

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 1207 OF 2019

Yashwant Babu Sawant

... Appellant

Versus

The State of Maharashtra and Anr.

... Respondents

...

Mr. Ashok P. Mundargi, Senior Advocate, i/by Niranjan P. Shimpi,
for the Appellant.

Mr. A.R. Kapadnis, A.P.P. for the Respondent-State.

Mr. V.S. Tadake, Advocate for Respondent No.2.

...

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : AUGUST 25, 2022

ORDER : (Per : SHARMILA U. DESHMUKH, J,) :

1. By this appeal preferred under Section 14A of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC/ST Act”), the Appellant seeks to quash and set aside the impugned order dated 30th January, 2019, passed by the learned District Judge-11 and Additional Sessions Judge, Pune, below Exh.1, in Criminal Bail Application No. 4137 of 2019,

and prays for pre-arrest bail in connection with CR No.891 of 2019 dated 06.08.2019, registered with Hinjewadi Police Station, for the offences punishable under Sections 120-A, 191, 192, 193, 197, 198, 199, 200, 406, 420, 467, 468, 504, 506 and 34 of the Indian Penal Code (for short, “IPC”) and Section 3 (1)(f) of the SC/ST Act.

2. We have heard Mr. Mundargi, learned Senior Counsel appearing for the Appellant; Mr. A.R. Kapadnis, learned APP for respondent No.1-State and Mr. V. S. Tadake, learned Advocate for Respondent No.2.

3. Mr. Mundargi, learned Senior Counsel appearing for the Appellant submits that a perusal of the First Information Report (FIR) reveals that the dispute between the parties is in fact, civil in nature and has been deliberately given the colour of a criminal prosecution; that even if the allegations made in the FIR are taken as it is, no offence is disclosed qua the appellant; that there is an inordinate, unexplained delay of 15 years in lodging the FIR, inasmuch as, the offence is alleged to have taken place on 30th October, 2004 – when the appellant was bequeathed the land in

question by a registered Will, whereas, the FIR was lodged on 6th August, 2019; that it is an admitted position that there are civil and revenue proceedings pending between the parties; and that no favourable orders have been passed in favour of the Complainant i.e. Respondent No.2 in the said proceedings.

4. Mr. Kapadnis, learned APP appearing for the respondent-State opposes the appeal and submits that the alleged Will of the year 2004 is a fabricated document; and that the aforesaid appeal ought not to be entertained. Mr. Tadake, learned counsel appearing for the Respondent No.2 submits that fabrication of the alleged Will is evident from the fact, that the alleged Will bequeaths the same property, which is the subject matter of the sale deed executed in the year 1997, between the Respondent No. 2 and the testator; that there appears to be forgery of the signature of the testator on the alleged Will of the year 2004.

5. Perused the papers with the assistance of the learned counsel for the parties.

6. A perusal of the FIR dated 06.08.2019, reveals that the FIR was lodged as against the Appellant, Shri S.N.Khirid (the then

Talathi) and Shri N.B. Dhangar (the then Naib-Tahsildar). It is alleged by the Respondent No.2 (Complainant) that in the year 1997, he had purchased landed property, admeasuring 6.75 Gunthas from his maternal aunt Smt. Dhondabai Laxman Dolas, a resident of Pune, *vide* registered sale deed No.1007 of 1998; that when he visited the Talathi's office for the purpose of inquiring about the mutation of his name in the 7/12 extract, he was informed that due to non furnishing of agriculturist certificate, his name is not mutated in the 7/12 extract; that on 03.10.2006 and 06.11.2006, he raised grievance on "Lokshahi Din" with the Collector and pursuant to order of the Collector, *vide* entry No.6318, the change was noted, however, his name was not mutated in the 7/12 extract; that he was informed by the then Talathi, Shri Khirid that there is an objection raised by one Rahul Waghmare to the mutation of the Complainant's name in the 7/12 extract; that the Complainant therefore, filed an RTS/Appeal No.185/2006 with the then Tahsildar Shri Dhangar; that during proceedings the said Rahul Waghmare stated that he has not taken objection to the mutation of the name of the respondent no.2 in the 7/12 extract; that in the said

proceeding, the Appellant raised a claim in respect of the said property; that inspite of the statement of Rahul Waghmare, the then Tahsildar had given a verdict in favour of the Appellant; against which the complainant had filed RTS/Appeal No.179/2007, which is pending. It further appears that the respondent No.2 has also filed Civil Suit No.1488 of 2015 against the Appellant; as well as, a private complaint on 30.04.2014, in which an order under Section 156(3) of the Cr.P.C. has been passed. It is alleged that inspite of having purchased the landed property *vide* registered sale deed, the Appellant, the Talathi Shri Khirid and the then Naib-Tahsildar Shri Dhangar conspired and did not permit the mutation of his name in the 7/12 extract and by illegal means transferred the property in the name of the Appellant and thereby cheated the Complainant.

7. Perusal of the FIR shows that the FIR was lodged against three accused i.e. the Appellant, Shri Khirid, the then Talathi and Shri Dhangar, the then Naib-Tahsildar, however, during investigation, Shri Dhangar and Shri Khirid were exonerated and only the Appellant was chargesheeted. The Complainant does not allege fabrication of the alleged Will of the year 2004, executed by

Smt. Dhondabai Dolas in favour of the appellant as is sought to be contended by the Learned APP and the learned counsel for Respondent No.2. The allegations in the FIR pertain to non-mutation of the name of the respondent No.2, in the 7/12 extract. It is not disputed that against the non mutation in the revenue records, revenue proceedings are initiated by Respondent No.2; that the alleged Will has been challenged by the Complainant in civil proceedings, and, the said case is pending.

8. The allegation as against the Appellant is that he participated in the hearing before the then Naib Tahsildhar and claimed right in the said property and that in connivance with the Talathi and Tahsildar, the said property has been illegally transferred in the name of the Appellant. Considering the facts of the present case, we *prima facie*, find considerable force in the submission of Mr. Mundargi, Learned Senior Counsel for Appellant, that a civil dispute is being given the colour of a criminal prosecution. The exoneration of two of the Accused i.e. the Talathi and Naib Tahsildar *prima facie*, creates doubt about the entire case, as alleged by the Complainant with respect to the illegal transfer of the

property by the appellant with the connivance of the statutory Authorities. In our considered opinion, the allegations in the FIR do not, *prima facie*, disclose the commission of the alleged offences.

9. Although, the FIR does not allege fabrication of the Will dated 30.10.2004, we have perused the alleged Will executed in favour of the Appellant and find that the father of the complainant is one of the attesting witness to the alleged Will. Since, civil proceeding i.e. challenge to the Will is concerned, is pending, we do not wish to comment on the said Will, lest it may influence the civil proceeding.

10. A perusal of the panchanama dated 07.08.2019, at page No.354 of the appeal reveals that the entire property consist of 81 gunthas. It appears that the alleged purchase of 6.75 gunthas by the complainant is of an undivided portion. The complainant is unable to point out the exact portion in the entire property (88 gunthas) so purchased by him and the subject property of the alleged Sale Deed is the same appears to be doubtful.

11. Considering the aforesaid, we are of the *prima facie* view, that the allegations in the FIR do not disclose the commission of the alleged offences, and, hence the bar under Section 18 of the SC/ST Act would not apply. The Appellant is therefore entitled to pre-arrest bail in connection with CR No.891 of 2019 dated 06.08.2019, registered with Hinjewadi Police Station, for the alleged offences. We make it clear that the observations made herein are only for the purpose of deciding the application seeking pre-arrest bail and that the trial Court shall conduct the trial uninfluenced by the observations made herein.

12. Accordingly, we pass the following order:

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned order dated 30th January, 2019, below Exh.1, in Criminal Bail Application No. 4137 of 2019, passed by the learned District Judge-11 and Additional Sessions Judge, Pune, is hereby quashed and set aside.

- (iii) In the event of arrest, the appellant is directed to be released on bail, on executing PR Bond in the sum of Rs.25,000/-(Rupees Twenty Five Thousand) with one or two sureties in the like amount.
- (iv) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The appellant shall inform his latest place of residence and mobile contact number 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;
- (vi) The appellant shall cooperate with the Investigating Agency.
- (vii) The Appeal is disposed of accordingly.
- (viii) All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.