



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4135 OF 2023

- 1 Sayed Fazlulla Sayed Sifagatulla,
Age 40 yrs., Occ. Agri.,
R/o Shahinshah Nagar,
behind Mehraj Masjid, Beed.
- 2 Syed Anwar Syed Sifagatulla,
Age 55 yrs., Occ. Driver,
R/o Shahinshah Nagar,
behind Mehraj Masjid, Beed.
- 3 Syed Junaid Syed Anwar,
Age 30 yrs., Occ. Business,
R/o New Shahinshah Nagar,
Beed.
- 4 Sayyad Azmattulla Rafatulla,
Age 35 yrs., Occ. Business,
R/o Bashir Gunj, Near Royal Lodge,
Beed.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station, Neknoor,
Tq. & Dist. Beed.
- 2 Balu Babru Kale,
Age 40 yrs., Occ. Agri.,
R/o Gat No.257 (Old Sy.No.45),
Sakhre Borgaon,
Tq. & Dist. Beed.

... Respondents

...

Mr. Sayyed Tauseef Yaseen, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. S.S. Jadhav, Advocate for respondent No.2 - **absent**

...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 29th NOVEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 the applicants have challenged order dated 27.09.2023 passed by learned Special Judge, under the S.C. & S.T. Act/Additional Sessions Judge, Beed, whereby directions were given to the Police Station Officer to investigate the complaint filed by present respondent No.2 under Section 156(3) of the Code of Criminal Procedure and for quashing the First Information Report vide Crime No.304/2023 dated 03.10.2023 registered with Police Station, Neknoor, Tq. & Dist. Beed, for the offence punishable under Sections 35, 36, 37, 38, 120(C), 120(D), 141, 142, 143, 144, 150, 268, 354, 436 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3, 6 and 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of said order.

2 Heard learned Advocate Mr. Sayyed Tauseef Yaseen for applicants and learned APP Mr. G.A. Kulkarni for respondent No.1.

3 Learned Advocate for applicants has submitted that learned Special Judge has failed to consider before passing the impugned order that there was no compliance of the decision in **Priyanka Srivastava and others vs. The State of Uttar Pradesh and others** [(2015) 6 SCC 287]. Respondent No.2 had filed Criminal Miscellaneous Application No.115/2023 before the Court of Sessions, Beed. Thereafter, it appears that the matter was assigned to District Judge-1 as per the endorsement on 21.09.2023. Thereafter, the impugned order came to be passed on 27.09.2023. It was not accompanied by the affidavit of complainant and there is absolutely no statement that the complaint discloses cognizable offence. Which documents were considered are not gathered and without application of mind when the impugned order is passed, it cannot be allowed to sustain. Though, now, it appears that after the investigation 'A' Summary has been filed on 29.11.2023 before the Sessions Judge, it is not yet been decided and the Investigating Officer is of the opinion that no evidence is existing to support the complaint.

4 Learned APP made available the police papers and submitted that the Investigating Officer is of the opinion that the material collected in

the investigation transpires that there were civil disputes in respect of land, which according to informant, he had taken for cultivation on contract of 11 months. Informant – respondent No.2 was not at all the owner of land and it appears that informant and his family members had left the spot on their own. Except the interested witnesses nobody has come forward to support contents of complaint.

5 The first and the foremost fact that is required to be noted is that the applicants have challenged the impugned order of sending the case for investigation under Section 156(3) of the Code of Criminal Procedure. From the police papers it can be seen that the application which was presented before the learned Special Judge was not accompanied with the affidavit. It is the mandatory requirement as per the decision in **Priyanka Srivastava** (supra) and specifically in **Babu Venkatesh and others vs. State of Karnataka and another** [(2022) 5 SCC 639] it was held that if such application is without affidavit duly sworn by complainant, then it cannot be entertained by the Magistrate. As per Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the Special Court has power to take cognizance of the offence and, therefore, it can be certainly said that the Special Court under the S.C. & S.T. Act has the same powers as Magistrate in respect of the private complaints, those would be filed and, therefore, same

rules would then be applicable to the applications under Section 156(3) of the Code of Criminal Procedure to the application filed before the Special Court. When the application in the present case was not accompanied by a duly sworn affidavit of the complainant, the Special Judge ought to have restrained himself from passing the order of directing investigation under Section 156(3) of the Code of Criminal Procedure. One more aspect to be noted is that while passing the order the learned Special Judge has also stated that the Investigating Officer should not arrest any person without prior permission of his Court. We are of the considered opinion that when the order of investigation is passed under Section 156(3) of the Code of Criminal Procedure, then the concerned Police Officer/Investigating Officer would all the powers which are there with the police under Section 154(1) of the Code of Criminal Procedure including the power to arrest. It cannot be so controlled or restrained by any Court of Law. The third aspect to be noted from the impugned order is that a clear statement has not been made that the facts disclosed in the complaint are disclosing cognizable offence. Unless that finding is arrived at, order for investigation under Section 156(3) of the Code of Criminal Procedure cannot be passed. Thus, the impugned order appears to have been without any application of mind and for the aforesaid defects it deserves to be quashed and set aside.

6 When the impugned order is quashed and set aside, the natural corollary would be that the First Information Report deserves to be quashed and set aside.

7 During the pendency of this application, as aforesaid, the investigation has been completed and 'A' final has been filed before the Special Judge on 29.11.2023. According to the Investigating Officer, the said Summary is yet to be accepted. When such summaries are filed, the Magistrate/Special Judge should act swiftly and should undertake the further procedure without consummation of time. Therefore, on both counts we allow the application. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Order dated 27.09.2023 passed by learned Special Judge, under the S.C. & S.T. Act/Additional Sessions Judge, Beed and consequent First Information Report vide Crime No.304/2023 dated 03.10.2023 registered with Police Station, Neknoor, Tq. & Dist. Beed, for the offence punishable under Sections 35, 36, 37, 38, 120(C), 120(D), 141, 142, 143, 144, 150, 268, 354, 436 read with Section 34 of the Indian Penal Code, 1860 and under

Sections 3, 6 and 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, stand quashed and set aside as against applicants viz. 1) Sayed Fazlulla Sayed Sifagatulla, 2) Syed Anwar Syed Sifagatulla, 3) Syed Junaid Syed Anwar and 4) Sayyad Azmattulla Rafatulla.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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