

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 192 OF 2023

VITTHAL RAMBHAU HAPASE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. Deshmukh Himmatsinh D.

APP for Respondent No.1/State : Mr. P. M. Kulkarni

Advocate for Respondent No.2 : Mr. Jain Jitendra Shantilal (appointed Through
Legal Aid)

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CORAM : KISHORE C. SANT, J.

DATE : 3rd MAY 2023.

Per Court :

Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

1. The appellants have approached this Court challenging the order dated 27.02.2023 passed by the learned Additional Sessions Judge (Court No.3), Ahmednagar in Criminal Bail Application No.263/2023, thereby the application for bail in the event of arrest of the appellants came to be rejected. Therefore the appellants have approached the

Court apprehending their arrest in connection with FIR bearing Crime No.29/2023 registered with Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Sections 337, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. In the FIR, there is allegation by respondent no.2 that respondent no.2 and appellants have their agricultural land adjacent to each other. Respondent no.2 belongs to a Scheduled Caste, whereas the appellants belong to Upper Caste. There was a dispute in respect of natural stream water flowing from both the lands. On that count, there was a quarrel between the parties and in the said quarrel, it is alleged that the present appellants abused respondent no.2 in the name of caste.

3. It is the case of the appellants that there was already civil dispute in respect of land pending between uncle of respondent no.2 and the present appellants. There was also a case i.e. revenue proceeding pending under the Mamlatdar's Court Act and Tahsildar had passed

order on the application/revenue proceeding of father of the informant. The said application was allowed by judgment and order dated 16.06.2022.

4. The learned Advocate for the appellants thus submits that because of this dispute, appellants are falsely implicated in the offence. From the FIR it is clear that it has taken place in the field of both the parties. He relied upon the judgment passed by this Court in the case of **Kiran Madhukar Ingle Vs. State of Maharashtra and Another**, reported in 2019(3) Mh.L.J.(Cri) 785 and the judgment in the case of **Vinod s/o Shankar Thakare Vs. State of Maharashtra**, reported in 2022 (6) Mh.L.J. (Cri) 383.

5. Learned appointed Advocate for respondent no.2 opposed the appeal saying that clearly allegations are spelt out in the FIR. There is no fact that the appellants belong to Upper Caste and complainant belong to Scheduled Caste. If the utterances are same, those are clearly humiliating respondent no.2.

6. The learned APP also opposed the appeal supporting the order passed by the learned Sessions Judge.

7. It is accepted that there was a civil dispute between the uncle of respondent no.2 and the present appellants. There was also proceeding under the Mamlatdar's Court Act lodged by father of informant against the present appellants. In the judgment of Vinod s/o Shankar Thakare (supra), this Court by relying upon the judgment of the Hon'ble Apex Court in the case of **Hitesh Verma Vs. State of Uttarakhand and Another**, reported in (2020) 10 SCC 710, held that when civil dispute is pending between the parties, no offence is made out as there is possibility of false implication of the accused persons. The dispute cannot be said to be a dispute only on the count of caste and bail was granted in the event of arrest.

. In the judgment of Kiran Madhukar Ingle (supra), this Court held that when it is shown that the offence is lodged because of the civil dispute pending between the parties, the bar under Section 18 or 18A of the Atrocities Act is not attracted and the power under Section 482 of the Code of Criminal Procedure can be exercised. This Court finds that

in this case the offence alleged under the Cr.PC. Act only because of Section 18 and the learned trial Court has rejected the application.

8. Looking to the facts of the case and in view of the judgment discussed above, this Court finds that the nature of dispute is civil in nature and the possibility of false implication cannot be denied. Therefore the appeal deserves to be allowed. Hence the following order.

ORDER

- (i) The appeal is allowed.
- (ii) In the event of arrest of appellants in connection with FIR bearing Crime No.29/2023 registered with Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Sections 337, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on executing PR. bond of Rs.15,000/- (Rupees Fifteen Thousand) each with one solvent surety in the like amount.
- (iii) Both the appellants shall attend the concerned Police Station as and when called by the Investigating Officer.

- (iv) Both the appellants shall not tamper with the evidence and shall not try to contact any of the witnesses.
- (v) Learned Advocate for Respondent No.2 has appeared through Legal-Aid. He is entitled to fees as per Rules.
- (vi) With this, the appeal is disposed off.

[KISHORE C. SANT, J.]

Najeeb.