

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 474 OF 2015

1. Sau. Vaishali Satish Harne,
Aged about 38 years,
Occu. : Household,
2. Satish Gajananrao Harne,
Aged about 44 years,
Occu. : Agriculturist,

Both R/o. Tank Nagar,
Anjangaon-Surji, Tq. Anjangaon-Surji,
Dist. Amravati.
3. Gajananrao Wamanrao Harne,
Aged about 65 years,
Occu. : Agriculturist,
R/o. Hingani- Gawandgaon,
Tq. Anjangaon-Surji, Dist. Amravati. . **APPLICANTS**

... VERSUS ...

1. State of Maharashtra through
PS.O. Chincholi-Rahimapur,
Tq. Anjangaon-Surji, Dist. Amravati.
2. Bhimrao Kashirao Gawhale,
Aged about 59 years,
R/o. Gawandgaon,
Tq. Anjangaon-Surji,
Dist. Amravati. . **NON-APPLICANTS**

Shri Kuldeep P. Mahalle, Advocate for the applicants.
Shri S. D. Sirpurkar, A.P.P. for non-applicant no. 1/State.
Shri R. G. Nitnaware, Advocate h/f. Shri O. Y. Kashid, Advocate for
non-applicant no. 2.

CORAM: Z. A. HAQ AND
AMIT B. BORKAR, JJ.
DATED: 02-03.2021

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.) :

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants have challenged registration of the First Information Report No.78/2015 registered with the non-applicant no.1 – Police Station for offences punishable under Sections 143, 294, 323, 354, 427 and 506 of the Indian Penal Code and 3(1)(x), 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The First Information Report came to be registered against the applicants with the accusations that the agricultural land bearing Survey no.124/2 Gat No.337 at mouza Chincholi was being cultivated by the non-applicant no.2. It is alleged that the applicants on 30.6.2015 at 12.30 noon illegally entered the agricultural land in possession of the non-applicant no.2 and damaged the crop. When the non-applicant no.2 tried to obstruct him, the applicants abused the non-applicant no.2 and offended modesty of wife of the non-applicant no.2. It is alleged that all the applicants hurled abuses in the name of caste against the non-applicant no.2.

3. The applicants have, therefore, challenged registration of the First Information Report by way of present application. On

24.07.2015, this Court issued notice to the non-applicants and on 8.9.2015 issued Rule granting stay to the further proceedings qua present applicants for offences punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The non-applicant no.1, in pursuance of notice of this Court, has filed reply stating that there is sufficient material available against the applicants with the prosecution. It is further stated that the Investigating Officer has recorded statements of the witnesses and one Gopal Khandare is the eye-witness to the incident, which supports the case of the prosecution.

5. We have carefully considered the allegations in the FIR and the material produced by the applicants in support of their case. Annexure-III to the application is the judgment of the Member, Maharashtra Revenue Tribunal, Nagpur, in relation to grant of permission to sale of the land sought by the applicant no.1 and her family members. The non-applicant no.2 is the appellant in that appeal. The judgment is delivered against the non-applicant no.2 on 9.7.2013. We have perused the statements of witnesses produced by the learned APP on record. On perusal of the statements, we find that all the statements of witnesses against the applicants are same

without changing a word. The incident in question allegedly took place on 30.6.2014 when there was a dispute in relation to land between the applicants and the non-applicant no.2. The Apex Court in the case of **Hitesh Verma Vs. State of Uttarkhand and another** reported in **(2020) 10 SCC 710** had an occasion to consider the First Information Report in the context of hurling abuses in the name of caste in relation to dispute of immovable property between the parties . In the said context in paragraph nos. 13, 16 and 18 of the said judgment the apex court has observed as under:

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not

permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out”.

6. In the facts of present case also, there was dispute in relation to the land which was the subject matter of the dispute between the non-applicant no.2 and the applicants by way of Ceiling Appeal No.142/MRC-81/Chicholi/32/2004-05, which was decided on 9.4.2013. Therefore, in the facts of the present case also, there was dispute in relation to immovable properties, we, therefore, find that the victim was not allegedly abused to intimidate or harass only that the reasons that he belonged to scheduled caste or scheduled tribes. The allegations made against the applicants in the First Information Report are vague in nature as the First Information Report discloses the allegation that all the three applicants had abused the non-applicant no.2. At the same, in absence of specific

role to each of the applicants and in the context of Civil dispute in relation to immovable property, we are satisfied that continuation of the present proceedings against the applicants would amount of abuse of process of the Court. We, therefore, pass the following order:

ORDER

The First Information Report No.78/2015 registered with the non-applicant no.1 – Police Station for offences punishable under Sections 143, 294, 323, 354, 427 and 506 of the Indian Penal Code. read with Section 34 of the Indian Penal Code and 3(1)(x), 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE