

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 961 OF 2022

Jaywant Keshav Kalekar .. Appellant
Versus
The State of Maharashtra & Ors .. Respondents

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Mr. Vinay V. Nair with Riddhi Tendulkar for the appellant.
Mr.Dhananjay Bhosale i/b S. S. Chaudhari for respondent no.2.
Mr.Y.M.Nakhawa, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th APRIL 2023

P.C:-

1 The learned proxy counsel for Advocate Shriram Chaudhary once again seek an accommodation.

 The two orders on record i.e. order dated 15/12/2022 as well as order dated 22/2/2023, reveal that in order to accommodate him, the proceedings were adjourned. However, on the third occasion, I am not inclined to grant indulgence.

2 The appellant face accusations u/s.3(1)(c) of Scheduled Caste Scheduled Tribes (Prevention of Atrocities) Act, 1989, in a C.R registered with Kudal police station at the instance

of Sou. Sneha Sunil Thakur (complainant), who claim to be belonging to Scheduled Tribe. It is informed that on the investigation being completed, the charge-sheet is filed and two more sections i.e. Section 3(1)(m) and 3(1)(y) are inserted.

3 The complainant is a Sarpanch of Gram Panchayat, Kadaval, since last four years and perusal of the FIR would reveal a long drawn dispute between the complainant and her family one one hand, and the appellant on the other.

 The dispute arises out of the land admeasuring 9 gunthas, situated in Survey No.35, Hissa No.1/B, which was purchased by the husband of the complainant, Shri Sunil Thakur and for enjoying the access to the said land, the pathway was allowed by the appellant from his land. The specific contention in the complaint, is to the effect that there is no record of this portion of land with the Gram Panchayat. Thereafter, the appellant got his land measured through Government official, and it was then realized that the land purchased by Sunil Thakur, forms part of the land belonging to the appellant. Therefore, once again, a transaction was entered and the land was offered for sale by the complainant, through an agreement to sale dated 21/4/2007, but since the sale deed was not executed, a Suit was instituted by Sunil Thakur and her version is, the Suit was decreed in his favour.

This discord was taken ahead and it is alleged that on the date of incident i.e. 14.8.2022 a fencing was erected by the appellant and this resulted in blockage of access for the complainant and her family and the allegation is, no other alternate way is kept open for them, and though a pathway did exist, four wheeler vehicle was not provided any access to the land belonged to the family of the complainant, and therefore, the car was required to be parked on the road.

Another allegation is levelled with respect to an incident dated 21/6/2022 and it is alleged that the harassment was wholly on the pretext that the complainant and her family belong to Schedule Tribe category. On 16/8/2022, it is alleged that the appellant threw garbage and waste in front of their house with an intention to block the access completely and to create impediment in their way.

It is only that on completion of investigation in the subject C.R, charge-sheet has been filed and Section 3(1)(m) and Section 3(1)(y) are inserted.

5 Section 3(1)(m) is involved in the wake of the allegation by the complainant that the appellant from the very beginning, was not agreeable for she being appointed as Sarpanch, that is why Section 3(1)(m) has been invoked. Pertinent to note that there is no other single accusation in the complaint which

would attract 3(1)(m), which stipulate that any person who forces or intimidates, or obstructs a member of Scheduled Caste/ Scheduled Tribe from performing their normal duties and functions, is alleged to have committed an offence. The mere allegation levelled in the complaint is to the effect that appellant was not happy with her appointment as Sarpanch, with no further overt act being attributed in any manner, intimidating or obstructing her from discharge of the duties, prima facie, Section 3(1)(m) is not attracted.

Similarly, as far as Section 3(1)(y) is concerned, the ingredients of the said section are also not attracted since it contemplate an act of denial to a member of Scheduled Caste or Scheduled Tribe, any customary right of passage to a place of public resort or obstruction to have access to the place of public resort.

Since the right of way was never accepted as a customary right of passage and it was not in a place of public resort. Prima facie, the aforesaid sections are not at all attracted.

However, prima facie, according to the allegations, the offence u/s.3(1)(c) is attracted. However, in the backdrop of the long drawn enmity between the parties, unless and until the offence is proved in the trial, the submission of counsel for the appellant that this is by way of a false implication, will have to be tested at the time of trial.

At the same time, the counsel for the appellant has invited my attention to C.R.No. 184/2022 registered with the same police station on 2/11/2022 against the complainant, her husband and son, which has invoked Section 447, 427 r/w Section 34 of the IPC.

6 In the wake of the fact that the investigation is now complete and charge-sheet has been filed, the custodial interrogation of the applicant is not necessary.

In wake of the above, the interim order dated 27/9/2022 is made absolute.

Appeal stand disposed off.

(SMT. BHARATI DANGRE, J.)