

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.291 OF 2023**

Govind Arjun Bhoir	.. Appellant
Versus	
The State of Maharashtra	.. Respondent
...	

Mr. Sachin R. Pawar, for the Appellant.
Ms. Pallavi Dabholkar, APP for the State.
Ms. Meghna Gowalani, for Respondent no.2
Mr. Kiran Matkar, API, Bhiwandi police station.

**CORAM: BHARATI DANGRE, J.
DATED : 24th MARCH 2023**

P.C:-

1 The learned APP on instructions of the Investigating Officer Mr. Kiran Matkar, who is present in the court state that on the investigating being completed against accused no.1 and accused no.3 charge-sheet has been filed under Sections 447, 504, 506 r/w 34 of IPC and Section 3(1)(f), 3(1)(g), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. She make a specific statement that the custodial interrogation of the appellant is not necessary.

2 I have heard the learned counsel for the appellant and learned counsel Ms. Meghna Gowalani, appointed to represent respondent no.2.

On perusal of the complaint, filed by the complainant it can be seen that he has narrated that he was allotted 2000 sq mt of land from Mauje Chinchavali from survey no. 105/1, 106-A, 117, 118 of Mauje Chinchavali for the purpose of cultivation and the documents to that effect has been placed reflecting that his name is mutated in the 7/12 extract, the land being allotted to him by Forest Department.

The complaint is in respect of alleged incident, which occurred on 31/05/2022, when it is stated by the complainant that he noticed that some persons were removing the soil from his survey no. 117, by means of a dumper truck and the applicant was present there along with one Ajit Sadanand Padekar, the co-accused, and was directing the driver of the JCB machine, to fill the earth in the dumper. On being questioned, it is alleged that certain castiest abuses were hurled at him and the accused persons rushed towards him.

In respect of the said incident, when his son protested to the accused persons, they asked him to show the documents of the land.

3 In the wake of the aforesaid incident complaint was lodged on 1/6/2022 and apart from the offences under IPC, Section 3(1)(f),(g),(r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were invoked.

4 Bare reading of the complaint do not disclose presence of any other person on the spot except the accused persons and the complainant. Nobody is said to have heard the abuses.

Prima facie it can be seen that the provisions of Section 3(1) (r) and 3(1)(s) are not attracted, as the incident did not occur in public view as contemplated in case of *Swaran Singh & Ors vs State Through Standing Council & Anr (2008) 8 SCC 435*, as well as in the latest decision of the Apex Court in case of *Hitesh Verma vs. The State of Uttarakhand and anr. (2020) 10 SCC 710*.

5 As far as the offence under Section 3(1)(f) is concerned the said section is attracted, where a person not belonging to Scheduled Castes/Scheduled Tribes wrongfully occupy or cultivate any land, owned by or in possession of, or allotted to, or notified by any competent authority to be allotted to the member of Scheduled Caste or Scheduled Tribe or get such land transferred.

The narration in the complaint do not make out an offence under clause (f).

6 As far as sub-clause (g) is concerned, it punishes an act of a person, who wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Sub-clause(g) of Section 3(1) has been rightfully invoked and when I have perused the material placed in the charge-sheet, which include the spot panchnama, there is a huge doubt about the location of the land belonging to the complainant.

The case of the applicant is specific and the documents along with the application reveal that the work of excavation for foundation in soil, sand, gravel murrum and its disposal was allotted to one Gargi Majoor Kamgar Sahakari Sanstha, Marya Karvel, Murbad and the appellant was executing the said work as he was driving the JCB and other two co-accused were executing the work.

7 There is no clarity in the case of the prosecution about the actual place from which the soil was excavated as the spot panchnama reveal that there is a bandhara located at the spot, which is constructed by cement and concrete and the work order reveal that this Bandhara is constructed 15 years ago and the work of de-silting was allotted to the society. The claim of the appellant is to the effect that they were rightly excavating the earth and ancillary material as per the work order allotted to them and the work was not being carried out in the piece of land, which was allotted to the complainant by the forest department.

8 Considering the aforesaid fact this will be ultimately a matter of trial and since prima facie case is not established by the prosecution the appellant deserve protection from arrest.

Hence the following order:

ORDER

- (a) In the event of his arrest, the Appellant – Govind Arjun Bhoir in connection with C.R.No.301 of 2022 registered with Bhiwandi Police Station shall be released on bail on furnishing P.R. bond

to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(c) The Appellant shall report to the Police Station as and when directed by the Investigating Officer.

9 At the end, this Court would like to express the appreciation for Ms. Meghna Gwalani, who was appointed through legal aid to represent case of the complainant and for effective assistance being rendered to this Court. The legal remuneration shall be paid to her by legal services authority within a period of four weeks from today.

(SMT. BHARATI DANGRE, J.)