

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6414 OF 2016

- 1) Dagadu s/o Baburav Talekar,
Age 75 years, Occupation Agri.,
- 2) Ganpat s/o Dagadu Talekar,
Age 42 years, Occupation Agri.,
- 3) Babasaheb s/o Dagadu Talekar,
Age 36 years, Occupation Agri.,
- 4) Kesharbai w/o Dagadu Talekar,
Age 70 years, Occupation Household,
- 5) Tarabai w/o Ganpat Talekar,
Age 39 years, Occupation Household,
- 6) Nutan w/o Babasaheb Talekar,
Age 35 years, Occupation Household,
- 7) Anita w/o Bharat Talekar,
Age 35 years, Occupation Household,

All R/o Panodi Tq. Sangamner
Dist. Ahmednagar.

...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Inspector,
Ashvi Police Station,
Tq. Sangamner Dist.Ahmednagar.
- 2) Sub Divisional Police Officer,
Sangamner Tq. Sangamner
Dist. Ahmednagar.

- 3) Rajendra Tabaji Kadam,
Age 42 years, Occupation Agri.,
R/o Panodi Tq. Sangamner
Dist. Ahmednagar.

...Respondents

Mr. A. N. Nagargoje, Advocate for applicants.

Mr. S. J. Salgare, Addl. Public Prosecutor, for respondents
No.1 and 2/ State.

Mr. S. R. Bodade, Advocate for respondent No.3.

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

DATE : 16-10-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Rule. Rule is made returnable forthwith. Heard both the sides for final disposal.

2. Present application has been filed by original accused persons by invoking inherent powers of this Court under Section 482 of Code of Criminal procedure for quashing and setting aside the First Information Report bearing Crime No. II – 1 / 2015, registered with Ashvi Police Sation Tq. Sangamner Dist. Ahmednagar and also the charge-sheet based upon the said FIR bearing No. 13 of 2015, dated 27-10-2015.

3. The applicants have come with a case that, the said FIR came to be lodged as per the directions given by learned Magistrate, Sangamner under Section 156 (3) of Code of Criminal Procedure on

the basis of private complaint lodged by present respondent No.2. It is stated that, there is dispute between the parties in respect of landed properties bearing Gut No. 78 and 31 situated at village Panodi. Original owner of the said land was one Manohar Kadam. He had five sons namely Keru, Tabaji, Nana, Madhukar and Bhaskar. Tabaji is the father of respondent No.2. After the demise of Manohar, Bhaskar filed Regular Civil Suit No. 207 of 2003 for partition and separate possession of the lands. The suit came to be partly allowed by Judgment and decree dated 28-01-2008. It was declared that each one of the brother is having 8 / 42th share in the properties. As per the said decree Keru Kadam got 55 R land in Gut No.78 whereas Nana got 54 R land in Gut No.78 and 3 ½ R land in Gut No.31. Mutation entry No. 2682 came to be effected in the revenue records to that effect. Thereafter vide registered sale deed dated 21-06-2011 Keru sold his 55 R land to one of the applicant namely Babasaheb Talekar, and thereafter Nana sold his 3 ½ R land in Gut No.31 to Babasaheb by registered sale deed dated 04-02-2012. Nana also sold his 54 R land from Gut No.78 in favour of applicant Tarabai Talekar and Bharat Talekar on 04-02-2012. On the date of the respective sale deeds all of them were given possession of those lands. Mutation entry to that effect was taken, however it was objected by Bhaskar. The objection was decided in favour of the applicants. The complainant in order to harass the applicants, filed

Regular Civil Suit No. 613 of 2012 claiming declaration that the decree passed in Regular Civil suit No. 207 of 2003 is not binding on him and also setting aside the sale deeds executed in favour of the applicants. In the said suit, the applicants filed counter claim claiming injunction against the complainant and also filed application for temporary injunction. During the pendency of the said proceeding it is alleged that the complainant and his family members assaulted the applicants on 24-05-2014 and non-cognizable offence was registered against them. A story was concocted by the complainant and he tried to lodge complaint against the applicants alleging that the applicants had assaulted him and his family members and abused in a name of caste. Crime No. 17 of 2014 came to be registered under Section 324, 323, 504, 506 read with 34 of the Indian Penal Code. After investigation, charge-sheet is filed and the trial is pending. In the suit filed by the complainant Keru and Nana who are the vendors of the applicant are also parties and they have filed their written statement raising contention in favour of applicants. Applicants who are the purchasers are in possession of the land in question. Still the complainant has come with a false story and lodged private complaint bearing M.A. No.437 of 2014 in which directions are given for investigation under Section 156 (3) of Code of Criminal Procedure. It is alleged that, since 2009 the applicants are harassing him and his family members and it is

stated that the applicants physically attacked the complainant and his family with deadly weapons on 24-05-2014. In fact when the charge-sheet is already filed in respect of the incident, the second crime cannot be registered. The ingredients of the offence punishable under Section 3 (f) (g) (r) (s) (z) (z-a) and (Z-b) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, are absolutely not made out, still the matter has been sent for investigation. The FIR based on the said complaint is with malafied intention and therefore the applicants have prayed for quashment of the same.

4. It is also vehemently argued that, the complainant is not a member of Scheduled Caste or Scheduled Tribes. In fact he is Christian by religion. The Baptism took place prior to 1973 and the complainant and his family members adopted Christianity. Date of Baptism of complainant is 31-12-1972. His real sister Alka's Baptism date is 25-06-1967. Keru adopted Christianity on 19-01-1933. The school record of the complainant also shows that, he is Christian by religion. Therefore, the provision of Atrocities Act are not at all attracted. The applicant had raised objection before Scrutiny Committee, Nashik on 05-03-2015 and 23-09-2015. Inquiry was held and validity certificate given to the complainant has been cancelled.

5. The application has been objected by respondent No.3 by filing affidavit-in-reply. Almost all the contents are repeated. It is tried to be stated as to how the decree passed in Regular Civil Suit No. 207 of 2003 is not binding on him. It has been specifically stated that, the applicants are harassing him and his family members. Since 2009 his father is agitating against the harassment by the applicants. He and his family members are in possession of the land. The contents of charge-sheet in R.T.C. No. 281 of 2015 is correct. It has also been submitted that, in the enquiry regarding the representation by the applicant before the Caste Validity Committee would show that most of the relatives of the complainant were by 'Mahar' caste and the finding recorded by the committee against Point No.1 is in negative. Complainant belongs to 'Mahar' community which is a scheduled caste. He was never converted to Christianity. He has challenged the order passed by the committee in writ petition before this Court. He has produced certain documents to show that his caste is 'Mahar'.

6. Heard learned advocate Mr. A. N. Nagargoje for the applicants, learned Addl. Public Prosecutor Mr. S. J. Salgare for respondents No.1 and 2 – State, and learned advocate Mr. S. R. Bodade for respondent No.3. Perused the documents filed by both the parties. In order to cut short it is stated that all the respective advocates have made submissions in support of their respective contentions.

7. From the documents which have been produced on record it is very much clear that, Regular Civil Suit No. 207 of 2003 filed by Bhaskar against his brothers came to be partly allowed. Share of each of the brother was declared, and thereafter it appears that actual partition took place and mutation entry No. 2682 came to be certified, taking into consideration the area allotted to each of the brothers. It was certified on 10-12-2011. Thereafter, by way of sale deed Keru as well as Nana have sold their share in the lands to Babasaheb and Tarabai as well as Bharat. The documents are on record. It appears that, the complainant is aggrieved and therefore he filed Regular Civil Suit No. 613 of 2012 challenging the decree that was passed in Regular Civil Suit No. 207 of 2003. The said proceeding is still pending. It appears that, the present applicants have filed a counter claim and claimed injunction against the complainant. It can also be seen that, Keru as well as Nana have filed their written statement supporting the present applicants. Thus, these documents reflect that as per the partition Keru and Nana were given possession and then by way of sale deed, the possession of the land was given to the respective purchasers.

8. At this stage it is required to be considered as to what was the contention before the learned Magistrate in private complaint by the present complainant. He has stated that, he belongs to 'Mahar'

community. His father had made a complaint on 31-12-2009 to Deputy Superintendent of Police, Sangamner against the accused persons for assaulting complainant's mother and abusing in the name of caste. A detailed complaint was made but no action was taken. Important point to be noted is that, though the date of complaint is given, further details regarding that incident has not been given, such as the date of the incident and what was uttered by whom. Thereafter the complainant says that accused persons had obstructed to renew the construction of his house in his own land and for that purpose also his father had made a complaint on 21-04-2013. These allegations are also as vague as possible. The date of alleged offence, the persons who allegedly participated in the act of obstruction, who was present etc. is not at all mentioned. Further it is also not mentioned in which land the house of the complainant is situated. The complainant further states that the accused persons had obstructed his father while he was ploughing the agricultural land. The number of the agricultural land is absent but then he says that his father and uncle had made a complaint about the same to the police on 18-06-2014. It is also stated that on 24-05-2014 all the accused persons entered into criminal conspiracy and attacked with deadly weapon to the complainant, his mother and father. Complaint was recorded by police for the offence punishable under Section 324, 323, 504, 506 read with 34 of the

Indian Penal Code. But it is stated that, cognizance in respect of Atrocity Act was not taken. Further he has stated that, all the accused persons had uttered, " महारांनो, आमच्यापेक्षा नीच जातीच्यांनो आम्हांला विरोध करता तुम्हाला जिवे मारुन टाकु व तुमच्या जमिनिचा ताबा घेउ. आमचे कुणीही काहीही करु शकत नाही, आमचेकडे गडगंज संपत्ती असून आम्ही कोणालाही घाबरत नाही." Thus, he says that, the accused persons have committed offence punishable under Section 3 (f) (g) (r) (s) (z) (z-a) and (Z-b) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus private complaint has been directed to be investigated by the learned Magistrate under Section 156 (3) of Code of Criminal Procedure.

9. It is to be noted that, the said complaint appears to have been filed before the learned Magistrate prior to 02-01-2015, and thereafter his caste validity certificate has been cancelled by the committee on 30-09-2016. Therefore, it will not be proper to go much deep into the aspect as to whether the complainant is a member of Scheduled Caste or not. Further the said point is still pending in the writ petition that is filed by the complainant before this Court. The position as on the date of filing of the complaint is required to be considered, on that day his caste validity certificate was certified. It is therefore required to be seen as to whether any such incident had taken place or whether grounds are made to

quash the FIR.

10. The checkered history shows that, there was dispute between the brothers i.e. sons of Manohar and therefore the partition suit was filed which came to be partly decreed. Every brother has got his share and then two of the brothers have sold their shares in favour of some of the applicants. Though complainant has filed Regular Civil Suit No. 613 of 2012, it is still pending and therefore it cannot be stated by any stretch of imagination that, the complainant and his family members would have been in possession of those portions of the land which have been sold by Keru and Nana to the applicants. Unless the decree in Regular Civil Sit No. 207 of 2003 is set aside, anything cannot be inferred in favour of the complainant.

11. Perusal of the FIR would show that, it is vague as possible. There is absolutely no mention as to why the contents which now attracting the provisions of Atrocities Act were not stated by the complainant in the earlier report. On the basis of the earlier report already investigation was carried out and charge-sheet is filed. Till the filing of charge-sheet why there were no efforts on the part of complainant to clarify as to what exactly had happened and to add provisions under Atrocities Act. It is to be noted that the complaint is filed against seven persons and it is stated that accused had uttered the above said abuses. The abuses cannot be in chorus. A

specific date is also not mentioned as to when the said incident had taken place. We are required to infer it from the contents of para No.09 and 10 that the incident had taken place on 24-05-2014. As regards earlier attempts by the father of the complainant to lodge the report did not materialize that cannot be agitated in this proceedings. The father of the complainant had independent right to agitate it before concerned Court if the police were not taking any kind of cognizance. Such a belated action can only be inferred with the fact that it is malafied and it is out of the enmity. The statements of the witnesses which were recorded in respect of incident dated 24-05-2014 earlier and the charge-sheet is filed do not show any utterances were heard by the witnesses which were allegedly given by the present applicants in the name of caste. The learned advocate appearing for the respondent No.3 has relied on the decision in, *Shiv Shankar Singh Vs. State of Bihar and Another*, reported in 2011 C J (SC) 264, wherein it has been held that,

“(A)..... Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour.”

It is to be noted that the facts of the said case are different from the facts of this case.

12. The earlier case under Section 324, 323, 504 and 506 read with 34 of Indian Penal Code is still pending before the learned Magistrate. What prompted the complainant to file a private complaint separately is a question, when he himself was the informant in the other case also. Therefore, with this background it would be a futile exercise to ask the applicants to face the trial. Therefore, case is made out to exercise powers of this Court under Section 482 of Code of Criminal Procedure within the parameters of the decision in, *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in AIR 1992 Supreme Court 604. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Relief is granted to the applicants in terms of prayer Clauses "A" and "B".
- 3) Rule is absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE