

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 118 OF 2019

1. Dadasaheb S/o Laxman Thengade,
Age : 36 Years, Occ. Agriculture,
2. Subhash S/o Karbhari Thengade,
Age : 34 Years, Occ. Agriculture,
3. Dnyaneshwar S/o Kaduba Thengade,
Age : 33 Years, Occ. Agriculture,
4. Gorashnath S/o Eknath Mhasrup/ Gorakh
Eknath Mhasrup as per FIR
Age : 32 years, Occ. Agriculture,
5. Kisan S/o Tulshiram Thengade/ Krushna
Tulshiram Thengade as per FIR

All resident of Palaswadi, Tq. Khultabad
Dist. Aurangabad

..APPLICANTS

VERSUS

1. The State of Maharashtra
Through Investigation Officer,
Khultabad Police Station
Tq. Khultabad, Dist. Aurangabad
2. Shivaji S/o andurang Nikale
Age : Major, Occ. Agriculture
R/o. Palaswadi Tq. Khultabad
District Aurangabad

... RESPONDENTS

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Advocate for the Applicants : Mr. R. V. Gore

A.PP for respondent : Mrs. R.D. Sanap

Advocate for respondent No.2 : Mr. S. S. Kazi

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**CORAM :T.V. NALAWADE AND
K.K. SONAWANE ,JJ.
DATE : 12th JULY, 2019.**

JUDGMENT(PER T.V. NALWADE, J] :-

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

2. Heard both the sides.

3. The present proceeding is filed for relief of quashing of FIR No. 396 of 2018 registered with Khultabad Police Station Aurangabd for the offences punishable under Sections 143, 149, 186 of the Indian Penal Code and Section 3 (g), 3 (2) (va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The crime is registered on the basis of report given by one Shivaji Nikalje who belongs to scheduled caste.

5. Shivaji has dispute with the present applicants in respect of his so called right of way passing through the land of the applicants bearing Gut No. 230, 265 and 266 situated at Palaswadi Tq. Khultabad District Aurangabad. It is contention that the applicants had created obstruction on the way and due to that the wife of the Shivaji Sau. Sarlabai Shivaji Nikale had approached to the Tahsildar, Khultabad and made application under Section 143 of Maharashtra Land Revenue Code and prayed for granting way to approach her land in Gat No. 264 and said application was allowed on 14.03.2012 and then order was made in their favour,

for removal of such obstruction. It is contended that in the year 2016 the applicants created a ditch of the width of 4 to 5 feet to close road which was width of 10 feet and which was by the side of the Bandh and so it became virtually impossible for him to approach his land bearing Gut No. 264 admeasuring 1 Hectar 14 Gunthas.

6. It is contention of the informant that he approached Tahsildar on 14.07.2017 and Tahsildar made order to police to see that the obstruction was removed. It is contended that he approached police and on 03.08.2017 police went with him to the spot for removal of obstruction. It is contended that on that day present applicant No.1 Dadasaheb came with the order of Sub Divisional Officer Kannad and said that stay was granted by Sub Divisional Officer to the order made by Tahsildar . It is contended that on that day no action could be taken and on 03.08.2017 everything which was done by informant to remove the obstruction went in vain. It is contended that he was required to spend around Rs. 35 to 37 thousand for police Bandobast and for using machinery. It is contended that he again went with the police to the spot on 26.12.2018 for removal of obstruction when there was no stay at about 1.00 p.m It is contended that when they were making marking of the road the applicant No.1 Dadasaheb came with there and he said that the Circle Officer had informed that there would be stay to the action of the applicant and he was to send the stay order on What's App.

It is contended that by saying so Dadasaheb asked them to stop the work.

7. It is contended that threat was given by Dadasaheb to the revenue officers and to the police that he would commit suicide if they continue the work. It is contended that other applicants were also there and they obstructed work of removal of the obstruction. It is contended that at about 2.30 p.m Laxman Thengade came with stay order and this stay order was given by Additional Collector. It is contended that due to such stay order no work could be done on 26.12.218 also and on that occasion also he was required to spend un-necessarily.

8. It is contention of the informant that by creating obstruction on the aforesaid road, the applicants have committed aforesaid offence. In support of this contention the record like police statements and 7/12 extract was shown to this court. It appears that on the basis of order made by the Tahsildar, entry was made in the 7/12 extract to show that the first informant had right to use some portion as the road. However, it is also admitted that stay was given by appellate authority to that order. Submissions made show that even at present there is the stay and the appeal is still pending.

9. Admittedly aforesaid lands belong to the applicants and they

have raised dispute that informant has no right to use portion of their land as road. The first informant is claiming the way of the width of 10 feet when Bandh cannot have width of such size. In any case the said matter is pending before the appellate authority. Offence under Scheduled Caste and Scheduled Tribe prevention of Atrocities Act can be made out if it is shown that the accused has wrongfully prevented persons of Scheduled Caste or Scheduled Tribe category from using right of his way. In view of the aforesaid circumstance, it cannot be said that the applicants were wrongfully preventing the first informant to use the way. There is dispute of civil nature between the parties and in view of this circumstances this Court holds that inference is not possible that intentionally and wrongfully applicants had prevented the first informant from using portion of their land as way. Due to all these circumstances, this Court holds that relief needs to be granted to the applicants, in the result, following order :-

ORDER

- I. Application is allowed.
- II. Relief is granted to the applicants in terms of prayer clause 'B'.
- III. Rule made absolute in those terms.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE