

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 41 OF 2023

Shailendra Bankebihari Singh

...Appellant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr. Rajiv Chavan Senior Advocate a/w Mr. Bhairavi Waravdekar,
Ms.Sweta Ghose Advocate for Appellant.

Mr. Mahendra Bhingardave i/by Rex Jurist Advocate for Respondent
No.2/complainant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 26th JUNE, 2023.

ETHAPE
DNYANESHWAR
ASHOK
Digitally signed
by ETHAPE
DNYANESHWAR
ASHOK
Date: 2023.07.28
21:17:42 +0530

P.C.:-

1. This is an Appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The appellant has challenged the order dated 10th January 2023 passed by learned Additional Sessions Judge, Mangaon, District Raigad rejecting the application for anticipatory bail.
2. The appellant is apprehending arrest in crime No. 189 of 2022 registered with Pali Police Station, Raigad for offences punishable under Sections 3(1)(r), 3(1)(s) of SC and ST (Prevention of Atrocities) Act and Section 504 of Indian Penal Code.

3. The case of the prosecution is that, the complainant/Respondent No.2 belongs to Scheduled Tribe. He is residing in Adivasi Wada at Ghodpapad. The appellant has purchased land adjacent to the residential area of the complainant and others. The residents of the locality used to pass through the land of the appellant towards source of water. However, due to compound put up by appellant, their way was affected. Meeting of the villagers and the appellant was held. The appellant was requested to provide the way to the villagers for having access to the water source. On 25th November 2022, the appellant came near the cattle shed of the complainant. The compound was broken by the Respondent No.2/complainant and others. The appellant had abused the complainant on the basis of his caste. The FIR was registered on 27th December 2022.

4. This appeal was initially heard by this Court vide order dated 20th January 2023 and interim relief was granted to the appellant with direction to co-operate with the investigation.

5. Learned Senior Advocate Mr.Chavan appearing for Appellant has submitted that, the appellant has purchased agricultural lands bearing Survey Nos.100/7/A and 100/7/B in village Jambhulpada, Taluka Sudhagad, District Raigad. On 20th July 2022, the Appellant made application to Deputy Superintendent of land Records, Sudhagad for the purpose of measurement and demarcation of boundaries. On 12th August 2022, the survey was conducted and the land record Department issued 'C'

copy of the survey measurement on 22nd August 2022. The complainant erected the structure in the land owned by the Appellant. The complainant approached the Appellant for settlement and consent letter was received for consideration of Rs.1,50,000/- for voluntarily removing structure. On 10th November 2022, the Appellant received information that someone has stolen 66 iron angles and 132 meters of wire after breaking the fencing wire and iron angles. Complaint was given to Jambhulpada beat Police Station. C.R. No. 156 of 2022 was registered on 16th November 2022 for offences under Sections 379 and 427 of Indian Penal Code. The complainant gave press note that, since the road access of the land was closed by the appellant, the wall compound of the land was removed. The appellant put up public notice board in the said land that access of said road in said land owned by the Appellant is open for neighbouring farmer and tribal for agricultural work. Spot panchnama of the land was conducted by local Talathi and Circle Officer on 25th November 2022 on receipt of the complaint by the complainant. Report was submitted. Spot panchnama mentions that, Appellant has fenced land and kept to small gates for exclusive access to the complainant and others and also put up public notice board near the main entry gate that the access of said road is open for farmer. The spot panchnama was conducted in the presence of complainant and signed by him. It was mentioned that, the access of road is never stopped by appellant. The complainant again attempted to

construct illegal structure in the land of the appellant. Application was addressed to Group Gram Panchayat Jambhulpada for bringing it to their notice. Gram Panchayat issued receipt of application and forwarded letter dated 27th December 2022 to the complainant. On 23rd December 2022, care taker of the land and others were abused and assaulted by six persons. FIR was registered vide C.R. No. 421 of 2022 on 25th December 2022 under Sections 143, 147, 149, 341, 324, 323, 504, 506 of Indian Penal Code with Khalapur Police Station. The complainant lodged FIR on 27th December 2022 for offences under Sections 3(1)(r), 3(1)(s) of Atrocities Act and Section 504 of IPC. The allegations in the FIR are false. It is registered with malafide intention. It is motivated. The property belongs to appellant. The farmer and the tribal were never restrained from passing through way. There are no independent witnesses to corroborate alleged abuses on caste. The incident has not occurred within public view. There is delay in lodging the FIR.

6. Learned APP submitted that, on perusal of FIR it cannot be seen that, there were abuses of appellant and other persons on the basis of caste. The complainant belongs to the Scheduled Tribe. The incident had occurred in public place and within public view. During investigation, statement of complainant and other witnesses were recorded under Section 161 and 164 of Cr.P.C. The investigation is in progress.

7. Learned Advocate for Respondent No.2 submitted that, the incident had occurred in a remote Aadiwasi. Therefore, the question of presence of any member of public does not arise. The incident of complainant with regard to the abuses on the basis of caste is corroborated by witnesses, whose statements are recorded by the Investigating Officer. The respondent No.2 has filed reply opposing the relief sought by appellant in this appeal. Hence, appeal may be rejected.

8. I have perused the FIR as well as various documents annex to this appeal by the appellant. Undisputedly, the incident had occurred on 25th November 2022 whereas the FIR was registered on 27th December 2022. There is no explanation for inordinate delay in lodging the FIR. On perusal of documents on record it is apparent that, the sammatipatra was executed between complainant and his relative on 9th August 2022 which referred to the fact that the hut was constructed in the land belongs to the appellant by the complainant and others. The sammatipatra also indicate that the compensation was provided to the aggrieved persons. On 10th November 2022, FIR was registered with Pali Police Station at the instance of appellant vide C.R. No.156 of 2022 under Section 379 and 427 of IPC. Public notice was put up by the appellant on the board stating that the land owned by the appellant is open and is also being used for agricultural work. The meeting was called. The documents indicate that there is deliberate reason for registering the FIR on 27th December 2022. The FIR motivated

and apparently registered malafide reasons. I have perused the investigation papers, statement of complainant and other witnesses were recorded during the course of investigation. From the said statement it is apparent that, they are closely related/associated with the complainant. There is no independent witness to support and corroborate the version of complainant. The incident had occurred within public view. In this circumstances, relief sought in this appeal is required to be granted.

ORDER

- (i) Criminal Appeal No. 41 of 2023 is allowed.
- (ii) Impugned order dated 10th January 2023 passed by Additional Sessions Judge, Mangaon, District Raigad in Criminal Misc. Application No.03 of 2023 is set aside.
- (iii) Interim Order dated 20th January 2023 is confirmed.
- (iv) In the event of arrest of the appellant in connection with C.R. No. 189 of 2022 registered with Pali Police Station, Raigad, the appellant is directed to be released on bail on furnishing PR bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.
- (v) The appellant shall report concerned Investigating Officer as and when called for.
- (vi) Criminal Appeal stands disposed off.

(PRAKASH D. NAIK, J.)