

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

CRIMINAL WRIT PETITION NO. 1834 OF 2022

Bapurao Shamrao Sathe

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. P. N. Ghadge, Advocate for the Petitioner.

Mr. P. M. Kulkarni, APP for Respondent Nos. 1 and 2.

Smt. Sakshi Ajeet Kale, Advocate for Respondent Nos. 3 to 10.

CORAM : KISHORE C. SANT, J.

DATED : 13th APRIL, 2023.

P. C. :-

. Heard learned advocates for the parties. Taken up for final disposal at the admission stage by consent of the parties.

2. The petitioner is aggrieved by the order passed by the learned Additional Sessions Judge, Ambad dated 04.08.2022 passed on an application filed under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.PC.") preferred by the petitioner to the extent of accused Nos. 2 to 8 who are presently respondent Nos. 3 to 10.

3. The petitioner filed criminal miscellaneous application bearing Criminal Misc. Application No. 05/2022 in the Court of learned Additional Sessions Judge (Special Atrocities Cases) Ambad on

16.07.2022 alleging the offence under Sections 504, 506 r/w Section 34 of the Indian Penal Code (for short “I.P.C.”) and Sections 3 (1) (r) and 3 (1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short “Atrocities Act”) that, he is owner and possessor of the land Gat No. 194 to the extent of 2 H 78 R. He found that, accused No. 1 - Govind with the help of JCB machine has created road in his land by damaging the crop. The petitioner therefore on 23.05.2022 at 9.30 a.m. in the morning had been to the house of accused No. 1 – Govind to ask as to why he has made road from the land of the petitioner. It is alleged that, on that Govind called the present respondent Nos. 3 to 10 on the spot. The respondent Nos. 3 to 10 thereafter abused the petitioner in the name of caste and also threatened to do away. The petitioner therefore sent communication to the police station. However, no action was taken by the police authorities and therefore, he was constrained to file application under Section 156 (3) of the Cr.P.C. The learned Additional Sessions Judge recorded that, the allegations against accused Nos. 2 to 8 are vague and general in nature and are not sufficient to make out a case of commission of offence as against these respondents, however, issued direction to the police under Section 156 (3) of the Cr.P.C. to the extent of accused No. 1 – Govind. It is this order which is under challenge.

4. Learned advocate for the petitioner vehemently argued that, a clear case is made out against present respondent Nos. 3 to 10 also. He submits that, there are clear allegations made in the application. Since all these respondents came on the call of accused – Govind, it is clear that they came their with common object and therefore Section 34 as well as Section 149 of the I.P.C. are attracted. With the help of this certainly a case is made out to at least to direct investigation at the hands of police. He submits that, a complaint is lodged for the offences punishable under the Atrocities Act and therefore, the Court ought to have taken serious cognizance of the same and prays that the police be directed to carry investigation even against present respondent Nos. 3 to 10.

5. Learned advocate for the petitioner also invited attention to the communication addressed to the Superintendent of Police, Jalna dated 02.06.2022 and 20.06.2022 to the same authority to show that, though he was trying to lodge the complaint with the authorities, no cognizance was taken and therefore, ultimately he filed an application under Section 156 (3) of the Cr.P.C. on 16.07.2022. Since he had already tried to lodge the offence with the police, the complaint can be said to have been lodged after delay.

6. Learned advocate for respondent Nos. 3 to 10 vehemently argued the matter. She submits that, to issue order under Section 156 (3) of the Cr.P.C., it is necessary for the complainant to show a prima facie case. Reading the complaint in this case as it is does not disclose any case against these respondents. She submits that, there is no question of having common object as from the complaint it is clear that, these respondents were called by accused Govind by making a call and it is only thereafter they went there. There is nothing to indicate that they had earlier knowledge of these facts or that they shared common object. Learned advocate further submits that, as a matter of fact, the complainant had denied easementary right and therefore they were required to make a complaint to the Tahsildar on 08.06.2022. It is after more than one month the complainant had lodged the complaint. She further invited attention to the panchanama that was drawn on the basis of complaint filed by these respondents dated 15.09.2022 by the Circle Officer, Ghansawangi and the Talathi of the village wherein, it is clearly recorded that, no work appears to have been done with JCB. It is also observed that, the road is in existence on the spot shown by the parties that is by the complainant. Even the complainant is a signatory to the panchanama and his signature appears at serial no. 9. She submits that, thus filing of complaint under Section 156 (3) itself is abuse of process of law.

7. Learned A.P.P. also supports the order passed by the learned Court below submitting that, the Court has rightly taken cognizance against accused No. 1 by looking to the complaint and no interference is called for.

8. After hearing the parties and going through the material on record, it seems that, the parties have the dispute among themselves in respect of rights and therefore, they have filed applications against each other before the police authorities. Even taking the complaint as it is, the only allegation against respondent Nos. 3 to 10 appears to be that, they all came there on the spot on a call of accused No. 1. Further allegation is only that, they all abused the complainant in the name of caste, however, no specific allegation is made against any of the accused except accused No. 1. The Court has therefore rightly issued order against accused No. 1 and has refused to pass an order.

9. This Court finds that, no case is made out to call interference in the impugned order. Therefore, the writ petition stands dismissed.

(KISHORE C. SANT, J.)

P.S.B.