

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 541 OF 2011

- 1] Sitaram S/o Budhaji Shinde,
Age : 48 Years, Occ. Agriculture &
Contractor,
R/o. N-1, CIDCO, Aurangabad
- 2] Satish S/o Budhajirao Shinde,
Age : 43 Years, Occ. Agri & Contractor,
Permanent R/o Ambika Nagar,
Ahmednagar
- .. PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through Police Station,
Chikalthana, Aurangabad
- 2] Vijay S/o Shivnath Borde,
Age : 23 Years, Occ. Labour,
R/o. Sanjay Nagar, Mukundwadi,
Aurangabad.
- .. RESPONDENTS

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Advocate for ApplicantS : Mr. Girish K. Thigle
APP for Respondents: Smt. D. S. Jape

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CORAM : T.V. NALWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATE : 30-10- 2018.

JUDGMENT [Per : T.V. NALWADE, J] :-

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

2. The petition is filed for relief of quashing of First Information

Report (FIR) No. 96 of 2011 registered with Chikalthana Police Station Aurangabad for the offences punishable under Sections 143, 323, 427, 506 of Indian penal Code and Section 3(1)(x) of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.

3. Both the sides are heard.

4. Respondent No.2 has given the reported dated 11-07-2011. He has contended that he was working as watchman and he was staying in Gut No. 270 and 271 as per the instruction of his employer. He has contended that on that day at about 10.30 a.m the present applicants had entered into the field with 10 to 15 persons and they gave abuses him by taking the name of his caste which is Scheduled Caste. It is contention that threat was given to finish him and then by using JCB Machine his construction of shed was demolished and he was compelled to leave the place.

5. The learned counsel for the applicants submitted that applicants are the owner of both gut numbers 270 and 271 and the land was purchased by them from one Kamalabai Ahire. Copy of the registered sale deed dated 24.01.2011 is produced on record. The 7/12 record are produced to show that these agricultural lands were previously owned by one Kamalbai and she was owner of the lands on the date of sale deed. Pursuant to this registered sale deed even necessary mutation entries and 7/12 entries have been effected in ownership and cultivation

column. The copies of 7/12 extract in the name of the applicants and copy of mutation is also produced.

6. The learned counsel for the applicants submitted that on 14-06-2011 report was given by the applicants against one Rahul Sawant as he was trying to show that he was in possession of the said agricultural lands and he had put up temporary structure erecting blue colour flag. No person by name Rahul Sawant was present in the structure and due to that the FIR was given. It was submitted that after giving of that FIR the present FIR was given against them and one person by name Bhausahab Dahihande is trying to misuse the provisions of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Photo-stat copy of application for temporary injunction at Exhibit-5 in Regular Civil Suit No. 900 of 2010 was filed by Bahusaheb Dahihande against Kamlbai Aahire, who is vendor of the applicants is produced on record. He had contended that Kamalbai had agreed to sale the property to him and under agreement he was put in possession. Relief of only injunction was claimed. Statement was made by the learned counsel for the applicants that suit came to be dismissed but Bhausahab is using various ways/tactics to harass the applicants and lodging of the present FIR is also part of one way to harass the applicants. The photo-stat copy of caste certificated issued to Aishwarya Sitaram Shinde daughter of applicant no.1 is produced on record. Applicant nos. 1 and 2

are real brother *inter-se* and it is contended that they are also belongs to Vimukta Jati.

7. Though notice of present proceeding was served on respondent no.2 but nobody turns up. The proceeding was admitted. In view of the aforesaid discussion, this Court holds that it will be abuse of process of law if the applicants are asked to face the trial for aforesaid offences. In the result following order :-

ORDER

- I] Petition is allowed.
- II] Relief is granted in terms of prayer clause (B).
- III] Rule made absolute in aforesaid terms.

[SMT.VIBHA KANKANWADI]
JUDGE

YSK/

[T.V. NALAWADE]
JUDGE