

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2249 OF 2021

**DEEPAK VITTHAL KHALANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Satej Jadhav, Advocate h/f Mr. A. D. Mane, Advocate for applicants

Mr. S. D. Ghayal, APP for the respondent/State

Mr. S. B. Solanke, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA
PRABHUDESSAI &
R. M. JOSHI, JJ.**

RESERVED ON : 19th JANUARY, 2023

**PRONOUNCED : 3rd MAY, 2023
ON**

PER COURT (PER- R. M. JOSHI, J.):-

1. This is an application under Section 482 of Cr.P.C. to quash and set aside order dated 17/12/2019 passed by the learned Additional Sessions Judge, Dhule in Criminal Misc. Application No. 97/2018 under Section 156(3) Cr.P.C. and crime registered vide C R. No. 04/2020 registered with Dhule Taluka Police Station, Dhule for the offences punishable under Sections 3(1)(5)(8)(9)(13) of Scheduled Caste and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (for short 'Act').

2. It is the case of the applicants that respondent No.2 and Dilip Magan Mistri in partnership purchased an agricultural land bearing gut No. 228 situated at village Khandalay Bk. The previous application being Criminal Misc. Application No. 781 of 2014 filed by the Respondent No.2 against the applicants for offences under the SC and ST Act was withdrawn. The respondent No.2 filed another application bearing Criminal Misc. Application No. 97/2018 under Section 156(3) of Cr.P.C., wherein learned Addl. Sessions Judge directed the Investigating Agency to register and investigate the offence. Pursuant to the said order, offence came to be registered against the applicants.

3. The Applicant Nos. 1 to 7 are private individuals, whereas applicant Nos. 8 and 9 - Circle Officer and Talathi are retired State Government employees. A perusal of the complaint made to the Special Court shows that respondent No.2 in partnership had purchased Gat No. 228 on 30/03/2012 under

a registered sale deed. In the month of April, 2012, an application was made for mutation of the names of the purchaser in the revenue record. It is alleged that applicant Nos. 8 and 9 have made available documents filed by respondent No. 2 and his partner for registration of industry to co-accused. It is alleged that all the accused in collusion have filed false and frivolous suit and other revenue proceedings only to cause harrasment to the respondent no.2. It is alleged that in collusion with Talathi and Circle Officer lis pendens was recorded. It is also alleged that accused sent copy of the plaint in civil suit No. 3/2013 to the Bank and therefore loan was not sanctioned to the respondent No.2 and his partner. It is further alleged applicant Nos. 5 to 7 have defamed respondent No.2 in the village and therefore no worker is prepared to work in his land. It is also alleged by respondent No.2 that the well dug by them was damaged by accused Nos. 1 to 7. On these allegations direction was sought under Section 156(3) of Cr.P.C. for registration of offence. Learned Addl. Sessions Judge, Dhule by passing order dated

17/12/2019 directed Dhule Taluka Police Station to register offence against the applicants for offence under Section 3(1)(5)(9) of the Act, as applicable prior to amendment in the year 2016. On the basis of said direction offence came to be registered.

4. Learned counsel for the applicants submits that the present complaint and first information report is malafide as the previous complaints being Criminal M.A. No. 781/2014 and 1108/2018, lodged by the respondent no.2 and the partner Dilip Mistry did not disclose any offence under SC and ST Act. He submits that institution of proceedings such as filing of suit, recording lis pendens or even addressing an email to the Bank informing about filing of the suit would not constitute an offence under the SC ST Act.

5. Learned counsel for the respondent No.2 and learned APP submit that the contents of the complaint, prima facie disclose essential ingredients of the alleged offence under the SC & ST Act. It is submitted that the Court cannot

look into the correctness or genuineness of these allegations at this stage and cannot quash the FIR or the proceedings on the premise that the allegations are false.

6. It is well settled that the FIR/complaint or the criminal proceedings can be quashed under Section 482 of Cr.P.C. inter alia where the allegations made in the FIR or the complaint and the material in support thereof even if taken at their face value and accepted in their entirety do not disclose any offence or make out a case against the accused or where the criminal proceedings is manifestly appended with malafide and/or instituted maliciously with ulterior motive for wreaking vengeance due to private and personal grudge. Reliance is placed on the decision of the Apex Court in ***State of Haryana and Others Vs. Bhajan Lal and Others*** reported in ***(1992) Supp (1) SCC 335***.

7. In the instant case, it is undisputedly the subject land was purchased by the partnership firm of which Dilip Mistry is one of the partners. Said Dilip Mistry does not claim

to be a member of SC or ST community. The FIR indicates that some of the applicants have filed a civil suit against respondent No.2 and his partner, and have also initiated other proceedings before the Revenue Authority raising objection for transfer of land in their names. Similarly, lis pendens is registered by the applicants against respondent No.2 and the other partner. These proceedings are initiated in accordance with law. Pertinently in this regard in the year 2013 itself partner of respondent No.2 had lodged FIR with the police making identical allegation. Not only the partner but respondent No.2 himself, who is an Advocate, had filed Criminal M.A. bearing No. 781 of 2014 and 1100/2018 wherein allegations were made against the applicants for committing offences under SC ST Act. However, the respondent no.2 withdrew the said complaint, pursuant to which by order dated 05/12/2014 the learned 5th JMFC, Dhule disposed of the complaint as withdrawn.

8. The aforesaid facts make it clear that the dispute between the parties is essentially in respect of the property

purchased by respondent No.2 with his partner and the action taken by applicants is in accordance with law. The previous complaint filed by the partner does not refer to any act committed by the applicants to attract the provisions of SC and ST Act. Even in the present FIR, it is not averred that the applicants have committed any such act with an intention of preventing him from enjoying his property. All that is reflected in the first information report is that various proceedings are instituted by the applicant nos.1 to 7 against him and his partner. Mere institution of legal proceedings would not constitute an offence under the SC ST Act.

9. In order to constitute offence punishable under Section 3(1)(v) (as applicable prior to amendment of the year 2016), there must be willful dispossession of the member of the scheduled caste from his land or interference with the enjoyment of his rights over land, premises or water. Section (ix) would attract when whoever gives any false information to any public servant and thereby causes such public servant to use his lawful power to cause injury or annoyance of the

member of SC or ST. Institution of false malicious or vexatious suit or criminal or other legal proceedings against a member Scheduled Caste or Scheduled Tribe with an offence under Section 3(1)(viii). In the instant case, we do not find any such ingredients in the FIR or any other material to indicate that the respondent no.2 is sought to be dispossessed from the property or his possession is interfered with only because he is a member of the Scheduled Caste. It is within the right of any person to institute any legal proceeding and unless such suit or the proceeding is held to be malicious or vexatious, no offence is said to have been committed under clause (viii) of Section 3(1) of the Act. Similarly, there is nothing on record to indicate that any frivolous information was given to any public servant which has resulted in causing loss or injury to the respondent No.2. As per his own statement, the applicant Nos. 1 to 7 sent email to the Bank sending copy of Civil Suit No. 3/2013. Sending the copy of legal proceeding by itself would not amount to furnishing false information. Similarly, there is vague allegation that the

Applicants have caused damage to their well. These statements lack particulars. As far as applicant Nos. 8 and 9 are concerned, they are government servants. They cannot be prosecuted merely because they have raised certain objections and for the reason that the names of Respondent No.2 and his partner are not mutated in revenue record. Similarly, registration of lis pendens can by no stretch of imagination constitute offence.

10. All these aspects assume relevance in the teeth of the fact that in previous complaint filed by the respondent No.2 as well as his partner, there is absolutely no whisper about the respondent No.2 being harassed in any manner whatsoever because of his caste. Furthermore, as noted above, the previous complaint where some reference was made to the offence under SC&ST Act, has been withdrawn by respondent No.2. We therefore find force in the contentions made by learned counsel for applicants that the FIR/criminal proceeding is malicious and vexatious.

11. The present case is squarely covered by illustration 1, 3 and 7 in the case of Bhajanlal (supra). Hence the application is allowed in terms of prayer clause (A). The order dated 17/12/2019 passed by the learned Additional Sessions Judge, Dhule in Criminal Misc. Application No. 97/2018 under Section 156(3) Cr.P.C. and crime registered vide C R. No. 04/2020 registered with Dhule Taluka Police Station, Dhule for the offences punishable under Sections 3(1)(5)(8)(9)(13) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stand quashed.

(R. M. JOSHI, J.)

(ANUJA PRABHUDESSAI,J.)

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