



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1195 OF 2022

VIVEKANAND BHALCHANDRA MHATRE ..APPELLANT
VS.
1. THE STATE OF MAHARASHTRA
2. PRAKASH HARI KHARPADE ..RESPONDENTS

Mr. Mithilesh Mishra a/w Mr.Kaustub Patil, for Appellant.
Ms. Sangeeta D. Shinde, APP for the State.
Dr. Uday P. Warunjikar, for Respondent No.2.
API- Mr. Pravin Ahire, Waliv police station is present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 23, 2024

P.C. :

- 1.** Heard learned counsel for the appellant, learned counsel for the respondent no.2 and learned APP for the State.
- 2.** This is an appeal for quashing and setting aside the order dated 11/11/2022 passed below Exhibit 1 in Criminal Anticipatory Bail Application No. 1518 of 2022 in respect of the offence punishable under sections 447, 506, 420, 465, 467, 471 of the Indian Penal Code, 1860 and under sections 3(1), 4 and 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Atrocities

Act”) registered on 26/06/2021 vide C.R. No.597 of 2021 with Waliv police station, Vasai.

3. It is the case of the first informant that he belongs to the Scheduled Caste (“SC”, for short) community. By the agreement of sale dated 24/02/2021, the first informant purchased 129 guntas of land from old survey no. 76 (new survey no. 90). Out of 129 guntas, the area of 48 guntas was purchased by the first informant from Narayan Dongarkar and the area of 81 Guntas was purchased from Yashwant Undrya Sonar. It is alleged that on 03/03/2021 when the first informant and the owners of the land had visited the land, they noticed that the appellant had constructed residential home made of bricks and tin shed . They further noticed that the appellant had put up a compound wall. It is then alleged that when questioned, the appellant threatened the first informant and the owners of the land. It is the case of the first informant that as he belongs to the SC community, the appellant having encroached upon the land belonging to the member of the SC community, the offence alleged is made out.

4. Dr. Warunjikar learned counsel appearing for the first

informant was at pains to point out that the land was belonging to and in occupation of the first informant as member of the SC community which the appellant encroached, and therefore the offence under the aforesaid provisions of the Atrocities Act is clearly attracted. It is further submitted that during the course of investigation, it transpired that there are some alterations made in the revenue record which are to the benefit of the appellant and therefore this amounts to tampering with the revenue records. Dr. Warunjikar made an attempt to distinguish the decision of the Supreme Court in the case of ¹**Hitesh Verma Vs. State of Uttarakhand and anr.** relied upon by the learned counsel for the appellant.

5. Learned APP opposed the appeal and submitted that custodial interrogation of the appellant in the facts and circumstances is necessitated.

6. I have heard learned counsel. The materials on record reveals that the accusations pertain to the first informant purchasing 129 guntas of land by an agreement of sale dated 24/02/2021. The alleged encroachment made by the appellant was noticed on 03/03/2021. The first

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informant is claiming on the basis of an agreement of sale. Reading of FIR indicates that the grievance of the first informant as well as the owners of the land is that there is an encroachment made by the appellant on their land which they claim to be owners. Paragraph 13 of the decision in Hitesh Verma (supra) is relevant to the present case which reads thus :

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste.”

7. Dr. Warunjikar also made an attempt to submit that even the provisions of 3(1)(f) and (g) of the Atrocities Act

are attracted in the present case. However, in my view, there is nothing on record to indicate that the encroachment over the land by the appellant is due to indignities, humiliations or harassment to the first informant being a member of the Scheduled Caste.

8. So far as the contention of learned APP and Dr. Warunjikar that there are accusations of overwriting in the revenue records, learned counsel for the appellant submitted that the appellant has in fact reported to the investigating officer on few occasions and is co-operating with the investigation. It is submitted that the appellant has joined investigation and that the appellant is willing to co-operate with the investigation. The documents which allegedly contain overwriting are already with the investigating officer. The appellant is willing to co-operate. The custodial interrogation is not required under such circumstances. Hence, the following order.

ORDER

- (a) The appeal is allowed.
- (b) The interim order passed by this Court stands confirmed. The impugned order dated 11/11/2022 is

quashed and set aside.

(c) In the event of arrest, the appellant- Vivekanand Bhalchandra Mhatre in connection with C.R. No. 597 of 2021 registered with Waliv police station, Vasai shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.

(d) The applicant shall attend the investigating officer of Waliv police station on 27/02/2024, 28/02/2024, 29/02/2024 between 11.00 a.m. and 2.00 p.m. and co-operate with the investigation.

(e) It is always open for the parties to resort to appropriate civil remedies in accordance with law for redressal of their grievance.

9. The appeal is disposed of.

(M. S. KARNIK, J.)