the complainant.

6. Since we find that the appellants have purchased the land in question for the complainant's father for valuable consideration by executing registered sale deeds, it cannot be said that there are wrongfully occupying or cultivating the said land. Therefore, offence under Section 3(1) (f) of the Atrocities Act is not made out. So far as

offence under Section 3(1)(s) of the Atrocities Act is concerned, we prima facie do not find any material to show that it was committed in a place within public view. Offence under both these Sections are not made out. Therefore, bar under Section 18 of the Atrocities Act do not come in way to claim anticipatory bail. So far as other offences under IPC are concerned, those are bailable offences and, therefore, we are of the view that the appellants have made out a case for grant of anticipatory bail. We dispose of the appeal by passing the following order :

1. The impugned order dated 25th July, 2017, passed by the learned Additional Sessions Judge at Barshi, in Criminal M. A. No.224/2017 is quashed and set-aside.
2. In the event of the arrest of the appellants in the subject crime, they shall be released on bail on execution of a PR Bond in the sum of Rs.10,000/- by each of the appellant with one or two sureties subject to the condition that they shall cooperate with the investigation of the subject crime.

The appeal stands disposed off.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]