IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPICATION NO. 2814 OF 2015

1. Vinod s/o. Bhagchand Mandlecha, Age 47 years, Occu. Business and Agriculture, R/o. Sillod, Tq. Sillod, Dist. Aurangabad.

2. Vinod s/o. Ramchandra Shirsath, Age 42 years, Occu. Service,

Both are R/o. Sillod, Tq. Sillod, Dist. Aurangabad. **....Applicants.**

Versus

1. The State of Maharashtra Through Inspector, Police Station, Bhokardan, Dist. Jalna.

2. Subhash s/o. Raghoji Jogdand, Age 55 years, Occu. Agri., R/o. Malkheda, Tq. Bhokardan, Dist. Jalna. **....Respondents.**

Mr. B.R. Warma, Advocate for applicants.

Mrs. V.S. Choudhary, APP for respondent No. 1/State.

Mr. S.L. Bhapkar, Advocate for respondent No. 2 (appointed).

CORAM : T.V. NALAWADE AND K.L. WADANE, JJ.
DATED : 07/08/2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 40/2015 registered with Bhokardan Police Station, Jalna for offences

punishable under sections 420, 323, 34 etc. of Indian Penal Code and section 3 (1) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The relief of quashing of the case filed in this crime is also claimed. Both the sides are heard.

2) The report was given by respondent No. 2. He belongs to scheduled caste. In the year 2002, he was in need of money and so, he approached present applicant for getting loan. Applicant No. 1 promised to give loan, but put a condition to execute a document by way of security. It is the contention of respondent No. 2 that mortgage document was to be executed and for that, he was taken to the office of Sub-Registrar on 12.7.2002 by the present applicants. It is contended that his signatures and thumb impressions were obtained on some documents and it was told to him that it was the loan of Rs.15,000/- and he was to return the amount of Rs.35,000/- which was the amount with interest and the amount was to be returned within three years. It is the contention that only the amount of Rs.15,000/- was given to him and as per the agreement, the possession of the land remained with him.

3) It is the case of first informant that after three years he went to present applicant No. 1 with Rs.25,000/- and requested to execute the document in his favour of redemption of mortgage. It is

contended that initially applicant No. 1 agreed to do it, but subsequently, applicant No. 1 said that the document of sale was executed by the first informant and there was no question of execution of document of redemption of mortgage. After that the first informant applied to Tahsil Office for cancellation of document. The suit filed for cancellation of document was also dismissed.

4) Allegations are made by the first informant that on 19.1.2015 at about 10.00 a.m. when he was present in his filed with Dharamsing with the tractor of Dharamsing and when they were ploughing the land, the applicants came there, gave abuses by taking the name of caste and beating was given to them by the present applicants. It is contended that persons who were proceeding towards Bhokardan by that side of road witnessed the incident. In respect of incident dated 19.1.2015, F.I.R. was given on 28.3.2015.

5) The learned counsel for applicants drew the attention of this Court to document of registered sale deed dated 11.7.2002. This document was of out of out sale and it was not of mortgage. The learned APP showed to this Court a copy of agreement and submitted that a parallel agreement was entered in to in which the applicant No. 1 had agreed to reconvey the land after returning the

amount of Rs.35,000/-. If such agreement was there, it was open to the first informant to go to the Court for specific performance of that agreement or for similar relief. In F.I.R. itself, it is mentioned that his suit came to be dismissed. Further, in sale deed and also in the agreement, there is no mention that the possession was kept with the first informant.

6) The learned counsel for applicants drew the attention of this Court to various orders made by Civil Court in Regular Civil Suit No. 54/2008 filed by the applicant. Exparte interim relief was granted on 25.3.2008 and by the order dated 16.12.2009 the application filed for temporary injunction was allowed in favour of the present applicant. The suit was decreed by the decision dated 31.7.2014. The suit was contested by the first informant. This record is sufficient to infer that on the alleged date of incident i.e. on 19.1.2015 the applicant was in possession of the disputed land. As there was decree of permanent injunction against the first informant, this Court is not expected to believe the case of the first informant that he was in possession of the disputed land and the incident took place there. The delay caused in giving of the report is also not explained in F.I.R. There is record produced to show that even after decree given in favour of the applicants, the first informant was creating dispute and so, the applications were moved

for getting police protection by the present applicants. The record is also produced to show that first informant had approached Assistant Registrar, Cooperative with the grievance that the transaction amounts to illegal money lending transaction. This claim is also rejected by the authority. In view of the aforesaid circumstances and the observations made by the Apex Court in the case reported as **1992 Supp (1) Supreme Court Cases 335 [State of Haryana and Ors. Vs. Bhajan Lal and Ors.],** this Court holds that it will be abuse of process of law if the applicants are directed to face the trial for aforesaid offences. In the result, the application is allowed. Relief is granted to the applicants in terms of prayer clause 'BB'. The fees of the learned counsel appointed for respondent No. 2 is quantified as Rs.3,000/-. (Rupees three thousand). It is to be paid through High Court Legal Services Authority. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.] **[T.V. NALAWADE, J.]**

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