

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

CRIMINAL APPLICATION NO. 961 OF 2018

Subhash S/o Pandurang Dahihande,
Age: 53 years, Occu: Agri,
R/o Mahadeo Galli, Chikalthana,
Taluka and District Aurangabad.

.. **Applicant**

Versus

1. The State of Maharashtra,
Through Mukundwadi Police Station,
District Aurangabad.

2. Indubai W/o Vinod Zare,
Age: 37 years, Occu: Household,
R/o Mukundwadi,
Taluka and District Aurangabad.

.. **Respondents**

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Mr. Santosh S. Jadhavar, Advocate for the Applicant.

Mr. S.B. Narwade, APP for the Respondent-State.

Mr. S.M. Pachore, Advocate for the Respondent No.2 (Appointed)

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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 03.03.2020

ORAL JUDGMENT :- (Per: *T.V. Nalawade, J.*)

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

2. The present proceeding is filed for relief of quashing of F.I.R. No.53 of 2018 registered with Mukundwadi Police Station, Aurangabad for the offences Section 3 (1) (10) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and Section 143, 147, 149 and 506 of the I.P.C..

2. Learned counsel for the applicant took this Court through the F.I.R. given by one Prabhakar Kulkarni against the husband of informant of F.I.R. No. 53 of 2018. The said F.I.R. was given on 22.02.2018 and the crime was registered for the offences punishable under Section 406, 420, 467, 468, 471, 120-B etc. of the I.P.C. After registration of this crime present F.I.R. came to be registered on 08.03.2018.

3. In F.I.R. No.53 of 2018 given by respondent it is mentioned that the complaint was given to police already on 01.12.2017 but on that occasion crime was not registered. In police papers there is a photocopy of that complaint and it shows allegations were made against nine persons including the present applicant Subhash Dahihande that they had come to the house of the informant on 01.12.2017 in the morning time and all of them had given abuses by taking name of her caste. Threat was also given. The name of the caste was not mentioned and actual words used were not mentioned in that complaint. The F.I.R. was not registered on the basis of that complaint and so

the subsequent report was given and crime came to be registered on 08.03.2018.

4. Learned counsel for the applicant submitted that the interest of present applicant and interest of Prabhakar Kulkarni were conflicting with each other and that can be seen from the circumstance that there was litigation between the wife of Prabhakar Kulkarni and the present applicant. Copy of decision given by Civil Court in R.C.S. No. 1691 of 2000 is filed on record and it shows that in a suit filed for injunction and declaration the Civil Court had declared that the sale-deed executed in favour of the wife of aforesaid Prabhakar Kulkarni and others was not binding on the share of Subhash Dahihande. The contention is made by Prabhakar Kulkarni that the matter was taken up to High Court and in the High Court the decision was given in favour of his wife. Thus apparently the interest of Prabhakar Kulkarni and present applicant were adverse to each other.

5. In F.I.R. given by Prabhakar Kulkarni he has made allegations against husband of the informant that he misused the Power of Attorney given to him to take care of the aforesaid litigation and by using that Power of Attorney and signatures he created some record to show that property was gifted to him and then he gifted the property to his wife, the informant. The

contents of the F.I.R. given by Prabhakar Kulkarni show that Power of Attorney allegedly given in favour of the husband of the present informant was cancelled by publishing notices in newspapers dated 16.06.2016 and 20.06.2016. Thus only after cancellation of Power of Attorney by Prabhakar Kulkarni the complaint dated 01.12.2017 was given by Indubai and then further steps were taken.

6. The aforesaid circumstances show that there is some civil dispute between the husband of the informant Smt. Indubai and Prabhakar Kulkarni. Though it is presumed that the interest of Subhash Dahihande may also get affected in that dispute, in that case also it cannot be said that on that day Subhash Dahihande - present applicant must have given company to Prabhakar Kulkarni. It can be said that F.I.R. is given by mentioning the caste of the informant only to pressurize the present applicant. In view of the vagueness of the allegations made in the complaint dated 01.12.2017 and in view of the aforesaid circumstances, this Court holds it will be abuse of process of law if the present applicant is asked to face the trial for aforesaid offences in Crime No.53 of 2018. So the following order. Application is allowed to the extent of present applicant. Relief is granted in terms of prayer clause-B. Rule made absolute in those terms.

7. The fees of the appointed counsel is quantified @ Rs.3000/- and it is to be paid through the High Court Legal Services Sub-Committee.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]