

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

CRIMINAL APPEAL NO. 363 OF 2023

Rajendra Maruti Kamble ...Appellant
vs.
Jamirbhai Shaikh and Anr. ...Respondents

Adv. Prosper D'souza - Advocate for the Appellant

Mr. S. R. Agarkar - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 08th DECEMBER, 2023

P. C. :-

1. Heard learned Advocate Shri D'souza appointed by way of legal aid to the Appellant.

2. Perused complaint filed before the Court of Additional Sessions Judge, Dindoshi on 13/06/2018 on page no. 14. The sum and substance of the complaint is that the Appellant has paid Rs. 1,00,000/- by cheque as well as cash for the purpose of renovation of his room at Gautam Nagar, Goregaon East. The Respondent has not completed that job completely. He left that job incomplete. The Appellant pursue with him however Respondent has avoided his responsibility. On one occasion even he beat the Appellant with Hammer in respect of which there is a separate case going on with the Court of Metropolitan Magistrate, Borivali. The contention is that Appellant as a member of the Scheduled caste community, the

Respondent caused loss to him.

3. It is true that Appellant has submitted various documents alongwith compilation to City Civil Court at Dindoshi on page no. 20. It is true that there are certain lacunae in the complaint, so to say particular Section of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is not quoted. However even though there may be defects in the complaint, Court cannot avoid its responsibility. Ultimately, Court will have to read the averments and to take action as permissible by law.

4. The only reason for which the complaint is dismissed is that the dispute is civil dispute and there are no allegations attracting to provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act para no. 4.

5. Learned Advocate Shri D'souza invited my attention to the provisions of Section 3(1)(z). It reads thus :-

“Forces or cause a member of Scheduled Caste or Scheduled Tribe to leave his house village or other place of residence.”

6. If person belonging to scheduled caste community is forced to leave the house, it is an offence. The phrase “leave to house” has to be interpreted liberally. It does not mean that the victim is required to leave the house even if he finds inconvenience to occupy the house. It may be included within

the meaning of the phrase to 'leave his house'.

7. So what I find is that learned Judge has not considered above provisions and dismissed the complaint. It is true that once the private complaint is filed there are various options available to the Court. It seems that none of these options are resorted that is to say recording verification or order of investigation.

8. So what I find that the order needs to be set aside and matter needs to be remanded to the trial Court. Even though Respondent No. 2-accused is served he has not appeared and hence matter is decided after hearing the appellant counsel.

9. In view of that following order is passed:-

ORDER

(i) Appeal is allowed.

(ii) Order dated 25/09/2019 passed by the Court of the Additional Sessions Judge, Dindoshi is set aside.

(iii) The Appellant is directed to appear before the trial Court on 26/12/2023.

(iv) Trial Court is directed to hear the Appellant and to pass an appropriate order after considering the observations made herein above.

10. Learned appointed Advocate be paid fees as per the Rules.

[S. M. MODAK, J.]