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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 530 OF 2018**

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|----|---|----------------|--|
| 1. | Vilas Eknath Nandgude |) | |
| | Age 58 years, Occupation Business, |) | |
| | Residing at Survey No.6, Pimple Nilakh, |) | |
| | Aundh Camp, Pune – 411 027 |) | |
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| 2. | Sujata Vilas Nandgude |) | |
| | Age – 50 years, Occupation Business, |) | |
| | Residing at Survey No.6, Pimple Nilakh |) | |
| | Aundh Camp, Pune – 411 027 |) | |
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| 3. | Shantanu Vilas Nandgude |) | |
| | Age – 29 years, Occupation Business |) | |
| | Residing at Survey No.6, Pimple |) | |
| | Nilakh, Aundh Camp, |) | |
| | Pune – 411 027 |) | |
| | |)...Appellants | |
| | | (Org. Accused | |
| | | Nos. 1 to 3) | |

Versus

- | | | | |
|----|--|--------------------|--|
| 1. | Vijay Nivrutti Waghmare |) | |
| | Age 50 years, Occupation Agriculturist |) | |
| | Resident of Village Wakad, Wakad, |) | |
| | Taluka Mulshi, Dist. Pune |)..Org.Complainant | |
| | | | |
| 2. | State of Maharashtra |)..Respondents | |

Ms. Vrushali U. Kabare for Appellants
Mr. Paresh B. Thakar for Respondent No.1
Mr. S.H. Yadav-APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 19, 2018

JUDGMENT:

1. Heard. Rule. Rule is made returnable forthwith with the

consent of the parties.

2. The Appellants herein impugned the order dated 2nd February, 2018 passed by the Additional Sessions Judge, Pune thereby issuing process against the Appellants for the offences punishable under section 3(1) (iv) & (v) (f) of the SC & ST (Prevention of Atrocity) Act 1989.

3. The facts of the case in nutshell are as follows.

4. The Complainant Vijay Nivrutti Waghmare filed a complaint before the District and Sessions Judge at Pune alleging therein that the properties situated at Wakad bearing Survey Nos. 167 and 168 are Inam Lands i.e. Mahar Inam Lands and that his grand-father Sakharam Chokhu Waghmare was in possession of the same by virtue of it being endowed upon Sakharam Chokhu Waghmare as Mahar Inam Land. That Sakharam expired on 21.12.1950. Appellant No.1 Vilas Nandgude at the behest of Shankar Kesu Waghmare had fabricated the documents and had prepared participation deed on 16.3.1951 and has cheated the Complainant as well as the Government of Maharashtra. According to the Complainant, he had filed a complaint about cheating before the

appropriate authority and, therefore, being annoyed with the same, the Appellants had committed criminal trespass in his house on 3.3.2015 at about 4.30 p.m. and had threatened the Complainant. Thereafter, the police had threatened the Complainant that in the eventuality he files complaint under the provisions of the SC & ST (Prevention of Atrocity) Act 1989, he would be eliminated. It is also stated that the wife of the Complainant had dialed 100 number and informed the police about the said incident. There are specific allegations against the police authorities that they would initiate action against the Complainant under the Maharashtra Police Act etc. However, the process is not issued against the police and, therefore, the allegations leveled against the police need not be considered.

5. According to the Appellants, the dispute in between the parties is of a civil nature, if any, and, therefore, the Complainant has also filed Special Civil Suit No. 348 of 2018 i.e. much after filing of the criminal complaint.

6. The Learned Additional Sessions Judge after verifying the complaint, has issued process under section 3 (1) (iv) (v) (f) of the SC & ST (Prevention of Atrocity) Act 1989 against the Appellants

and the police personnels have been exonerated of the same.

7. The learned counsel for the Appellants has drawn the attention of this Court to the sale deed dated 12.10.1998 executed in favour of Sujata Vilas Nandgude and Shailaja Baburao Shitole by Vijay Waghmare i.e. none other than the complainant, his brother Bhimrao and others. The sale deed was in respect of Survey Nos. 167/10, 167/11 and 168/16. That at the time of executing the agreement for sale, the cash amount of Rs.10,000/- was paid in favour of the vendors. Thereafter, the amount of Rs.18,65,000/- was paid by cheque in favour of the vendors. It is pertinent to note that since it was a Mahar Inam Land, it would be incumbent for the parties to seek permission from the Collector to enter into any transaction of sale. Hence, it was Dyanu Sakharam Waghmare and 8 others i.e. the Complainant and his brother Bhimrao Nivrutti Waghmare, who had filed the application to the Collector seeking permission to sell the said land. The permission was granted on 29.9.1998 and the sale deed was executed on 12.10.1998. The vendors had executed the sale deed in respect of their own share. The second deed in respect of the same land was executed by Dnyanu Sakharam Waghmare and 5 others, who have consented to the said sale deed.

8. It is also brought on record that Vasant Shankar Waghmare and three others had filed an application to the Collector on 15.6.1999 seeking permission to sell land bearing Survey Nos. 167/9, 167/13 and 168/5. The permission was granted on 15.6.1999 and the sale deed was executed on 4.4.2000. It is pertinent to note that an amount of Rs.38,80,000/- was paid in favour of the vendors.

9. It is submitted that practically after 20 years, the Complainant has filed a complaint stating therein that there was an attempt by the Appellants to dispossess him illegally from the said lands and, therefore, the order of issuance of process is unjustified and deserves to be quashed and set aside.

10. As against this, the learned counsel for the Respondents submits that in fact, in the year 1951, the Appellants had fabricated the document carving out the share of Sakharam Waghmare. The mutation entry is dated 8.3.1951. It is submitted that on the basis of the said fabricated documents, further proceedings had taken place.

11. At this stage, it would not be necessary to consider the said issue as there is no reference to it in the complaint and, moreover,

the process is issued only under section 3 (1) (iv) (v) (f) of the SC & ST (Prevention of Atrocity) Act 1989. Hence, the main accusation is of illegally dispossessing the Complainant from the said land.

12. It is not in dispute that the Complainant is a party to the sale deed. It is also not disputed that the permission to sell the land was obtained by the vendors including the complainant. The purchase amount has also been accepted by the vendors and, therefore, it would not be correct to hold that the vendors have been wrongfully dispossessed from the said land on the ground that they belong to scheduled caste or scheduled tribes. In any case, upon perusal of the contents of the complaint and the verification, the allegation appears to be in respect of the incident dated 3.3.2015 when the Appellants had committed trespass into the house of the complainant. It is alleged that only because the Complainant had filed a complaint to the appropriate authority, he and his family members were assaulted by the Appellants. There is no reference as to before whom the said complaint was filed or the progress of the said complaint. The allegations in the complaint appear to be vague and unfounded. There is no element of any act demonstrating the attempt on the part of the Appellants to

dispossess the Complainant or any of his family members from Survey Nos. 167/10, 167/11 and 168/16. Hence, the order dated 2.2.2018 deserves to be quashed and set aside.

13. In the above background, continuance of the proceeding in Criminal Misc. Application No. 335 of 2017 amounts to abuse of process of law and, hence, the said proceeding deserves to be quashed and set aside. Hence, the following order:

ORDER

- (i) Appeal is allowed.
- (ii) The order dated 2nd February, 2018 passed by the Additional Sessions Judge, Pune thereby issuing process against the Appellants for the offences punishable under section 3(1) (iv) & (v) (f) of the SC & ST (Prevention of Atrocity) Act 1989 is hereby quashed and set aside.
- (iii) Rule is made absolute in the above terms.

[SMT.SADHANA S. JADHAV, J.]