

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1233 OF 2018

1) PRAKASH REVACHAND BUDHRANI)
)
2) NISHA PRAKASH BUDHRANI)
)
3) VISHAL PRAKASH BUDHRANI)
)
4) GIRISH PRAKASH BUDHRANI)...APPELLANTS

V/s.

1) THE STATE OF MAHARASHTRA)
)
2) SURESH SOMA HINDOLE)...RESPONDENTS

Mr.Kabul Singh Labana, Advocate for the Appellants.

Mr.K.T.Thomas, Advocate for Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th OCTOBER 2018

ORAL JUDGMENT :

1 By this appeal, the appellants/accused in Crime No.198 of 2018 registered with Police Station Kalyan Taluka for offences punishable under Sections 143, 342, 447, 120B, 465,

468, 471, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(f)(g)(p)(q)(r)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at the instance of respondent no.2 Suresh Hindole, are challenging the order dated 28th September 2018 passed by the learned Special Judge, Kalyan, in Anticipatory Bail Application No.878 of 2018 thereby rejecting the claim for anticipatory bail of the appellants/accused in the subject crime.

2 Heard. Admit. Heard finally, considering the controversy involved in the instant appeal.

3 The learned counsel appearing for the appellants/accused submitted that even if the entire material including the First Information Report (FIR) lodged by the respondent no.2 Suresh Hindole is considered, then also no offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, can be made out against the appellants/accused. He drew my attention to the Sale

Deed dated 12th July 2006 executed by the parties, to which the respondent no.2/ First Informant was a consenting party.

4 I have heard the learned counsel appearing for the respondent no.2 / First Informant. He argued that as per the provisions of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, no application for anticipatory bail can be entertained by any court for offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Consequently, the appeal as framed and filed by appellants/accused is not maintainable under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and therefore, the same needs to be dismissed as not maintainable.

5 The learned APP opposed the appeal by contending that appellants/accused have obtained documents to show that they are agriculturists from Rajasthan State and that aspect of the matter is being investigated.

6 I have considered the rival submissions and also perused the material placed on record.

7 Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, creates a bar from entertaining any application for anticipatory bail moved under provisions of Section 438 of the Code of Criminal Procedure. Though Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, creates a bar from entertaining any application under Section 438 of the Code of Criminal Procedure, still it is open for this court to see whether a prima facie case for the offence punishable under any provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out by the prosecution. If no such offence is made out, then mere invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are of no avail and the court can entertain the application for anticipatory bail moved for such offences. In this view of the matter, contention of the learned counsel

appearing for the respondent no.2 that the appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be validly entertained has no substance. Even otherwise, if this court comes to the conclusion that no case for the offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out, then certainly appeal can be entertained.

8 The penal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, invoked by the prosecution against the appellants/accused viz. Sections 3(1) (f)(g)(p)(q)(r)(z) read thus :

“**3(1)(f)** wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;”

“**3(1)(g)** wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment

of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom. Explanation - For the purposes of clause (f) and this clause, the expression - “wrongfully” includes -

- (a) against the person's will;
- (b) without the person's consent;
- (c) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or
- (d) fabricating records of such land;”

“**3(1)(p)** institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;”

“**3(1)(q)** gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;”

“3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

“3(1)(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence;”

9 On this backdrop, let us examine averments in the FIR lodged by respondent no.2/Suresh Hindole. Perusal of the FIR lodged by respondent no.2 Suresh Hindole makes out the following facts :

Suresh Hindole claims to be belonging to Scheduled Tribe Thakur. He has averred in the FIR lodged on 25th May 2018 that Vishnu Phadke and others are owners of area admeasuring 5 Hectares and 31 Are of Survey No.47/1 of Village Vagherapada. It is further averred by him that his grandfather Chahu Hindole was cultivating this land prior to 1957. First Informant Suresh Hindole alleged that on 18th February 2000 he applied for entering his name as tenant by moving an appropriate application before the

Tahsildar. On 31st May 2000 his application came to be allowed by the Tahsildar for an area admeasuring 1 Hectare and 20 Are of Survey No.47/1. Accordingly, mutation was effected and he was shown as tenant of that land on 2nd June 2000. The FIR itself is containing the averments that Vishnu Phadke preferred a Tenancy Appeal bearing No.19 of 2001 challenging the order of the Tahsildar passed on 31st May 2000. The FIR contains averments that on 21st September 2002, the tenancy appeal filed by owner Vishnu Phadke came to be allowed. Entry taken in the revenue record to the effect that First Informant Suresh Hindole was tenant of the land, came to be deleted. The First Informant further contended that the order dated 31st May 2000 passed by the Tahsildar declaring him as tenant was set aside in this tenancy appeal. It is further averred by respondent no.2/ First Informant Suresh Hindole that he challenged the appellate order by filing an appropriate proceeding before Maharashtra Revenue Tribunal and that proceeding bearing no.TNC/COM/72/B/2002 came to be withdrawn by him.

10 If these averments in the FIR are considered, then it becomes clear that as of now, First Informant / respondent no.2 Suresh Hindole has no right, title or interest in the land owned by Vishnu Phadke. Consequently, it appears that Power of Attorney holder Shantilal Poriya had withdrawn the civil suit in respect of this land. This appears to be so because of allowing of the tenancy appeal. The net result of foregoing discussion is to the effect that the FIR itself makes it clear that the order passed by the appellate authority in Tenancy Appeal No.19 of 2001 filed by Vishnu Phadke has attained finality and now the First Informant is no more tenant of the land from Survey No.47/1.

11 The FIR contains further averments that on 12th July 2006, Shantilal Poriya, who is Power of Attorney holder of owner Vishnu Phadke, had executed the registered Sale Deed in favour of appellants Vishal and Nisha Budhrani. Copy of that registered Sale Deed is placed on record by the appellants/accused. Respondent no.2/ First Informant Suresh Hindole is a consenting

party to that Sale Deed. Clause no.2(a), 5 and 7 of this registered document, to which the First Informant / respondent no.2 Suresh Hindole is a party, are relevant and material. Suresh Hindole has accepted an amount of Rs.1 lakh as consideration in respect of the transaction. He has agreed as per recitals in Clause (5) of this registered Sale Deed that neither he nor his relatives or successors shall have any right, title or interest in the subject land. He declared that the purchasers have become full owner of the subject land. As per recitals in Clause (7) of the registered Sale Deed, respondent no.2 Suresh Hindole has further declared that there is no encumbrance on the subject land and if anybody raised any right for files any suit, then along with other parties to the Sale Deed, respondent no.2 Suresh Hindole had also agreed to reimburse the purchaser i.e. appellants/accused Vishal and Nisha Budhrani.

12 These recitals in the Sale Deed make it clear that the respondent no.2 has declared that he has no right, title or interest in the subject property and he has relinquished all his claim, if

any, in the suit land apart from the fact that, even in the tenancy appeal it is held that he is not the tenant of the suit land.

13 These material facts gathered from the FIR lodged by the respondent no.2/ First Informant make it clear that no prima facie case under alleged offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out by First Informant / respondent no.2 Suresh Hindole. There is no question of wrongful occupation or cultivation of the land of which appellants/accused Vishal and Nisha Budhrani are registered owners. There is no question of wrongful dispossession of the respondent no.2 of the suit land in the wake of the registered Sale Deed dated 12th July 2006, to which he himself is a party. There is no averment regarding any false, malicious or vexatious suit, criminal or other proceedings initiated by the appellants/accused against the respondent no.2. Similarly, the FIR does not contain any averment regarding false or frivolous information to any public servant in order to cause injury or annoyance to the member of the Scheduled Tribe. The FIR does

not contain any averment regarding intentional insult or intimidation with intent to humiliate the respondent no.2 within public view. Similarly, provisions of Section 3(1)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are also not even prima facie made out from the FIR lodged against the appellants/accused.

14 In this view of the matter, as no offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is prima facie made out, it cannot be said that the appeal is not maintainable. Bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. So far as offences punishable under the Indian Penal Code are concerned, I do not feel that custodial interrogation of the appellants/accused is warranted. Therefore, it needs to be held that the learned Special Judge committed an error in rejecting the application for anticipatory bail moved by the appellants/accused, vide impugned order dated 28th September 2018. The said order, as such, cannot

be sustained. In this view of the matter, the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 28th September 2018 passed passed by the learned Special Judge, Kalyan, below Exhibit 1 in Anticipatory Bail Application No.878 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellants/accused is allowed.
- iv) In the event of arrest of the appellants/accused in Crime No.198 of 2018 registered with Police Station Kalyan Taluka for offences punishable under Sections 143, 342, 447, 120B, 465, 468, 471, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(f)(g)(p)(q)(r)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at the instance of respondent no.2 Suresh

Hindole, the appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each and on furnishing surety in like amount, by each of them.

- v) The appellants/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellants/accused should not contact the respondent no.2 in any manner.
- vii) The appellants/accused should co-operate the Investigating Officer in investigation of the crime in question.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)