

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.766 OF 2019

- 1) Dwarkadas s/o Yashwant Bansod
@ Pathrikar,
Age 79 years, Occupation Agri.,
And Social Work,
- 2) Yogesh s/o Uttamrao Bansod
@ Pathrikar,
Age 31 years, Occupation Agri.,
And Social Work,
- 3) Varun s/o Dwarkadas Bansod
@ Pathrikar,
Age 32 years, Occupation Service,

All R/o At Post Pathri Taluka
Phulambri District Aurangabad. **...Appellants**

VERSUS

- 1) The State of Maharashtra.
- 2) Sheshrao Gyanuji Jadhav,
Age 65 years, Occupation Agri.,
R/o At Post Pathri Taluka
Phulambri District Aurangabad. **...Respondents**

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Advocate for Appellants : Senior Counsel Mr. R. N. Dhorde
instructed by Adv. Mr. V. R. Dhorde.

APP for Respondent No.1-State : Ms. Vaishali Choudhary.

Advocate for Respondent No.2 : Mr. A. M. Nagarkar.

Advocate for Assist to APP : Mr. S. N. Pagare.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
01-03-2021.**

**Date of Pronouncing The Order :
12-03-2021.**

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.
3. By consent the appeal is taken up for final disposal.
4. Present appellants are apprehending their arrest in connection with Crime No.169 of 2019, dated 22-07-2019, registered with Wadod Bazar Police Station Tq. Phulambri Dist. Aurangabad, for the offences punishable under Section 277, 278, 284 read with 34 of the Indian Penal Code and Section 3 (1) (c) (x) and 3 (2) (va) (v) the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity). Present appeal has been filed under Section 14-A of the Atrocities Act with Section 438 of Code of Criminal Procedure.

5. Heard learned Senior Counsel Mr. R. N. Dhorde instructed by Adv. Mr. V. R. Dhorde for the appellants, learned Additional Public Prosecutor Ms. Vaishali Choudhary for respondent No.1-State well assisted by learned Advocate Mr. S. N. Pagare, and learned Advocate Mr. A. M. Nagarkar for respondent No.2.

6. It has been vehemently submitted on behalf of the appellants that respondent No.2 has lodged the First Information Report. In fact it appears to be the out come of order passed under Section 156 (3) of Code of Criminal Procedure by learned Special Judge, Aurangabad on the complaint filed by the informant and others. Miscellaneous Criminal Application No.183 of 2019 has been filed by many complainants, however to that complaint the present appellants were not party. It can also be seen that those persons intended to say that they are the land holders in village Pathri and there was proposal by the present appellants to purchase their lands, however it was refused and, therefore, some chemical was dumped in land Block No.144 which had caused health hazardous. The respondent No.2 claimed that he is cultivating his ancestral land Block No.140, 141. Present appellant No.1 who is the Chairman of Foster Development, Aurangabad purchased 8 Hectare of land from

Block No.144 in the year 2014. Appellant No.1 had gone to respondent No.2 on 15-08-2017 and requested him that he should give his land to appellant No.1. Along with the appellant, the lands of Bhagwan Suradkar, Ganesh Jadhav, Sanjay Navgire was also asked by appellant No.1, but all of them had resisted. Two months thereafter the appellant No.2 had insisted them that they should give their lands, but then on 01-01-2018 at about 12.00 p.m. appellant No.1 had brought tankers having chemical of strong smell and it was poured in Block No.144. The smell was so strong that it was creating strong smell in the vicinity and because of which the persons in the nearby area were facing problem of omitting, breathing and headache. In spite of resistance, the appellants continued the pour chemical from tankers to the said land, as a result of which the chemical dripped in Block Nos.123, 124, 143, 139, 141, 142, 140 resulting in the contamination of the water from the well in those lands. Consumption of that contaminated water has resulted in health hazardous. All this has been done as the agriculturists of these lands are Mahar by community and, therefore, the complaint has been lodged on the orders of the Court under Section 156 (3) of Code of Criminal Procedure. It has been sent for investigation and then offence has been registered.

7. It has been further vehemently submitted by learned Senior Counsel that the false implication of the appellants is very much clear. It is only to malign the image of the appellants and action is done with vengeance at the instance of one Dr. Pramod Eknath Jadhav who is trying to create tension between two communities in village Pathri. A complaint was also filed to that extent on 06-12-2018 with the police. The entire history has been given as to how Dr. Pramod Jadhav is behaving in the complaint itself. In fact the complaint was also made by Dr. Jadhav with Water Pollution Board on 06-12-2018. Now by misusing the law in respect of the Atrocities Act at the instigation of Dr. Jadhav, the present respondent No.2 has lodged the report. Nothing is required to be seized from the present appellants. It is stated that the chemical is found in the well water. Samples of the water from the well have been taken by the Water Pollution Control Board and they have given the result, however those well are situated in the field of respective persons. Complaint lodged by one Rekha Waghmare would show that she had seen a person pouring chemical in the well. That means, it is not the act of the present appellants. Now said Dr. Pramod Jadhav is giving his own reasons as to why Rekha Waghmare has made complaint

against him. Another important aspect that is required to be noted is that the Water Pollution Control Board has not taken any kind of action against the Radico Distilleries Limited. There is absolutely no direct evidence to show that such chemical would have percolated in the fields of all those complainants. A picture has been tried to be painted that because of the contamination of the water, which is then consumed by the villagers, they are suffering from many diseases. The water may be contaminated but then it has to be proved that said contamination is made by the present appellants. Another fact to be noted is that the contamination then would have been in respect of all the land holders and not of a particular community, therefore question of invoking Atrocities Act does not arise at all. The appellants are co-operating with the investigation in view of the ad-interim orders those are passed, therefore that ad-interim protection deserves to be confirmed.

8. Per contra, the learned Additional Public Prosecutor Ms. V. S. Choudhary well assisted by learned Advocate Mr. S. N. Pagare for the informants vehemently submitted that there is ample evidence against the present appellants. The appellants intended to purchase the adjoining agricultural lands to the land which they had

purchased in 2014. When the villagers refused to give them the land, they had poured 100 litres of chemical in their land, resulting in contamination of the air and the water. The people around the vicinity who are consuming the water, are suffering from various illness including serious illness and the voluminous record is available to that extent. The Water Pollution Board was not responding properly and, therefore, the complainant was required to approach the Court. Thereafter, the samples have been taken from various well, and it is found that, the water is contaminated. People have right to get clear, fresh and pure water, however there is criminal conspiracy of the present appellants. Each time when the villagers have approached the revenue authorities or police authorities challenging the action of pouring chemical by the present appellants and their company, there was no proper response. Even the medical reports of several persons have been produced on record. Even if we adopt procedure to clear or making the water pure which is now contaminated then that process would take more than ten years, and till then the villagers are required to cope up with such contaminated water. It is one of the heinous crimes the appellants are committing. They do not deserve any sympathy. Due to the contamination of the drinking water, long term effects,

such as, Cytotoxic and Genotoxic effect and all the symptoms would be found in the complainants and the generations to come. All this has been done by the present appellants to harass particular community and merely because the complainants are from a particular community and, therefore, offences under Atrocities Act are definitely made out. Their application under Section 438 of Code of Criminal Procedure is barred under Section 18 of the Atrocities Act.

9. At the outset, it can be seen that the First Information Report which has filed or registered i.e. Crime No.169 of 2019 is stated to have been given by one Shesherao Gyanuji Jadhav. However, if we find Miscellaneous Criminal Application No.183 of 2019 then it appears to have been filed by about 53 persons. The copy which has been provided at page No.82-A also shows an order which is stated to be passed on 12-06-2019 stating that, "perusal of the application show that there is no prayer to refer the matter to police under Section 156 (3) of Code of Criminal Procedure but to initiate action against the accused and, therefore, the applicants were directed to lead evidence before issue of process." The order thereafter passed under Section 156 (3) of Code of Criminal

Procedure appears to have not been filed on record, but the fact remains that there is such order. It appears that all those 53 persons are the members of Scheduled Castes or Scheduled Tribes coming within the ambit of Atrocities Act. Now the First Information Report is in the name of only one person, but it also says that, he has produced the copy of the order passed by Special Judge under Section 156 (3) of Code of Criminal Procedure and then he is lodging the report. According to him, the present appellants had purchased land Block No.144 admeasuring 8 Hectares in 2014. He then says that appellant No.1 had approached him on 15-07-2017 with a request that he should sell his land to him, that means from 2014 to 2017 there was no problem. He further says that nobody was ready to sell their land to the appellant No.1 but then the act of pouring chemical was firstly done on 01-01-2018 at about 12.00 p.m. It does not say how many tankers containing chemical were poured, but chemical was poured in Block No.144. Thereafter, he says that though it had caused problems like omitting, headache and breathing to the people, the appellants continued to pour the tankers. Till the date of the complaint he says that the liquid or chemical had percolated from the land of the appellants to the land of those complainants in Block No.123, 124, 143, 139, 141, 142,

140 and then it has contaminated the water in the well in those lands. Though there is affidavit and counter-affidavit by both sides, it is to be noted that the village map has not been produced so as to show that these lands are adjoining the land Block No.144. Further though there is various reports of the Water Pollution Control Board showing various chemicals those are present in the water from the well of which samples were taken including the sample from Block No.144, yet it is to be noted that there is no expert opinion produced on record as to whether such percolation is possible from the well of one land to the well in another land. The intention is the main criteria to attract the provisions of Atrocities Act. Here from the contents of the First Information Report it cannot be stated that merely because the complainants were not ready to sell the land to the present appellants and because they are of a particular community, this act has been done by the appellants. This is prima facie view of this Court based upon the documents on record. No doubt the contamination that has taken place in respect of the water in various well in the vicinity, would definitely affect the mankind, but unless there is direct evidence that it is the result of the alleged pouring of the chemical by the appellants in their land, the appellants cannot be sent behind bars. Further we cannot forget

that one Rekha Waghmare had filed complaint stating that she had seen some of the complainant pouring some powder in the well. If the complaint that is lodged with Police Inspector against Dr. Pramod Eknath Jadhav and others on 06-12-2018 is perused, it would show that the said Rekha Waghmare is the real sister of Dr. Pramod Eknath Jadhav who is signatory to Miscellaneous Criminal Application No.183 of 2019. Under these circumstances, the physical custody of the appellants is not required for the purpose of investigation. The interim relief granted to the present appellants deserve to be confirmed, accordingly it is confirmed. Hence, following order.

ORDER

- 1) Appeal is hereby allowed.
- 2) The order passed by learned Additional Sessions Judge (Spl.Judge SC & ST Act), Aurangabad, in Criminal Bail Application No.1548 of 2019, dated 26-07-2019 is hereby set aside. Said application stands allowed.
- 3) In the event of arrest of the appellant No.1 Dwarkadas s/o Yashwant Bansode @ Pathrikar, No.2 Yogesh s/o Uttamrao Bansode @ Pathrikar and No.3 Varun s/o Dwarkadas Bansod @ Pathrikar, in connection with Crime No.169 of 2019, registered with Wadod Bazar

Police Station Tq. Phulambri Dist. Aurangabad, they be released on furnishing P.R. Bond of Rs.50,000/- each (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).

4) The appellants shall not indulge in commission of any such act, which may amount to tampering the prosecution evidence.

5) The appellants shall not enter into the area of village Pathri until trial.

6) In addition to this, appellants shall appear before the Investigating officer on every Monday in between 10.00 a.m. to 02.00 p.m., till filing of charge-sheet.

7) Further the order passed by this Court on 24-09-2019 regarding attendance of meeting is also confirmed and it should remain till the conclusion of the trial, if he is a still member of Grampanchayat.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-