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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 881 OF 2021

1. Ramesh Dattu Kathe
2. Bharat Dattu Kathe
3. Nirmal Bharat Kathe
4. Rajendra Ramesh Kathe
5. Sau. Aasha Bharat Kathe
Versus
The State of Maharashtra and Anr.

...Appellants
...Respondents

Mr. Kalpesh U. Patil for the Appellants.

Mr. D.R.Singh i/b S.B.Deore for the Respondent No.2.

Mr. A.R.Patil, A.P.P for the Respondent No.1-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 30th MARCH, 2022

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of Respondent No.1 – State. Mr. D.R.Singh waives notice on behalf of the respondent No.2.

3. Vide order dated 19th October, 2020, the aforesaid appellants were granted interim pre-arrest bail on certain terms and conditions and notice was issued to the respondent No.2.

4. The appellants, by this appeal, seek pre-arrest bail in connection with C.R.No. I 59 of 2020 registered with the Nashik Taluka Police Station, Nashik, for the alleged offences punishable under Sections 143, 147, 148, 149, 323, 354, 504, 506, 336 of the Indian Penal Code and under Sections 3(1)(s), 3(1)(r), 3(1)(w)(i) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

5. Learned Counsel for the appellants submits that the allegations as against the appellants are false and baseless and contrary to the material on record. He submits that although the alleged incidents are stated to have been taken place on 21st March, 2020 and 15th May, 2020, the aforesaid complaint/FIR was lodged on 18th September, 2020 i.e. after a delay of more than 6/4 months. He submits that essentially, there is a dispute with respect to a piece of land i.e. Gat No. 343, between the appellants and the respondent No.2. He submits that the appellants had purchased the suit property vide registered Sale Deed from one Kiran Sitaram Chavan in 1991

and that, vide the said Sale Deed, the appellants were put in possession of the suit property which is the bone of dispute between the appellants and the respondent No.2. He submits that after the appellants were put in possession of the said suit property, the appellants started cultivating the suit land. Learned Counsel relied on the 7/12 extract showing that the said land is being cultivated by the appellants. The said 7/12 extract is on page 53 of this appeal.

6. Learned Counsel further submits that Kiran Chavan had purchased the said land from one Vinod Mutha, Power of Attorney Holder of Malhari Jadhav in 1985 (Malhari Jadhav is the ancestor of the Complainant). He submits that Kiran Chavan who had purchased the said property in 1985 was in possession of the same till 1991, till the said land was sold by him to the appellants. He further submits that the respondent No.2 filed a civil suit as against the appellants in 2017, challenging both the Sale Deeds i.e. Sale Deed of the year 1985 and 1991. The respondent No.2 also filed an application seeking injunction as against the appellants and sought an order, that the appellants shall not create any third party rights in the suit property. He submits that the said interim application was rejected by the trial Court and that the same has been confirmed by this Court. Learned Counsel submits that infact, the appellants were constrained to file

an FIR on 23rd April, 2020 against the respondent No.2 and others as they were trying to dispossess them from the suit land and were threatening to falsely implicate them under the Atrocities Act. The said FIR is on page 81 of this appeal.

7. Learned Counsel for the respondent No.2 opposed the appeal. He submits that the FIR clearly shows that the appellants have abused the respondent No.2 in the name of his caste and have even assaulted the respondent No.2.

8. Learned APP states that there are independent witnesses who had heard the abuses, however, not a single statement is shown, in support thereof.

9. Perused the papers, in particular, the orders passed by the Civil Court with respect to the suit property. *Prima facie*, it appears that the appellants has purchased the suit property vide registered Sale Deed from one Kiran Chavan in 1991. The said Sale Deed is a registered Sale Deed. The respondent No.2 has filed a civil suit, challenging the said Sale Deeds of the year 1991 (entered into between the appellants and Kiran Chavan) and 1985 (entered into by one Vinod Mutha, Power of Attorney Holder of

Malhari Jadhav, and Kiran Chavan). The documents on record reveal that the application filed by the respondent No.2 seeking injunction as against the appellants was rejected by the Joint Civil Judge, Senior Division, Nashik vide order dated 31st January, 2019. The said order was confirmed in appeal by the learned District Judge – 2, Nashik vide order dated 2nd June, 2020. It also appears that the said orders were challenged in this Court by the respondent No.2 by filing Writ Petition St.No. 97104 of 2020. Since the Advocate appearing for the appellants had no instructions and inspite of issuing notice to the petitioners, since none appeared for the petitioners, the said petition was dismissed for want of prosecution on 5th February, 2021. There is nothing on record to show that any application has been filed seeking restoration of the said petition.

10. The incident, in question, is stated to have been taken place on 21st March, 2020 when the appellants allegedly abused the respondent No.2 in the name of his caste and also assaulted him by entering upon his land. Although, in the said FIR, it is stated that there was an order passed by the District Court ordering status-quo, however, the orders on record are to the contrary. The injunction was refused on 31st January, 2019 and even the appeal filed by the respondent No.2 was rejected vide order dated 31st October, 2020. It appears that during this time, the respondent No.2 lodged

an FIR, (on 18th September, 2020) with respect to an incident dated 21st March, 2020. In this background, i.e. of the civil suit between the parties and an injunction order having been refused, the present facts will have to be considered. It *prima facie* appears that after the injunction was refused, the aforesaid FIR was lodged on 18th September, 2020 alleging hurling of castiest abuses by the appellants on 21st March, 2020. The respondent No.2, in the FIR has given incorrect information i.e. of a status-quo order passed by the Court. Considering the peculiar facts, the possibility of the respondent No.2 falsely implicating the appellants cannot be ruled out.

11. Considering the aforesaid, the interim protection granted by this Court vide order dated 19th October, 2020 stands confirmed on the following terms and conditions :-

ORDER

- (i) In the event of the arrest, the appellants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.10,000/- each, with one or two sureties in the like amount ;
- (ii) The appellants shall attend the concerned Police Officer on every Saturday from 10.00 a.m. to 12.00 noon, till the filing of the chargesheet, and thereafter, as and when called;

(iii) The appellants shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

(iv) The appellants shall inform their latest place of residences and mobile contact numbers and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The appellants shall cooperate in the conduct of the trial.

12. Rule is made absolute on the aforesaid terms and the Appeal is accordingly disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.