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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.618 OF 2023

Snehalata Narayan Thite] .. Appellant
VS.
State of Maharashtra & Anr.] .. Respondents

Mr.R.N. Thite i/b Salik Ray for the Appellant.

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

Mr.Veerdhawal Deshmukh, appointed Advocate for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 9th October, 2023.

P.C.

1] The Appellant seek discharge from the accusations levelled against her in Special Atrocity Case No.4/2017 pending before the Special Judge, Mangaon, where she is accused of committing offence under Sections 3(1)(g), 3(1)(r), 3(2)(va) and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 447 read with 34 of the Indian Penal Code.

The Appellant moved an application before the Special Judge, Mangaon, seeking discharge, under Section 227 of the Cr.P.C., which came to be rejected on the ground, that prima facie case is made out against her in the charge sheet and she must undergo the trial.

Hence, she has approached this Court praying for quashing and setting aside of the order dated 12.01.2023, passed by the Special Judge, Mangaon and she seek discharge.

2] I have heard the learned counsel Mr.Thite i/b Salil Ray for the Appellant, Mr. Veerdhawal Deshmukh, who was appointed to represent Respondent No.2 and Mr.Y.N. Nakhwa, APP for the State.

Respondent No.2, a Contractor by profession and who claims to be belonging to Booud caste (SC) lodged a complaint on 12.05.2017 in his capacity as treasurer of Raigad District Boorud Samaj Sanghatana. He alleged that the said society is registered and land in Survey No.136B, Hissa No.3 at Nave Nagar is in the name of Panchayat Samiti, Mahad and out of this land, 3 Guntha of land has been allotted to the Sanghatana on lease basis by the Government, where a temple of Boorud samaj is constructed on some portion and remaining area is kept open. Adjoining to the said land is the house belonging to the Appellant and since she had erected a shed, which encroached upon the land belonging to Boorud Samaj, a complaint was filed with Mahad Nagar Parishad.

While reporting the incident of 09.05.2017, the complainant alleged that at around 1.45 hours in the afternoon, the Appellant alongwith her two sons was found erecting a compound by encroaching upon the land allotted to Boorud Samaj, at the time, when an Engineer of Nagarparishad and other employees in the presence of the informant and members of Boorud Samaj and other people were carrying out the measurement so as to ascertain the encroachment. At that time, the informant is alleged to have told the accused persons to remove the encroachment, but it is alleged that the accused persons uttered the following words :

“The Boorud Samaj people have grabbed the government land and hence they should not teach them, as they are conversant with law and they should do whatever they want to do.”

It is the allegation, that this utterance amounted to castiest abuses and all the three accused persons pushed the informant and also abused three other members of his community.

3] The aforesaid accusations resulted in invocation of Section 3(1)(g), 3(1)(r) , 3(2)(va) and 6 of the Act of 1989.

Since clause (g) of Sub-section (1) of Section 3 relate to wrongful dispossession of a member of SC or ST from his land or premises or any interference in the enjoyment of his rights over the land, I specifically made a query to the learned APP, as to what documents are collected during the course of investigation to establish that the land was allotted to Boorud Samaj, to which the complainant belong, as the premise of the complaint is the accused persons attempted to dispossess the members of Boorud community from their lawful occupation of the land, which is allotted to them by Government. Since no satisfactory explanation was coming forth, I directed the Investigating Officer to justify invocation of Section 3(1)(g) of the Act of 1989 and in response, Shri Shankar Bhausahab Kale, Sub Divisional Police Officer, Mahad Division, District Raigad, has filed Affidavit where he makes the following statement :

“7. After going through papers of the offence, it appears that order of the Joint Secretary, Maharashtra Government vide no जिपज- 2013/प्र. क. 159/ पंरा- 9 regarding cancellation of the allotment, submitted by the appellant in court on page no.27 during proceedings of appeal was not available to investigation officer. In absence of this document it seems difficult for investigation officer, to draw any conclusion regarding cancellation of allotment of said land by Maharashtra Government to Boorud Community. Investigation Officer, then Sub Division Police Officer must have submitted Charge sheet u/s 447,34 of IPC and u/s 3(1)(g), 3(1)(r)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On the contrary investigation officer obtained resolution regarding of Zilla Parishad General Body to hand over said land for Community Center and Hostel of Boorud Community on lease. As submitted Page no.78. On Page no.80 investigation Officer obtained resolution of Panchayat Samiti Mahad regarding of the aid land of the Boorud Community. In the light of these two resolutions and actual possession of said land with Boorud Community, investigation officer submitted chargesheet u/s 3(1)(g) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in court of law.

8. It is humbly submitted that, even after cancellation of the allotment of land to Boorud Community by Maharashtra Government, if hon'ble court comes to the conclusion that section 3(1)(g) Scheduled Castes and Scheduled Tribes Act does not remain applicable to this offence, in the light of other evidences collected during investigation attracts other

sections of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) provisions of law. Therefore it will be harsh to accept prayer of the appellant to squash entire FIR for purpose of the justice.”

4] The above statement in the Affidavit, when read with the annexures to the Appeal, make it evident that the Investigating Officer, before invoking Section 3(1)(g) of the Act of 1989, did not ascertain whether the land belong to Boorud Community and therefore the alleged encroachment by the accused persons amounted to dispossess them or interfere with enjoyment of their right as contemplated in Section 3.

The Appellant has placed on record the Rule Card, where her name is reflected against the land on which she had constructed her house in Survey No. 136B. She had also placed on record receipt of property tax on the said property in Survey No.136B.

Worth it to mention that, as far as the land to which a reference is made by the complainant i.e. 136B/3, the land stand in the name of Commissioner, Animal Husbandry, Pune, State of Maharashtra in the Land Records and this is what the Investigating Officer state in his Affidavit.

It is pertinent to note that the 7/12 extract in respect of Survey No.136B/3, once upon a time recorded the name of Taluka Panchayat Samiti, Mahad, through BDO.

5] From the document annexed at Page No.27 to the Appeal, the learned counsel for the appellant would assertively submit that an

application made by the Boorud Samaj for construction of Samaj Mandir and Vidyarthi Vastigruh on the land located in Survey No.136 Hissa No.3, ademasuring 3 gunhas, is rejected on 10.05.2016, by informing that this land is already transferred in the name of Commissioner, Animal Husbandry and therefore it cannot be allotted to the Boorud Samaj. It is, thus, crystal clear that though there was recommendation made by the Zilla Parishad for allotment of land to Boorud Samaj, the State Government never made allotment of this land to the Samaj and hence there is no question of any wrongful dispossession of the members of the community from the said land, since they were not in possession, since it was never allotted to them.

This fact becomes clear from the Affidavit of the Investigating Officer, who has placed on record the resolution of Panchayat Samiti, Mahad and based on this, it is the presumption drawn by Samaj that the land is allotted to it. In fact, the document on Page 27 which the Investigating Officer is referring to as cancellation of allotment, is not a correct description, on the contrary, by the said document it was informed to the Boorud Samaj Sanghatana that the request made by the Samaj forwarded to the Chief Executive Officer of Zilla Parishad Raigad on 13.08.2014 cannot be considered.

As such, Boorud Samaj has no legal entitlement over the said piece of land, which is the foundation of the complaint.

Since the complaint resulted in accusation under Section 3(1)(g) and the case of the complainant is that the land was allotted to Boorud Samaj by the Government on lease, which is an incorrect statement, as it was only a recommendation made by the Zilla Parishad for leasing

out three gunthas land to the Samaj for 99 years. But since the State Government through, Rural Development Department was the Competent Authority to take the decision and though the proposal was forwarded to the concerned department, alongwith resolution, the same is rejected on 10.05.2016. Without the permission of the State Government, there is no question of land being leased out in favour of the Boorud Samaj merely on the recommendation of the Zilla Parishad as the land can be granted on lease only by the State Government.

6] The accusation as regards the castiest abuses having been hurled, from the version of the complainant, it is not the accusation that it is the Appellant who specifically hurled any castiest abuses as even going by the version of the complainant, the accused persons are alleged to have told the informant that they had grabbed the government land, as they belong to Boorud community.

This accusation being not referable to the Appellant, but alleged to be in collective form and as far as the abuses hurled at the members of community are concerned, the allegation is not about the castiest abuses, I do not think that the Appellant must face a trial on this accusations.

7] It is a trite position of law that simply addressing a person by his caste without any intention to insult or intimidate would not constitute an offence under the Act of 1989, particularly when there is no evidence of use of castiest words uttered with an intention to humiliate a member on the ground that he belongs to that caste.

Since the material in the charge sheet is not sufficient to proceed to frame the charge and proceed with the trial, particularly under the provisions of Act of 1989 and since the ingredients of Section 447 of IPC as far as criminal trespass are concerned, are also not satisfied as the Appellant has established that she is the owner of piece of land in the said survey number and since there is no material to establish that she has encroached upon the land belonging to Boorud Samaj, it is a fit case for her discharge, as no fruitful purpose would be served in continuing the trial against her in the wake of the insufficient material in the charge sheet, which fail to make out the ingredients of the offences which are clamped in the charge sheet.

8] At this stage, I must also record my appreciation in favour of Advocate Veerdhawal Deshmukh, who was appointed to represent the complainant and who has rendered his effective assistance in deciding the Appeal. The legal Services Authority shall ensure payment of his remuneration within a period of 6 weeks from today.

9] In view of the above discussion, the impugned order dated 12.01.2023 passed by the Special Judge, Mahad, who has failed to take into consideration this important aspect, is liable to be set aside.

In the wake of, Appeal is allowed in terms of prayer clause (b) and (c).

10] At this juncture, I must express a word of caution to be followed

by the Investigating Officers, who are entrusted with the investigation of Special Act of 1989, enacted to prevent the commission of offences of atrocities against the members of Scheduled Caste and Scheduled Tribe, of being cautious while dealing with the accusations faced by the members of non Scheduled Caste or Scheduled Tribe category, particularly, in the wake of the bar provided under Section 18 of the Special Act of 1989 and before proceeding with the investigation, the Investigating Officer shall obtain the necessary documents in support of the complaint levelling accusations of Atrocity, including the caste certificate of the complainant. In the present case, if the Investigating Officer would have asked the complainant to produce the documents establishing the possession of the land on which, he has alleged that the accused persons had encroached, it would have avoided the further investigation specifically under clause (g) of Sub Section (1) of Section 3 of the Act of 1989.

I can only hope and trust, that the obligation of the Investigating Officer shall be discharged with full accountability.

[BHARATI DANGRE, J]