



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

CRIMINAL APPEAL NO. 128 OF 2023

BUDHO DEVRAM DHULKAR (BHIL)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Ms. Pallavi Wangikar, Advocate h/f Mr. Ravindra V. Gore, Advocate
for Appellant
Mr. S.B. Jadhav, APP for Respondent No.1 – State
Mr. Ajay G. Talhar, Advocate for Respondent Nos.2 & 3
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th FEBRUARY, 2024

PER COURT :

1. This appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, challenges order dated 03/05/2018, passed by learned Special Judge and Additional Sessions Judge, Bhusawal, below Exhibit-1 in Criminal Misc. Application No.07/2017, thereby rejecting private complaint filed by appellant.

2. Criminal Misc. Application No.07/2017 is filed by appellant contending that he is owner of agricultural land bearing Gut No.55/2, admeasuring 01 Hecter 89 R, situated at village Kanhala (Bk), Bhusawal and his brother Bhiva is owner of agricultural land Gut No.55/1, admeasuring 1 Hecter 88 R, situated at the same village. Said lands are allotted to them as they belong to Scheduled Tribe. Kolte English School is adjacent to the lands of

appellant and his brother. Accused are founders of the said school. For further development of said school, they were interested in the lands of appellant and his brother. On 28/02/2012, registered agreement to sale is executed between appellant and respondent No.3. On the same day, another registered agreement to sale is executed between brother of appellant and respondent No.2. Draft of both the agreements to sale were prepared by respondent Nos.2 and 3. On both the documents signatures of appellant, his brother and their relatives were obtained by respondent Nos.2 and 3. Copy of the said agreements to sale is not given to appellant and his brother. On both agreements, at page No.3 some portion was kept blank. Accused persons failed to pay the balance amount. When appellant and his brother demanded the balance amount, accused persons demanded possession of the property. Appellant and his brother refused to give possession till balance amount is paid to them. Thereafter, appellant obtained certified copy of agreement to sale from Registry Office. Then he came to know that on page No.3 of the agreement, it is mentioned that possession of the land is given to the purchaser, but in appellant's copy no such recital was there. In appellant's copy that place was kept blank and respondent No.2 had put his signature there. Appellant, therefore, contended that after giving copy of agreement to appellant, accused have changed page No.3 of the agreement in the office of Sub-Registrar.

3. Appellant complained to Superintendent of Registrar, Pune, against Sub-Registrar, B. D. Hire. Inquiry was conducted and the said officer was found guilty. Appellant and his brother requested accused persons to cancel the agreement. Therefore, accused persons filed Special Civil Suit Nos. 75/2015 and 76/2015 for specific performance of contract. In both matters interim stay is granted on 28/06/2016 and 29/09/2015. Appellant, therefore, contended that both accused persons have committed forgery and cheating by manipulating agreements to sale and inserting recital of handing over of possession to them, though it was not handed over. He, therefore, prayed for direction under Section 156(3) of Cr.P.C.

4. Trial Court recorded verification of appellant and entertained the complaint under Section 200 of Cr.P.C. Thereafter, after hearing appellant, trial Court has dismissed the complaint. Hence, this appeal.

5. Heard learned advocate for appellant, learned advocate for respondent Nos.2 and 3 and learned Additional Public Prosecutor for State. Perused the investigation papers.

6. Learned advocate for appellant submits that concerned officer in the Registrar's Office is suspended and since serious offence is committed by respondent Nos.2 and 3, as they have changed one page of the registered agreement, investigation

through police is necessary in present case.

7. Learned advocate for respondent No.2 and 3, on the other hand, opposed the prayer contending that Special Civil Suit No.75/2015 was filed by respondent No.3 against appellant for specific performance of the same agreement to sale. In that suit, same contentions were raised by appellant that the terms and conditions of agreement to sale were changed by respondents and this contention is negated by the Civil Court and the suit filed by respondent No.3 is partly decreed.

6. Learned Additional Public Prosecutor submits that appropriate orders may be passed.

7. Admittedly, accused Rajashree Kolte has filed Special Civil Suit No.75/2015 and accused Nishikant Kolte has filed Special Civil Suit No.76/2015, for specific performance of agreement to sale, against appellant and his brother respectively. There is inordinate delay of five years in filing the private complaint. Registered agreement to sale is dated 28/02/2012, whereas private complaint is filed on 01/04/2017. In respect of alleged tampering of agreement to sale, the Civil Court framed issue; "Does defendant No.1 prove that, the plaintiff had changed terms and conditions of original agreement to sale?". After recording of evidence the same is answered in negative. The suit filed by accused Rajashree is partly

decreed. Since specific finding is recorded by competent Civil Court, it is difficult to accept the allegations of forgery and tampering of agreement to sale, made by appellant in his complaint.

8. Trial Court after considering the material on merit, has held that only statement of complainant is not sufficient to show that material ingredients of offence alleged are made out. Appellant has failed to make out case to send it for investigation under Section 156(3). Trial Court has passed a well reasoned order, which is not liable to be interfered with.

9. Appeal being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)