

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2430 OF 2008

- 1) Gangadhar s/o Laxman Pawar,
Age : 56 years, Occ.: Agril.,
- 2) Govind s/o Raosaheb Pawar, Age
: 27 years, Occ.: Agril.,
- 3) Ganpat s/o Suryaji Pawar, Age :
65 years, Occ.: Agril.,
- 4) Raosaheb s/o Laxman Pawar,
Age : 65 years, Occ.: Agril.,
- 5) Balaji s/o Raosaheb Pawar, Age :
30 years, Occ.: Agril.,

All R/o.: Hotala, Tq. Naigaon,
Dist. Nanded.

...**Applicants**

Versus

- 1) The State of Maharashtra,
Through Police Station, Naigaon
(Bz), Tq. Naigaon Dist. Nanded.
- 2) Ananda s/o Tanaji Kamble,
Age : 40 years, Occ.: Agril.,
R/o.: Hotala, Post Narshi,
Tq.Naigaon Dist. Nanded.

...**Respondents**

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Advocate for Applicants : Mr. U.B. Bilolikar

APP for Respondent No.1/State : Mr. M.M. Nerlikar

Advocate for Respondent No.2 : Mr. Jitendra V. Patil (Appointed)

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CORAM : T.V. NALAWADE &

K.L. WADANE, JJ.

DATE : 26TH JULY, 2018

JUDGMENT : (PER K.L. WADANE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The present Application is filed by the applicants, challenging the first information report bearing Crime No.57/2008 dated 08.07.2008, registered at Police Station, Naigaon against the present applicants for the offences punishable under Sections 323, 143, 147, 148, 149, 447, 506 of the Indian Penal Code and under Section 3(1) (x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On 08.07.2008, the

respondent No. 2 herein and his other family members lodged a complaint to the Police Station, Naigaon, alleging that on 05.07.2008 at about 05.00 to 06.00 a.m., the respondent No. 2 was in the field and was doing sowing operation. At that time, all the applicants and other 10 – 15 persons belonging to the Maratha community assaulted the respondent No. 2 and his family members, namely Laxmibai and Mamtabai. It is further alleged that due to the assault, there is danger to the life of the respondent No. 2. On receipt of the complaint, the offence came to be registered against the applicants.

3. We have heard the arguments of Mr. Bilolikar, the learned counsel for the applicants, Mr. Nerlikar, the learned APP for the respondent/State and Mr. Patil, the learned counsel for the respondent No. 2. We have perused the contents of the first information report, the statement of witnesses recorded during the investigation and the documents produced on record in the present proceeding on behalf of the applicants. On perusal of the same, it appears that the applicant No. 1 herein had filed an application

before Mahatma Gandhi Tanta Mukti Kendra, on 01.06.2008 making grievance that a landed property was given to the respondent No. 2 under certain transactions. But it was a money lending transactions and therefore, prayed for return of the same. Similar application was given by the present applicant No. 1 to P.S.I., Police Station, Naigaon as well as to Dy. Superintendent of Police, Biloli, making grievance against the respondent No. 2 about the execution of the sale deed by way of security. However, the disputed land was/is in possession of the applicant No. 1. It was not handed over to the respondent No. 2 at any point of time. It further reveals from the record that on 05.07.2008, the applicant No. 1 lodged a complaint against the respondent No. 2 and his family members, alleging that on 05.07.2008 at about 10.00 a.m., the respondent No. 2 and his other family members entered into the land of complainant No. 1 with intent to commit his murder. However, after hearing hue and cry, some other persons gathered there. The copy of the agreement between the applicant No. 1 and the respondent No. 2 dated 23.11.2001 is placed on record, from which it appears that the applicant No. 1 had obtained an amount

of Rs. 1,11,000/- from the respondent No.2 and a land was entered into the name of the respondent No.2. However, it was agreed between the parties that the land was to be returned to the applicant No. 1 within a period of two years. The copies of the various sale deeds were placed on record i.e. sale deed of Gat No.169 executed by the present applicants in favour of the respondent No. 2. Another sale deed dated 25.06.1992 executed by the applicant No. 1 in favour of the brother of the respondent No. 2 namely, Vishwambhar. Third sale deed is executed by one Govind Khandurge in favour of the respondent No.2, on 25.06.1992 regarding land Gat No. 115. The sale deed dated 02.06.1999 shows that one Suresh Vyankat Pawar and Ganesh Vyankat Pawar executed a sale deed in favour of the respondent No. 2 in respect of land Gat No. 120. Whereas, other two sale deeds dated 26.06.1996 and 25.08.2000 appears to be executed by the respondent No. 2 in favour of Vasant Khandurge and Suresh Vyankat Pawar. On perusal of the transactions under these sale deeds coupled with the agreement dated 23.11.2001 between the applicant No. 1 and the respondent No. 2, it appears that the transaction between the

applicant No.1 and the respondent No. 2 appears to be a money lending transaction and the applicant No. 1 has specifically made a grievance to that effect before various authorities and lastly, he made a complaint to the Police Station, Naigaon on 05.07.2008 i.e. the day of alleged incident. For the same instance, the respondent No. 2 filed a complaint on 08.07.2008 and in that complaint/first information report, the allegations of abusing him on caste by the applicants/accused and other 10 – 15 persons are absolutely vague and *prima facie*, it appears that the same was given to give counter-blast to the complaint given by the applicant No. 1, on 05.07.2008. The allegations in the first information report are absolutely vague and appears to be inherently improbable. No specific allegations against each of the accused/applicants regarding their particular act are not quoted by the respondent No.2. Looking to the background regarding the transactions appears to be in the nature of money lending. It appears that first information report lodged by the respondent No. 2 was after thought.

4. In view of the above, the application is liable to be allowed and accordingly, it is allowed. The relief is granted in terms of prayer Clause 'B'.910 CA 4801-13 Rules is made absolute in those terms.

5. The fees of the appointed Counsel is fixed as Rs.3,000/- to be paid through the Legal Aid.

6. The Criminal Application is disposed of.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]