

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 451 OF 2020

1. Raosaheb s/o Kundlik Bhavar,
Age; 48 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur
District; Jalna.
2. Vishnu s/o Maroti Bhavan,
Age; 28 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur
District; Jalna.
3. Vitthal s/o Kundlik Bhavar,
Age; 45 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
4. Dnyandeo s/o Kundlik Bhavar,
Age; 43 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
5. Sanjay s/o Vitthal Bhavar,
Age; 25 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Bandapur
District; Jalna.
6. Vitthal s/o Baburao Jagtap,
Age; 31 years, Occ; Agriculture,
R/o; Nivdunga, Tq. Jafrabad,
District; Jalna.
7. Baburao s/o Deoram Jagtap,
Age; 69 years, Occ; Agriculture,
R/o; Nivdunga, Tq. Jafrabad,
District; Jalna.
8. Rajendra s/o Daulatrao Salampure,
Age; 35 years, Occ; Agriculture,
R/o; Dhawaleshwar,

Taluka & District; Jalna.

9. Arun s/o Bhimrao Dolse,
Age; 36 years, Occ; Agriculture,
R/o; Dhawaleshwar,
Tq. & District; Jalna.
10. Vikram s/o Kashinath Bodkhe,
Age; 43 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
11. Gajanan s/o Gopala Hiwale,
Age; 40 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
12. Ganesh s/o Ramrao Bodkhe,
Age; 32 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
13. Shivaji s/o Ramrao Bodkhe,
Age; 45 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.'
14. Vilas s/o Damodhar Hiwale,
Age; 26 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
15. Parmeshwar s/o Kaduba Hiwale,
Age; 28 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.
16. Narhari s/o Sukhdeo Bodkhe,
Age; 58 years, Occ; Agriculture,
R/o; Asarkheda, Tq. Badnapur,
District; Jalna.

...Petitioners

VERSUS

1. The State of Maharashtra
Through the Police Inspector
Tembhurni Police Station,
Tq. Jafrabad, District Jalna.
2. Dnyaneshwar s/o Vitthalrao Khandebharad
Age;30 years, Occ; Agriculture,
R/o; Nivdunga, Tq. Jafrabad,
District; Jalna. ...Respondents.

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Shri V.D. Hon, learned Senior Counsel i/b Shri Ashwin V. Hon the
learned counsel for the petitioners.
Shri S.P. Tiwari, the learned A.P.P. for respondent No. 1-State.
Smt. Maya R. Jamdhade, the learned counsel for respondent No. 2.
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CORAM : T.V. NALAWADE AND
MG.SEWLIKAR, JJ.

Date of Reserving of the Judgment : 03/09/2020.
Date of Pronouncing of the Judgment : 10/09/2020.

JUDGMENT [PER : M.G. SEWLIKAR, J.] :

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.
2. This is a petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure for

quashing of the First Information Report (F.I.R.) and the Charge-sheet filed on the basis of the said F.I.R.

3. The informant Dnyaneshwar Vitthal Khandebharad has lodged F.I.R. alleging that Gut Nos. 417/1 and 417/2, situated at village Nivdunga, Taluka Jafrabad, District Jalna, are owned and possessed by the father of the informant. On 28.1.2019 at 10.00 a.m., informant Dnyaneshwar Khandebharad, Gangabai Baliram Khandebharad, Renuka Krushna Khandebharad, Prayagabai Vishnu Khandebharad, Vitthal Namdeo Khandebharad were in the farm house in the said gut numbers. At that time, petitioner Nos. 1 to 16 came there, they were accompanied by 10 to 20 persons. They had come there for taking possession of Gut Nos. 417/1 and 417/2, along with two Poclain machine, tractors and a truck for sinking a well. The informant and others objected to it, on the ground that a civil suit is pending in the Court. But the petitioner Nos. 1 to 16 did not listen and started beating them with sticks. All of them threatened the informant and others to kill. All of them pushed the informant and others into a pit, adjacent to the brook. Petitioner No. 1 was asking the driver of the Poclain to throw mud on them by Poclain machine. The petitioner tore the blouse of the ladies of the informant party. Petitioner No. 1 was shouting loudly saying that saries of ladies

of the informant party should be removed and petitioner No. 1 was saying that these ladies are the prostitutes. The petitioners took away gold “mangalsutra” and “ear rings” of Gangabai Baliram Khandebharad. When Krushna Dhondiram Mali tried to rescue the informant and others, the petitioners abused him calling him “Bhilla” and “Mahar” for interfering in their affairs. The informant and others were rescued by Krushna Dhondiram Mali, Nandabai Tukaram Kharat, Kisan Sukhdev Kharat, Bhagwan Sadashiv Jagtap and others. Accordingly, the present F.I.R. was lodged on 28.01.2019, on the basis of which offences punishable under Sections 307, 143, 147, 148, 149, 327, 324, 354, 354(A) (4), 504 and 506 of the I.P.C. has been lodged against the petitioners. During investigation it was revealed that the petitioners had hurled abuses on caste, hence offences under sections 3 (1)(r)(s), (w)(i), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, were added. Accordingly the charge-sheet has been filed.

4. Heard Shri V.D. Hon, the learned Senior Counsel instructed by Shri Ashwin V. Hon for the petitioners, Shri S.P. Tiwari, the learned A.P.P. for respondent No. 1-State and Smt. Maya R. Jamdhade, the learned counsel for respondent No. 2, the informant.

5. Shri Hon, the learned Senior Counsel for the petitioners argued that the petitioners have purchased the land Gut Nos. 417/1 and 417/2 from the informant by registered sale deeds dated 15.1.2018 and 21.06.2018 respectively. On the basis of these sale deeds the revenue entries have also been effected. Since then, the informant and others have been interfering in possession of the petitioner No. 1. Therefore, petitioner No. 1, his wife Sangita and son Akash filed R.C.S. No. 147 of 2018 in the Court of Civil Judge (J.D.), Jafrabad, District Jalna. In the said suit, petitioner No. 1 had filed an application for temporary injunction (Exhibit 5), to restrain respondent No. 2 and others from interfering in the peaceful possession of petitioner No. 1 over the land Gut Nos. 417/1 and 417/2. He further argued that this application was rejected by the Trial Court. Petitioner No. 1 preferred appeal bearing M.C.A. No. 24 of 2019 before the District Judge- 1, Jalna, which was allowed on 18.6.2019 and the respondent and others have been restrained from causing any obstruction and interference in the peaceful possession of petitioner No.1, over the suit land, till the disposal of the suit. Shri Hon, the Senior Counsel for the petitioner submitted that respondent No. 2 preferred writ petition bearing No. 9287 of 2019 before this Court, which was dismissed as withdrawn. He further argued that the Civil Court while deciding application Exh. 5 has given finding

that the suit property is in possession of the petitioner No. 1. The revenue entries also are effected in the name of the petitioner No. 1. Petitioner No. 1 had submitted an application in police station Temburni, Tq. Jafrabad on 3.8.2018, stating therein that respondent No.2 and others are interfering in his possession over land Gut Nos. 417/1 and 417/2. He submitted that petitioner No. 1 is in possession over the suit property. Respondent No. 2 and others are interfering in his possession over the disputed property, despite having no concern. He submitted that the documentary evidence on record makes it amply clear that the F.I.R. filed by respondent No. 2 is a false one. He submitted that video recording shows only 7 to 8 persons, out of them 4 to 5 are from respondent No. 2's side. But respondent No. 2 has implicated 16 persons. This itself shows the falsity of the F.I.R. Despite parting with entire amount of consideration, petitioner No. 1 is not in a position to enjoy the disputed property. He submitted that offences punishable under Sections 354, 307 and under Section 3 (1), (r) (s) w (i), 3 (2) (va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been added subsequently after filing of the F.I.R. Shri Hon, the learned counsel for the petitioners argued that the F.I.R. being false one, the F.I.R. and charge-sheet filed on the basis of it needs to be quashed.

6. Smt. Jamdade, the learned counsel for the respondent No. 2 argued that respondent No. 2 had taken loan from petitioner No. 1 and had sold land Gut Nos. 417/1 and 417/2, as security for the said loan. The amount taken as loan from petitioner No. 1 has been repaid by respondent No. 2. Respondent No. 2 requested petitioner No. 1 many a times to re-convey the sale-deed but petitioner No. 1 did not listen. Therefore, respondent No. 2 made a complaint to the District Deputy Registrar, Jalna, mentioning therein that the disputed lands were sold as security for the loan of Rs. 3,00,000/-, which was taken by respondent No. 2 from petitioner No. 1. Despite the payment of amount of loan, petitioner No. 1 is not returning the loan. She submitted that the Assistant Registrar of Co-Operative Societies, Jafrabad, submitted report that possibility of sale of this land for the security for loan cannot be ruled out. She submitted that this indicates that this was a transaction of security for the loan. She submitted that petitioner No. 1 has been interfering in the possession of respondent No. 2. She submitted that the incident did happen, therefore, she submitted for dismissal of the petition.

7. Shri Tiwari, learned A.P.P. for respondent-State submitted that F.I.R. is based on true incident. Respondent No. 2 has made

complaint before the District Registrar, against petitioner No. 1 about the loan transaction. Evidence on record shows that land Gut Nos. 417/1 and 417/2 are in possession of respondent No. 2 and others. On the basis of documents placed along with charge-sheet offences as alleged are clearly made out and therefore, writ petition is devoid of any substance and it be dismissed.

8. The date of the incident is 28.1.2019. The F.I.R. was lodged on the same day. The prosecution has produced medical certificates of injured Gangabai Baliram Khandebharad, Renuka Krushna Khandebharad, Prayagabai Vishnu Khandebharad and Vitthal Namdeo Khandebharad. The injury certificate of Gangabai Khandebharad shows that she had abrasion over left knee. There was bleeding through her right nostril. She was complaining of abdominal pain and back pain. She was examined on 28.1.2019 at 10.00 p.m. The injury certificate of Renuka Krushna Khandebharad shows that she was complaining of left hip joint thigh pain. Vitthal Namdev Khandebharad's injury certificate shows that he was complaining of low back pain. Prayagabai Vitthalrao Khandebharad's injury certificate shows that she had back pain and neck pain.

9. The spot panchanama produced on record shows that the

land at the spot was trampled. Near the trampled land, Poclain tractor bearing No. MH-21-AN-414, tractor bearing No. MH-21-AN-0658, Tractor No. MH-21-AD-4190, Tractor with Trolly bearing No. MH-14-CP-1355, Trolly bearing No. MH-14-CP 1588 of 16 tyres were at the spot of the incident. This clearly shows that the allegations in the F.I.R. that the petitioners had gone to the disputed lands with poclain machine and tractors get corroboration from the spot panchanama. It is true that the revenue entries have been effected in the name of petitioner No. 1. However, there is a communication on record addressed to the police station by petitioner No. 1 dated 03.08.2018, in which, petitioner No. 1 has admitted that respondent No. 2 has a "Bakhar" (cattle shed) in the disputed land. If petitioner No. 1 was in possession of the disputed land, it is not explained as to how there is "Bakhar" (cattle shed) in the disputed property of petitioner No. 1. Therefore, prima-facie, on the basis of his own admission it appears that on the date of the incident the property was in possession of the informant. The injunction was issued against respondent No. 2 and others on 18.6.2019 and the date of the incident is 28.6.2019. The allegations in the F.I.R. and the statements of the witnesses show that abuses on caste were hurled. Moreover, wrongfully dispossessing the member of the scheduled castes and scheduled tribes from his land is an offence within the

meaning of Section 3 (1) (g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1089.

10. There are allegations in the F.I.R. that the petitioners tore the blouse of ladies and petitioner No. 1 was saying loudly that ladies should be disrobed and he was calling them as prostitute. Therefore, offences punishable under Section 354 of I.P.C. and under Sections 3 (1) (r) (s) w (i), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1089 are prima-facie made out.

11. Shri Hon, the learned counsel for the petitioners argued that there is no evidence to show that all the 16 accused were there at the spot. He argued that even images of the mobile video clips do not support the allegations in the F.I.R.

12. It is pertinent to note that supplementary statement of the informant was recorded during the investigation. After viewing the video clips he has mentioned the names of petitioner No. 10 Vikram, petitioner No. 11 Gajanan, petitioner No. 12 Ganesh, petitioner No. 13 Shivaji, petitioner No. 14 Vilas, petitioner No. 15 Parmeshwar and petitioner No. 16 Narhari. Therefore, at this prima-

facie stage, it cannot be said that there was no role of the petitioners in the alleged offences. In view of this, we are not inclined to quash the F.I.R. and the charge-sheet. Hence the petition is devoid of any substance. The petition is therefore dismissed. Rule is discharged.

[M.G.SEWLIKAR]
JUDGE

[T.V. NALAWADE]
JUDGE