

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.469 OF 2018

Vikas Shivram Kamble

Applicant

versus

Balasaheb Baban Barate and another

Respondents

Ad.Adwait Bhonde for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th September 2021

PC :

1. This is an application for cancellation of anticipatory bail granted to respondent no.1 vide order dated 25th June 2018.

2. CR No.57 of 2018 was registered with Uttam Nagar Police Station under Sections 420,467, 468, 471 of Indian Penal Code. The case of prosecution is that Gat No.719 situated at Bhagatwadi, Pune admeasuring 3.5 acres belonged to grandmother of the complainant. Th complainant is her legal heir. The said land was vacant. It was not possible for the complainant to look after the land as he was resident of thane. The complainant learnt about encroachment and illegal construction carried out by the accused. On enquiry with them it was stated that the property was acquired by accused in 2002 from Dagadu Sarode and the agreement was executed on 16th June 2003. The complainant doubted the genuineness of the document. In 1979 the grandfather Dagadu Sarode had expired. In 1998 the fabricated document was prepared. The complainant filed suit before Civil Court for adding his name on the record as legal representative. The suit was decided ex-parte in favour of complainant.

3. Learned advocate for applicant submitted that there is non application of mind on the part of learned Judge while allowing the said application. The factual aspects of the matter were not appreciated. Custodial interrogation of applicant was necessary. The complainant had forwarded complaint to the Atrocities Commission and pursuant thereto the FIR was registered. However, provisions of Atrocities Act were not invoked. In the event of invoking such provisions, application u/s.438 of Cr.PC would not have been maintainable.

4. Learned counsel for applicant, however, submitted that this application is pending since 2018. In the meantime charge sheet is filed before concerned Court.

5. On perusal of the FIR it is apparent that provisions of SC & ST (Prevention of Atrocities) Act, were not invoked and hence bar u/s.18 of the said Act is not attracted. Learned Sessions Judge has allowed the application by order dated 25th July 2018. It was observed that dispute is of civil nature. The accused had appeared before the Investigating Officer and his statement was recorded on several occasions. Custodial interrogation of the respondent-accused was not necessary. It is pertinent to note that subsequently the investigation is completed and charge sheet is filed. The complainant has also filed suit. In the light of the facts of this case, no case is made out to interfere in the impugned order. Hence, Criminal Application No.469 of 2018 is rejected and disposed of.

(PRAKASH D. NAIK, J.)

MST