

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1678 OF 2019

Prakash S/o Dattatray Patki
Age : 74 years, Occu. Pensioner,
R/o Washi, Tq. Washi, Dist. Osmanabad

.. Applicant

Versus

1] The State of Maharashtra,
Through Superintendent of Police,
S.P. Office, Osmanabad

2] The Police Station, Washi,
Through – Dy. S.P. Washi,
Tq. Washi, Dist. Osmanabad

3] Ankush S/o Gopinath Gawali,
Age : 70 years, Occu : Agril,
R/o Sailani Baba Nagar, Washi,
Tq. Washi, Dist. Osmanabad

.. Respondents

...
Advocate for the applicant : Mr. S.J. Salunke
APP for the respondent – State : Mr. V.S. Badakh
Advocate for the respondent no. 3 : Ms. Maya R. Jamdhade
...

**CORAM : MANGESH S. PATIL &
M. M. SATHAYE, JJ.**

DATE : 16 MARCH 2023

ORDER (MANGESH S. PATIL, J.) :

The applicant is invoking the powers of this Court under section 482 of the Code of Criminal Procedure, 1973 for quashing a crime registered against him being crime no. 61 of 2019 registered with Washi Police Station, District – Osmanabad for the offences punishable under section 447, 504 of the Indian Penal Code and section 3, 3(2) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to '**Atrocities Act**').

2. Briefly stated the allegations in the FIR are to the effect that the respondent no.3 owns a house and a nearby 2-1/2 *Guntha* open portion adjacent to it. The applicant possesses his agricultural land adjacent to respondent no.3's land and there is a wire fencing dividing the two properties.

There is a public way to approach the respondent no. 3's property. On 09-03-2019 at about 2:00 pm, the applicant with his wife arrived at the scene with a JCB machine and started digging the way leading to his property. When the respondent no. 3 and his wife protested, the applicant started hurling abuses declaring that the portion of the land he was digging belonged to him. Respondent no. 3 then alleges that the applicant illegally and unauthorizedly obstructed his use of the public way by digging it.

The respondent no. 3 then approached the Police. The applicant and his son were called there. The applicant promised to restore the way in 2-3 days. However he avoided doing it and the respondent no. 3 lodged the FIR on 20-03-2019 and the offence was registered.

3. The learned advocate for the applicant Mr. Salunke would vehemently submit that a pure civil dispute is being presented with a

concocted version on the basis of which the offence has been registered without there being any element of crime. He would take us through the papers to demonstrate that the applicant is the owner of a portion admeasuring 2 *Hectare* 97 *Are* from survey no. 236. It was duly measured in the year 2019. It was found that there was encroachment by one Smt. Molwane over 9 *Guntha* portion owned by him. A joint measurement was conducted and it was again revealed that there was indeed such an encroachment by that lady. Regular Civil Suit no. 394 of 2018 was filed against her and two others which was compromised on 14-01-2019 and the possession of encroached portion of 9 *Gunthas* was returned to the applicant.

4. Mr. Salunke would then refer to the measurement map and submit that in-fact there is no access to the plot of the respondent no. 3. The alleged public way is in-fact not a way and in any case, it is a matter of dispute of purely civil nature and the respondent no. 3 has given a colour of criminality without there being necessary ingredients regarding the commission of the offence. The FIR has been lodged belatedly which lends support to the applicant's version regarding concoction. He would rely upon the decision in the matter of ***Hitesh Verma V. State of Uttarakhand and Another; 2020 DGLS (SC) 605.*** He submits that it would be sheer abuse of the process of Court allowing such a fragile and concocted allegations making the applicant face the trial.

5. Learned APP and the learned advocate for the respondent no. 3 strongly oppose the application. They submit that under section 482 of the Code of Criminal Procedure, the powers of this Court are limited. It is not expected to decipher the allegations much less to demonstrate that the material collected by the Investigating Officer is sufficient to convict the applicant. The inferences reached by the Investigating Officer based on the material collected by him needs to be proved during the trial for which the prosecution should get an opportunity. Admittedly, the Investigating Officer having reached such a conclusion has filed the chargesheet and the prosecution deserves to be extended an opportunity to establish the charge.

6. We have carefully considered the rival submissions and perused the papers.

7. Indeed, there are inherent limitations on the powers of this Court under section 482 of the Code of Criminal Procedure in quashing and setting aside a crime. It is not that there is any bar as such but the scope for this Court to cause interference is limited.

8. It is trite that the scope of power of this Court is limited in ascertaining as to if going by the allegations and the material collected by the Investigating Officer, the ingredients for constituting the offence can be made out. There is no scope to consider the probable defence

available to the accused during the trial unless there is some material produced by him which is of a sterling quality and impeccable character which alone can be gone into in such a proceeding while exercising powers under section 482 of the Code of Criminal Procedure. Bearing in mind these principles, if one peruses the papers, it does appear that there has been a civil dispute going on between the parties.

9. Admittedly, the respondent no. 3 has filed a civil suit against the applicant and his sons for perpetual injunction restraining them from obstructing his peaceful possession over his property which he describes as a portion admeasuring 4 Are, CTS no. 238/E corresponding to municipal property no. 3540. Conspicuously, in the four boundaries he has shown a public way of 15 feet width to the east of his plot. Admittedly, though initially ad-interim injunction was granted to the respondent no. 3, ultimately his application for temporary injunction (Exhibit 5) was rejected against which he has preferred a Miscellaneous Appeal which is pending before the District Court. Pertinently, this suit seems to have been filed in the month of September 2019 (R.C.S. no. 819 of 2019) after the criminal law was set in motion by the respondent no. 3. It is therefore abundantly clear that this circumstance *prima facie* is indicative of some motive on the part of the applicant.

10. Pertinently, it is observed by the trial Court while rejecting the application for temporary injunction *prima facie* accepting his ownership and possession over his property bearing CTS no. 238/E admeasuring 4 *Guntha albeit*, the averments of the respondent no. 3 regarding existence of 15 feet wide road to the east of his plot has not been found favour with the trial Court which, therefore, rejected the application. It is quite apparent that even in that suit the applicant herein has not been disputing the fact about the respondent no. 3 having purchased his property under sale deed dated 10-01-2003.

11. Irrespective of the sustainability of the claim of the respondent no. 3 regarding existence of 15 feet wide road to the east of his property, simultaneously, one cannot ignore the fact that since 2003, he has been using it for which there is no other access even according to the applicant.

12. Be that as it may, the afore-mentioned circumstances are indicative of the fact that there is some dispute between the two sides which is pending before the civil Court and at this juncture, it is sufficient to proceed on the premise that there must have been a strong motive for the applicant which can easily be attributable to him.

13. So far as the actual incident is concerned, there are statements of the witnesses to lend support to the allegations of the respondent no. 3. One Gokul Kisan Sukale claims to have heard the

commotion and the noise of the JCB machine and when he along with his nephew and grandson reached the house of the respondent no. 3, the applicant was seen digging near the plot of the respondent no. 3 with a JCB machine wherein the applicant hurled abuses and destroyed the way. Obviously, there are statements of his nephew Bapu and grandson to the same effect.

14. The statements are sufficient to disclose the ingredients for constituting the offences punishable under section 447 and 504 of the Indian Penal Code.

15. So far as the offences under the Atrocities Act, the FIR as well as the chargesheet does not exactly state as to which offences under that Act are being invoked. It is only mentioned as section 3 and section 3(2) without further expressly mentioning as to which offences the Investigating Officer has been intending to charge the applicant with.

16. The respondent no. 3 who is the original informant in his affidavit-in-reply has made an attempt to fit these allegations under section 3(1)(za)(A) which contemplates obstruction or prevention of a member of a scheduled caste or scheduled tribe in using a common property, resources of an area. An attempt is also made even to demonstrate that the allegations would constitute the offences punishable under section 3(2)(va) which is defined as committing an

offence specified in the schedule against a person or a property knowing that such a person is a member of scheduled caste or scheduled tribe.

17. It is indeed peculiar state-of-affairs wherein the chargesheet does not precisely indicate as to for which offences under the Atrocities Act, the Investigating Officer is intending to charge the applicant. The respondent no. 3 being an informant is now seeking to fit his case under a specific category of the offences. Pertinently, the Special Court has taken cognizance and the matter is pending before it for last more than 3 years.

18. In view of such peculiar state-of-affairs, according to us, it would be appropriate that so far as the offences under the Indian Penal Code, there being enough material, the Special Court considers the afore-mentioned aspects so far as the offences under the Atrocities Act are concerned and makes it clear as to for which offences under the Atrocities Act, it has taken cognizance and frames the charge accordingly.

19. We, therefore, dismiss the application, however, granting liberty to the applicant to seek discharge.

[M. M. SATHAYE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/