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

CRIMINAL APPEAL NO. 315 OF 2018

1. Santoshsinh S/o. Pitambarsinh Pawar,
Age-42 years, Occu- Agril.,
R/o Katkatpura, Patil Galli, Dharur,
Tq. Dharur, Dist. Beed.

2. Shaikh Ejaz S/o. Shaikh Ahemad,
Age-47 years, Occu- Business,
R/o Dudhiya Galli, Rangar Galli, Dharur,
Tq. Dharur, Dist. Beed. ... **APPELLANTS**

V E R S U S

1. The State of Maharashtra,
Through Dharur Police Station,
Tq. Dharur, Dist. Beed.

2. Sunil S/o. Manikrao Gandhale,
Age- 48 years, Occu- Agri.,
R/o Dhorwada Kasba, Dharur,
Tq. Dharur, Dist. Beed. (Ori. Informant)
... **RESPONDENTS**

WITH

CRIMINAL APPEAL NO. 316 OF 2018

1. Vilas S/o. Narayan Raut,
Age-35 years, Occu- Agril. & Labour,
R/o Barabhai Galli, Dharur,
Tq. Dharur, Dist. Beed.

2. Mithun S/o. Ganpat Samarth,
Age-42 years, Occu- Labour,
R/o Barabhai Galli, Dharur,
Tq. Dharur, Dist. Beed. ... **APPELLANTS**

V E R S U S

1. The State of Maharashtra,
Through Dharur Police Station,
Tq. Dharur, Dist. Beed.

2. Sunil S/o. Manikrao Gandhale,
Age- 48 years, Occu- Agri.,
R/o Dhorwada Kasba, Dharur,
Tq. Dharur, Dist. Beed. (Ori. Informant)

... **RESPONDENTS**

AND

CRIMINAL APPEAL NO. 317 OF 2018

1. Vasant S/o. Maruti Kumbhar,
Age-63 years, Occu- Business,
R/o Kumbhar Galli, Dharur,
Tq. Dharur, Dist. Beed.

2. Ravi S/o. Vasant Kumbhar,
Age-32 years, Occu- Service,
R/o Kumbhar Galli, Dharur,
Tq. Dharur, Dist. Beed.

3. Arun S/o. Rangnath Sakhre,
Age-50 years, Occu- Agri.,
R/o Kej Road, Dharur,
Tq. Dharur, Dist. Beed. ... **APPELLANTS**

V E R S U S

1. The State of Maharashtra,
Through Dharur Police Station,
Tq. Dharur, Dist. Beed.

2. Sunil S/o. Manikrao Gandhale,
Age- 48 years, Occu- Agri.,

R/o Dhorwada Kasba, Dharur,
Tq. Dharur, Dist. Beed. (Ori. Informant)
... **RESPONDENTS**

...

Mr. M. R. Jadhav, Advocate for Appellants in all the appeals.

Mrs. V. S. Choudahri, APP for Respondent No.1 / State in all the appeals.

Mr. S. D. More, for Respondent No.2 in all the appeals.

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CORAM : **T. V. NALAWADE &**
SMT. VIBHA KANKANWADI, JJ.

DATE : 20th August, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 In all the proceedings, the prayer is made for granting relief of quashing and setting aside the orders made by the learned Additional Sessions Judge in the applications filed for the relief of anticipatory bail. The Appellants from Criminal Appeal No.315 of 2018 had filed Application No.95 of 2018 and the Appellants from other two appeals were also the applicants in the same proceeding. By order dated 18th April, 2018, the application came to be rejected.

3 The aforesaid application was filed in C.R. No.59 of 2018, registered with Dharur Police Station, District Beed, for the offences punishable under Sections 323, 420, 465, 467, 468, 471, 504 and 506 read with 34 of the Indian Penal Code and Sections 3(1)(x)(xi) and 3(1)(Ch)(Gh) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The crime is registered on the basis of order of investigation made by the learned Judge of the Special Court to make investigation under Section 156(3) of the Code of Criminal Procedure. In the complaint, allegations are made by Respondent No.2, Sunil Gandhale that Accused No.1 Bhagyashala and her deceased husband Jaishankar Kumbhar had deceived the Complainant and the sale-deed was got executed in respect of the portion of 94 Ares land from Survey No.137/4 of village Dharur. It is contended that Jaishankar used to give money to the Complainant for gambling and for liquor and as some amount had become due from the Complainant, he was pressurized to execute sale-deed on 24th June, 2015. It is contended that as the Complainant was under influence of liquor, he did not read the contents of the sale-deed and he was deceived.

4 Some incidents are mentioned in the complaint. No date is given of the first incident and it is contended that after execution of sale-deed, during the lifetime of Jaishankar, the Complainant and his brother approached Jaishankar to question as to how the sale-deed was obtained from the Complainant. It is contended that as Jaishankar kept promising to reconvey the property, till his death, which took place on 29th July, 2016 and so, no steps were taken by the Complainant. It is contended that after the death of Jaishankar, when the Complainant again approached all the Accused persons, they gave abuses by taking the name of his caste and assaulted him. It is contended that on 7th July, 2015, mutation was made in favour of the purchaser by using sale-deed. Allegations are made that subsequently suit for injunction was filed and after that again all the Accused had come to the residential place of the Complainant and abuses were given by taking the name of the caste. Allegations are made that on 14th July, 2017, even assault was made on the Complainant.

5 In the complaint, it is contended that the Complainant had approached Police, but the Police avoided to register the crime and

then the complaint was sent to S.P. office. It is contended that as no action is taken by the Police, private complaint was required to be filed.

6 The submissions made and record show that not only one sale-deed was executed in favour of Accused No.1 of the present matter, but in the past one more sale-deed was executed in favour of Jaishankar on 19th December, 2014 and that was in respect of other agricultural land. To that sale-deed, the present first informant was a party as a consenting party. The second sale-deed was executed by the Complainant himself in favour of the wife of Jaishankar. Though it is contended that no consideration was received, that grievance can be raised before the Civil Court. Admittedly, registered sale-deeds were executed in favour of Accused No.1 and also the deceased and mutations are made on the basis of registered sale-deeds. It is not disputed that civil suit is filed by Accused No.1 Bhagyashala and Civil Court first granted *ex-parte* temporary injunction and then the injunction was granted by allowing the application, which was filed for temporary injunction on merits. *Ex-parte* order was made on 23rd June, 2017 and the order was confirmed by allowing the application at

Exhibit-5 on 8th January, 2018. Thus, it can be said that after grant of *ex-parte* temporary injunction on 23rd June, 2017, according to the Complainant, some incidents took place. This does not appear to be probable. If the Civil Court had granted relief of injunction, there was no need for the Accused persons to go to the Complainant and create such incident.

7 Some record is produced to show that Accused No.1 Bhagyashala had approached Police and she had expressed that there was possibility of filing false complaint by the present Complainant due to aforesaid civil dispute. There is a record of inquiry made by the concerned police station into the allegations. One N.C. was registered against Sunil Gandhale on the basis of report given by present Accused No.1. Copy of Criminal Application No.896 of 2018 filed in this Court by Accused No.1 Bhagyashala is produced and it shows that in the proceeding filed for quashing of FIR itself, this Court has granted interim relief in favour of Bhagyashala and direction is given not to take coercive measures against her.

8 The learned counsel for Applicants placed reliance on the observations made by the Apex Court and also the directions given by

the Apex Court in **Criminal Appeal No.416 of 2018** (Subhash Kashinath Mahajan (Dr.) Vs. State of Maharashtra). The Apex Court had directed the police to see that the provisions of the aforesaid special enactment are not abused and there is no unnecessary arrest. Direction was given to see that first preliminary enquiry is made to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

9 In the present matters, there are circumstances like existence of civil dispute and existence of two sale-deeds in favour of the family of Accused No.1. It can be said that the Complainant side wants to get back the land sold by them. Accused No.1 took first step and filed the suit and only after that the Complainant side took some steps. Allegations are very vague in nature as they are made not only against the purchaser, but also the witnesses, who have signed on the sale-deeds. As the allegations are very vague and there are other circumstances, this Court holds that the bar of the provisions of Section 18 of the aforesaid Special Act will not be there as against the present Applicants. This Court holds that the appeals need to be allowed for granting relief claimed by them before the Sessions Court.

In the result, the following order is passed:

O R D E R

I. All the appeals are allowed.

II. The order made by the learned Additional Sessions Judge, Majalgaon rejecting the application filed by the Appellants is set aside.

III. Amendment to be carried out.

IV. Relief is granted in terms of prayer clause (B). They are to be released on PR & SB of Rs.15,000/- (Rupees Fifteen Thousand Only) in case of their arrest in aforesaid crime. They are not to tamper with prosecution witnesses. They are not to commit similar offence.

V. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.] **[T. V. NALAWADE, J.]**

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