



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.843/2022

1. Farooq S/o Jikar Motiwala (Kacchi),
a/a 54 Yrs., Occ. Business,
R/o Behind Snehal Talkies,
Radha Nagar Layout, Tirora,
Thah. Tirora, Dist. Gondia.
2. Isak s/o Fasal Gagan,
a/a 45 Yrs., Occ. Business,
R/o Girjabai School Road,
Tirora, Tah. Tirora, Dist. Gondia.
3. Uttam S/o Munnalal Yadav,
a/a 45 Yrs., Occ. Business,
R/o Krishnapura Ward,
Gondia, Tah. & Dist. Gondia. ... Applicants

- Versus -

1. The State of Maharashtra,
through the P.S.O. of P.S.
Tirora, Tah. Tirora, Dist. Gondia.
2. Smt. Usha W/o Arun Gajbhiye,
a/a 45 Yrs., Occ. Business,
R/o Kumbhare Nagar, Gondia,
Tah. & Dist. Gondia. ... Non-applicants

Mr. V.R. Borkar, Counsel for the Applicants.
Mr. S.B. Bissa, A.P.P. for Non-applicant No.1.
Mr. A.J. Mirza, Counsel for Non-applicant No.2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 19.3.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. This is an application seeking to quash chargesheet arising out of Crime No.0335/2022 (Special Atrocity Case No.68/2022) registered by non-applicant No.1 for the offence punishable under Sections 294, 323 and 506 read with Section 34 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. At the instance of report lodged by informant Usha crime has been registered. After completing the investigation the police have filed chargesheet. It is informant's case that she owns a piece of land bearing Gat Nos.202/1/A and 202/1/B at village

Tiroda. On 19.4.2022 applicants along with 10 to 15 unknown persons came to the land for raising construction. Since informant and her husband prevented them, applicants abused in the name of caste, particularly, applicant Uttam hurled abuses in the name of caste. The said incident was witnessed by persons namely Monu Appa Ambedare, Rohit Kiranpure and Nitin Gaherwar. Applicants have also manhandled the informant.

4. It is informants case that in presence of one Rajesh G. Guneriya who was Ex Vice-President of Nagar Parishad, Tiroda the applicants were asked to show title papers however they did not. The informant stated names of several persons who allegedly abused and tried to take forcible possession therefore the report.

5. It is applicants' case that entire allegations in the F.I.R. are false and fabricated. The informant has lodged report with *mala fide* intention to pressurise the applicants for vacating possession of subject property. It is submitted that informant

made a mis-statement that she is exclusive owner of subject property. The applicants have produced a copy of title document to show that one plot was sold by informant long back to one Kolhe who in turn under agreement handed over possession to the applicants. Moreover it is submitted that several plots have been sold by informant to different persons whose names have been mutated. According to the applicants though informant has sold the plot she is not allowing any one to take possession. The applicants have produced a copy of judgment passed by civil Court in R.C.S. No.66/2012 dated 27.1.2015. The said suit was filed by purchaser Kanchan Kolhe against the informant wherein for same subject property permanent injunction has been issued against the informant.

6. It is applicants' case that on the date of occurrence they were about to construct compound on the subject property, however, informant and her husband obstructed, for which on the very day, they have reported the matter to the police. Particularly

our attention has been invited to the N.C. Report lodged on 19.4.2022 wherein the applicant Farooq has specifically expressed that the informant gave threat that she would involve them in the offence under the Atrocity Act. On such a background we have examined the entire material. Notably, as per informant's own case, alleged occurrence took place on 19.4.2022 while crime has been registered on 26.4.2022. Though it reveals from the record that the informant has filed an application to the police on 22.4.2022 there is a delay of 4 days in lodgement of report. We have examined the statements of witnesses who have been named in the F.I.R. i.e. witness Gaurao @ Monu and Rohit Kiranapure. They have stated about the occurrence but they have not specifically stated who amongst them gave abuses in the name of caste. Witness Nitin Gaherwar is silent about the act of abuses.

7. Learned A.P.P. took us through the evidence pertaining to CCTV footage and related description. We can only gather from the CCTV footage that at relevant time the applicants

were present. However it is the very case of the applicants that they have been put in possession on the strength of agreement. At the time of occurrence they were obstructed by informant, therefore, CCTV footage would not help in any manner. Pertinent to note that already applicants have filed N.C. report on the very day which assumes significance. On such a background, long delay of 4 days creates a serious doubt about the happening of occurrence.

8. The entire genesis is doubtful since the informant is not the owner as documents to that effect have not been filed. On the other hand, the applicants have produced documents to show that the piece of land was sold to one Kanchan Kolhe and through her they are claiming a right. Moreover the statement of Kanchan Kolhe is recorded which supports the applicants case. It is apparent that there was a rivalry in which the informant is not ready to accept the possession of someone on the plot which she has already sold long back. Having regard to all the above

circumstances it reveals that the lodgement of report is actuated with *mala fides*. Rather the N.C. Report itself clarifies that on the very day itself the informant has expressed her intention to file a case under the Atrocity Act. Thus the above facts are squarely covered by Criteria No.7 as laid down by the Supreme Court in the guidelines issued under Para 108 in case of State of Harayana V/s Bhajan Lal reported in AIR 1992 SC 604.

9. For the above reasons, continuation of prosecution would be abuse of the process of Court. We deem it fit to exercise our inherent jurisdiction.

10. In view of the above application is allowed.

We hereby quash and set aside chargesheet (Special Atrocity Case No.68/2022) arising out of Crime No.0335/2022 registered by non-applicant No.1 for the offence punishable under Sections 294, 323 and 506 read with Section 34 of Indian

Penal Code and Sections 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)