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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3376 OF 2022

1. Bairaj s/o. Vishwanath Reddy,
Age 36 years, Occ. Advocate.
2. Vishwanath S/o. Narsappa Reddy,
Age 68 years, Occ. Retired.
3. Amol S/o. Maroti Tupsundar,
Age 37 years, Occ. Business.

All R/o. Raje Shivaji Nagar, Pakharsangavi,
Latur, Tq. and Dist. Latur.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through Police Station Officer,
MIDC, Latur Police Station,
Tq. and Dist. Latur.
2. Narayan S/o. Prabhakar Kharatmol,
Age 66 years, Occ. Service,
R/o. Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur.

.. RESPONDENTS.

Mr. Rahul P. Cheble, Advocate h/f. Mr. S.C. Swami, Advocate for
applicants.

Mrs. R.P. Gaur, APP for respondent No.1

Mr. D.R. Jethliya, Advocate for respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 23rd SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR,J.]. :-

1. The applicants have approached this Court under Section 482 of Cr.P.C. for quashment of FIR bearing No. 509 of 2022 dated 2.9.2022 registered with Police Station, MIDC, Latur for the offences punishable under Sections 447, 427, 504, 506 r/w. 34 of IPC and under Section 3(1)(f) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989, (hereinafter referred to as, “the Atrocities Act” for sake of brevity) .

2. Respondent No.2 lodged report dated 2.9.2022 with the police station, alleging that he had purchased plot Nos. 186, 187, 188 and 189 admeasuring 600 square feet out of Gat No. 78, at village Pakhar Sangvi, Taluka and Dist Latur from its owners under registered sale deed. Since then, he is in possession of the plots. In the year 2009, he has constructed basement and since 2012, he is cultivating certain crops in the plots. It is further alleged that on 3.8.2022, accused, who are residing in plot situated on western side destroyed part of the basement of Plot Nos. 186 and 187 fenced Plot No. 186 and constructed a tin shed. As such, accused Vishwanath Narsappa Reddy, has encroached upon his property. When he objected to the encroachment, accused Nos. 1 and 2 abused him and gave life threats. Similarly, on 13.8.2022, accused No.3 damaged basement constructed on Plot No. 188 and 189 from eastern side, raised tin fencing and put a board depicting that property is subject matter of dispute in R.C.S. No. 562 of 2022, pending before the Civil Court. Similarly, accused have installed CCTV cameras. Although he is owner of the plots, accused persons have damaged the basement from

Eastern and Western side and encroached upon his property.

3. On the basis of aforesaid information, Crime No. 509 of 2022 has been registered with Police Station, MIDC, Latur for the offences punishable under Sections 447, 427, 504, 506 r/w. 34 of IPC. Thereafter, respondent No.2 recorded his supplementary statement dated 4.9.2022 and introduced allegation that he belongs to Scheduled Caste and in spite of knowledge of his caste, applicants encroached upon the property, as such, committed offences under the Atrocities Act. Consequent to narration introduced in supplementary statement of respondent No.2, offences punishable under Sections 3(1)(f) and 3(1)(g) of the Atrocities Act have been added. On completion of investigation, charge sheet has been filed against accused persons for aforesaid offences. After filing of charge sheet, applicants have amended the application seeking quashment of proceeding in Special Case (Atrocities) No. 101 of 2022, pending before the Special Judge, Latur arising out of impugned FIR.

4. Mr. Rahul Cheble, learned advocate for the applicants vehemently submits that the applicants have been falsely implicated on account of civil dispute as regards to the boundaries of the plots. He would submit that applicant No.2 has already filed a Civil Suit seeking perpetual injunction against respondent No.2 vide R.C.S. No. 562 of 2022 which is pending before the Civil Judge (S.d.), Latur. He would further submit that the applicant No.3 also belongs to Scheduled Caste. Therefore, no offence could have been registered against him under the Atrocities Act. He would further submit that in the FIR there is no

stipulation in FIR to attract offence under the Atrocities Act, however, in supplementary statement stipulation is added indicating that respondent No.2 belongs to Scheduled Caste, eventually offences have been added under the Atrocities Act.

5. Mr. Cheble would further submit that even by taking the contents of the FIR, supplementary statement or the material in charge sheet, on its face value, none of the offence can be made out against the applicants. According to him continuation of criminal proceeding against applicants would amount to abuse of process of law.

6. In support of his contention, he relies upon the observations of the Supreme court in the matter of *Vyankateshwaran vs. P. Bhaktavatsalam in Criminal Appeal No. 1555 of 2022 dated 5.1.2023* as well in the case of *R.S. Bharti vs. State represented by Assistant Commissioner of Police in Criminal Appeal No. 635 of 2021 vide judgment dated 19th July, 2021* and in the case of *Rameshchandra Vaishya vs. State of U.P. 2023 SCC OnLine SC 668*.

7. Per contra, Mrs. R.P. Gaur learned APP and Mr. D.R. Jethliya, learned advocate for Respondent No.2 vehemently opposes application contending that the respondent No.2 belongs to scheduled caste. He owns and possesses Plot Nos. 186, 187, 188 and 189 since year 1988. The applicant were knowing well that respondent No.2 belongs to scheduled caste, still they encroached upon his property and damaged construction of basement. They would submit that ingredients of offences can be observed in the contents of the FIR and charge sheet. A triable case is made out against accused. Hence, there is no reason for

interference in exercise of powers of this Court under Section 482 of Cr.P.C.

8. We have considered the submissions advanced by learned advocates for respective parties. We find that impugned FIR has been lodged on 2.9.2022, alleging that respondent No.2 owns and possesses plots in Gat No. 78 since 1985. In the year 2009, he constructed basement. On 3.8.2022, the applicant Nos. 1 and 2, who are adjacent plot owners, destroyed basement from western side and constructed a tin shed. When the Respondent No.2 objected applicant Nos. 1 and 2, they abused and threatened him. Similarly, on 13.8.2022, applicant No.3 destroyed basement of plot No. 188 and 189 from Eastern side and raised tin fencing, so also put a board depicting that dispute is pending in Civil Court as regards to said property before Court in R.C.S. No. 562 of 2022.

9. From the allegations in the FIR, at the most, offences under penal code may be made out. However, there is no resemblance with the ingredients of the offences under Sections 3(1)(f) and 3(1)(g) of the Atrocities Act. Therefore, we are prima-facie of the opinion that so far as alleged offences under the Penal Code, there is no case for interference under the inherent powers of this Court.

10. It appears that respondent No.2 recorded his supplementary statement dated 4.9.2022 and introduced two additional facts; firstly that he belongs to “Dhor” community which is recognized as Scheduled Caste. Similarly, applicant/accused No.3 Amol Maruti Tupsundar belongs to “Mang” community. Although the accused were knowing

about caste of respondent No.2, they have encroached upon his property and endeavouring to dispossess him.

11. On the basis of stipulations in the supplementary statement, Sections 3(1)(f) and 3(1)(g) of the Atrocities Act have been added.

Section 3(1)(f) and 3(1)(g) read thus :-

“3 Punishment for offences of atrocities (1). Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe

(f) Wrongfully occupies or cultivates any land, owned by, or in the possession or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe, or gets such land transferred;

(g) 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.

.....

.....

Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years or with fine.”

12. With a view to find out ingredients of the aforesaid offences in present case, we have considered the material in the charge sheet, stipulations in the FIR and supplementary statement of informant. The plain reading of FIR nowhere depicts that the acts alleged against accused persons were designed or intended against respondent No.2

because he belongs to “Dhor” Community i.e. Scheduled Caste. Even in the supplementary statement dated 4.9.2022, there is no stipulation that the respondent No.2 was victimized owing to the fact that he belongs to Scheduled Caste. On plain reading of the FIR and supplementary statement apparently it is a case of a civil dispute, particularly, as regards to the boundaries of the respective plot owners. Pertinently, applicants have instituted the proceeding before the Civil Court for the relief like perpetual injunction. Applicant No.2 has instituted R.C.S. No. 562 of 2022 before the Civil Judge Senior Division, Latur against the respondent No.2. The date of institution of suit appears to be 29.7.2022 i.e. almost one month before the filing of FIR. Similarly, from the averments in the FIR itself, it can be gathered that R.C.S. No. 598 of 2022 has been instituted by applicant No.3 before the Civil Court. It is, therefore, clear case of civil dispute between the parties and the actions alleged against the applicant/accused are also subject matters of rival claims. Pertinently, the stipulations in the supplementary statement dated 4.2.2022 shows that the applicant No.3 also belongs to “Mang” community which is recognized as a Scheduled caste. Therefore, offence under the Atrocities Act could not have been registered against him at the instance of respondent No.2. At this stage, certain observations of the Supreme Court in the recent judgment of ***Prabhatkumar Mishra vs. State of Uttar Pradesh reported in (2024) 3 SCC 665***, are relevant, wherein, the Supreme Court in para. 15 to 17, observed as under :-

“15. At the outset, we may take note of the fact that the prosecution of the appellant herein for the offence under [Section 3\(2\)\(v\)](#) of the SC/ST Act is ex facie illegal and unwarranted because it is nowhere the case of the prosecution in the entire charge-sheet that the offence under [IPC](#) was committed by the appellant upon the deceased on the basis of his caste.

16. This Court in the case of [Masumsha Hasanasha Musalman v. State of Maharashtra](#) considered this issue and held as under:-

“9. [Section 3\(2\)\(v\)](#) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of (2000) 3 SCC 557 [Section 3\(2\)\(v\)](#) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under [Section 3\(2\)\(v\)](#) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”

18. Thus, from the admitted allegations of the prosecution, the necessary ingredients of the offence under [Section 3\(2\)\(v\)](#) of the SC/ST Act are not made out so as to justify prosecution of the accused appellant for the said offence.

13. Although the offence in the cited case was under Section 3(2)(v) of the Atrocities Act, the proposition of law would equally apply even to the offences under Section 3(1)(f) or 3(1)(g), and it would be necessary to establish that the encroachment on the property has nexus with the fact that such person belongs to Scheduled Caste or Scheduled Tribe. In every dispute of civil nature, where one of the party belongs to Scheduled Caste or Scheduled Tribe, offence under Section 3(1)(f) and 3(1)(g) cannot be made applicable, unless there is intentional act of the accused persons against the person belonging Scheduled Caste or Scheduled Tribe. As observed in the case of [Masumsha Hasanasha](#)

Musalman v. State of Maharashtra (*supra*) the *sine qua non* to make out offence under Atrocities Act is that the victim should be a person who belongs to a scheduled Caste or scheduled Tribe and that the offence under the Penal Code and the acts are committed by the accused against him on the basis that he belongs to a Scheduled Caste or Scheduled Tribe. In absence of such ingredients, no offence can be made out under the Atrocities Act. In the case of Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710, the Supreme Court of India, while dealing with the offence under Section 3(1)(2) observed in para. 18 as under :-

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out..”

14. In the light of aforesaid observations of the Supreme Court, without going into the arena of appreciation of evidence, when we considered material on record before us at its face value, we find that the requisite ingredients to make out offences under Section 3(1)(f) and 3(1)(g) are absent. Merely because respondent No.2 belongs to a Scheduled Caste, his civil litigation with the accused persons can not be given the colour of offences under the Atrocities Act, particularly when the FIR was not registered for such offence and later on, by a supplementary statement, certain stipulations have been added with an

intention to implicate the applicants in larger offences under the Atrocities Act.

15. Under such circumstances, we remind ourselves of the guidelines laid down by the Supreme Court in the case of ***“State of Haryana vs. Ch. Bhajanlal and others”*** reported in AIR 1992 S.C. 604,

Particularly, in para. 108, which reads thus :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

16. Explanation 1 and 7 as indicated above would attract in the present case, which warrants exercise of our jurisdiction under Section 482 of Cr.P.C. In the result, we pass the following order :-

O R D E R

- [I] The application is partly allowed;
- [II] The FIR in Crime No. 509 of 2022 dated 2.9.2022 registered with MIDC Police Station, Latur and consequential proceeding **is hereby quashed and set aside to the extent of offences punishable under Sections 3(1)(f) and 3(1)(g) of the SC and ST (Prevention of Atrocities) Act.**
- [II] The proceeding to **continue in respect** of offences under Sections **447, 427, 504, 506 r/w. 34 of IPC**, against the applicants, in accordance with law.
- [III] The application stands disposed of accordingly.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-