

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.2959 of 2007

- 1) Anna s/o Mahadu Jadhav,
Age 70 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.
- 2) Dnyaneshwar s/o Anna Jadhav,
Age 32 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.
- 3) Raju s/o Abarao Jadhav,
Age 31 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.
- 4) Bhikan Sadashiv Kale,
Age 40 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.
- 5) Ramkrishan Vithoba Jadhav,
Age 50 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.
- 6) Vinayak Ananda Jadhav,
Age 70 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad.

- 7) Sitaram Tukaram Kale,
Age 65 years,
Occupation : Agriculture,
R/o Palshi (Kh), Taluka Kannad,
District Aurangabad. .. **Applicants.**

Versus

- 1) The State of Maharashtra,
Through Chief Secretary,
Home Department, Mantralaya,
Mumbai - 32.
- 2) The Superintendent of Police
(Rural), Aurangabad.
- 3) The Police Inspector,
Police Station, Kannad,
Taluka Kannad,
District Aurangabad.
- 4) Shripat s/o Pandu Mali,
Age 43 years,
Occupation : Agriculture,
R/o Palashi (Bk.), Taluka Kannad,
District Aurangabad. .. **Respondents.**

Shri. V.M. Humbe, Advocate, for applicants.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent Nos.1 to 3.

Shri. R.V. Gore, Advocate, for respondent No.4.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 8 JUNE 2018

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

1) The application is filed under section 482 of the Code of Criminal Procedure for relief of quashing of first information report of CR No.I-80/2007 registered with Pishor Police Station, Tahsil Kannad, District Aurangabad for offences punishable under section 7(1),(5) of Protection of Civil Rights Act, under section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and some sections of the Indian Penal Code. Both the sides are heard.

2) The submissions made and the record show that by order dated 28-9-2007 this Court had granted interim protection in terms of prayer clause (D) of the present application only to the extent of the provisions of section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Thus, further steps including investigation and filing of case were allowed by this Court. It appears that after making investigation charge-sheet was filed for offences punishable under the Indian Penal Code only in the Court of the Judicial

Magistrate First Class and the case was register as RCC No.225/2007. The learned Judicial Magistrate Kannad has acquitted the present applicants of those offences. It can be said that in ordinary course police could not have made investigation of only offences under the Indian Penal Code as in one and the same incident all the offences were allegedly committed by the present applicants. Thus, there is irregularity of aforesaid nature and at present this Court is expected to consider the crime registered only for offence punishable under section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3) Copy of F.I.R. is on the record and it shows that respondent No.2 gave report in respect of incident dated 8-8-2007. The respondent No.2, original complainant, had dispute with the villagers as respondent No.2 had started cultivating some portion of *Gairan* land. Civil cases were also pending in respect of that dispute. It is the case of respondent No.2 that he had applied to the Government to regularize his encroachment and to allot the land to him and the Government was expected to take decision. It is

his case that at the relevant time he had taken crop of *Bajra* in some portion of the land and on the date of the incident all the accused came there, they caused damage to the crop and they set free their cattle in the crop. It is the case of respondent No.2 that when he made enquiry with the applicants they picked up quarrel and they gave him abuses by taking the name of his tribe which is a scheduled tribe. It is his case that loss was caused to him due to the act of the accused. Due to the nature of the allegations the crime was registered for the aforesaid offences.

4) The submissions made and the admitted circumstance like there was a dispute show that the first informant had made encroachment over *Gairan* land which is allowed to be used by all the villagers for grazing cattle. If some damage was caused it was apparently caused by cattle. No record is produced by the first informant to show that any kind of relief was granted to him by Civil Court. Similarly, there is nothing on record to show that Government had allotted the land to him. Thus, the first informant himself was illegally cultivating some

portion of *Gairan* land which can be enjoyed by all the villagers for grazing cattle. Further, the allegations made are very vague and against all the applicants it is mentioned that they all together gave abuses by taking the name of his tribe. Thus, everything is vague. All these circumstances are considered by the Judicial Magistrate while giving acquittal for other offences. In view of the aforesaid circumstances this Court holds that it will be abuse of process of law to allow the first informant to go ahead with the case and nothing can be achieved if charge sheet is filed for the aforesaid offences also against the present applicants. In the result following order :

5) The application is allowed in terms of prayer clause (C) in respect of the offences punishable under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Rule made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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