



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

**CRIMINAL APPEAL NO. 873 OF 2024
WITH
CRIMINAL APPEAL NO. 885 OF 2024**

Mr. Pankajkumar s/o. Sanjaykumar Magar & Ors.

.. Appellants

Versus

Mr. Tukaram s/o. Gangaram Rayalla & Ors.

.. Respondents

Mr. P.S. Magar, Party-in-person (appellant no.1) present.

Smt. Sarika R. Pawar and Mr. V.B. Kale, Advocate for respondent Nos. 1, 4 to 6.

Mr. S.S. Ghodke and Mr. V.B. Karande, Advocate for respondent Nos. 2 and 3.

Mr. R.B. Dhaware, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 27.06.2025
PRONOUNCED ON : 17.07.2025

ORDER :-

01. These Criminal Appeals are arising out of orders dated 31.07.2024 and 16.08.2024 passed by the learned Additional Sessions Judge, Aurangabad and learned Special Judge, S.C. & S.T. (POA) Act, Aurangabad in Criminal Misc. Application No. 351 of 2024 & Criminal Misc. Application No. 350 of 2024 respectively. The learned Trial Court, by way of the impugned orders, rejected the said applications of the

present appellants. The appellants by way of said applications had prayed for issuance of directions for investigation under section 175 (3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS").

02. The appellants had approached the learned Sessions Judge, after the police refused to register FIR and even the Senior Police Inspector also refused to register the offence. It is case of the appellants that they happen to be persons belonging to Scheduled Caste. They are owner of plot No.1, admeasuring 2227.059 sq. mtr. from Gat No. 154 of village Mitmita, Tq. & Dist. Chh. Sambhajinagar. When they went to their plot on 01.05.2024, they found four persons standing on the plot. There was a board showing owner of the plot to be Tukaram Gangaram Rayalla. These persons told that the plot belongs to them and they are putting up the board. On informing that the plot belongs to the appellants and their family, they directed to stop the work of putting up the board. Respondent Shivaji called respondent No.2 Kisan Kanse. Respondent No.2 thus came and told that he is having papers in respect of the said property, however, refused to give the papers. Inspite of resistance by the appellants, the respondents continued to do the work of putting up the board.

03. On this, the appellants made complaint to Chhavni police station on 02.05.2024. It is stated that the appellants happen to be persons belonging to the Scheduled Caste. The respondents are deliberately trying to harass the appellants as the appellants because of their caste. It is case of the appellants that inspite of specific complaint, the police refused to accept the complaint and to register the FIR. On their refusal, the appellants filed a complaint with the Commissioner of Police, Chh. Sambhajinagar on 14.05.2024. However, even the Commissioner of Police failed to take cognizance of the complaint. Since no cognizance was taken by the police, the appellants filed Misc. Criminal Applications in the Sessions Court, seeking directions under section 175(3) of the BNSS. The learned Trial Court considered the applications. It is observed that the applicants took search on the Government Web-site and found that in respect of land Gat No. 154, there is consent deed dated 07.02.2024 between accused/present respondent Nos. 4,5 and 6. The Court considered that the dispute is about the ownership of a plot from Gat No.154 and observed that it is purely a civil dispute between the parties. It is open for the parties to take recourse to the law before the appropriate Authority. The Court did not find any material sufficient enough to direct the police to conduct investigation. It also observed that there are no ingredients attracting provisions of the Maharashtra

Control of Organized Crime Act [for short "MCOC Act"] and rejected the applications, as mentioned above.

04. Appellant No.1 has appeared in person and addressed this Court. He submits that the property belongs to the appellants. The respondents without any authority have taken the law in their hand and are claiming to be owners of the said plot. On asking, they could not produce any documents showing their ownership. They are unauthorizedly grabbing the property. The respondents are in habit of grabbing the property especially open plots of others. He thus submits that even the provisions of the MCOC Act are attracted as the respondents have grabbed various properties in this manner. He further submits that the respondents have knowledge that the appellants belong to the Scheduled Caste and deliberately they are trying to oust the appellants. This clearly attracts provisions of section 3(1) (f), (g), (r) and 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [for short "Atrocities Act"]. He referred various litigations and cases pending against the respondents, before various forums and strenuously submits that provisions of the MCOC Act are clearly attracted. He relies upon judgments of the Hon'ble Supreme Court in the cases of **Lalita Kumari Vs. Government of Uttar Pradesh and Ors.**,

(2014) 2 SCC 1 and Pradeep Nirankarnath Sharma Vs. State of Gujarat & Ors., [arising out of SLP (Crl) No. 3154 of 2024].

05. Learned Advocates for the respondents vehemently oppose the applications. It is submitted that the dispute is purely of a civil nature. The claim of both the parties is about ownership of open plot. It is open for the appellants to approach the Civil Court and claim the ownership. Just to avoid civil litigation, the appellants are trying to drag the respondents in criminal cases only to harass the respondents and to pressurize them and to make them to come to some compromise terms. There was no reason for the respondents to show the documents to the appellants. The police have rightly not registered any FIR. Even the Commissioner of Police found it to be a case of civil nature and rightly did not direct the police station to register the offence. The learned Trial Judge has considered all these aspects and arrived at correct conclusion that the dispute is about the property and has rightly passed the order.

06. The learned APP submits that the police at Chhavni Police Station considered the application. It is seen that the dispute is clearly a civil dispute and therefore rightly no FIR was registered. Even the Commissioner of Police found that there is no substance in the

allegations. Learned APP thus supports the impugned orders.

07. This Court has heard arguments of all the parties and seen the documents along with appeal memo. On hearing the parties, it is clearly seen that the allegation is that the respondents were seen on the plot allegedly belonging to the appellants. The appellants had shown mutation entry No. 11319, showing their ownership on the plot, which was taken in revenue record and certified on 29.09.2018. The appellants have produced on record the caste certificate issued by the Sub-Divisional Officer, Aurangabad in favour of appellant No.1 showing that they belong to scheduled caste – Mahar (37).

08. On going through the complaints, no doubt there are entries in the name of the appellants. However, those are of 2018. The contents of the complaint show that respondent No.1 is a person in whose name the board on the plot is put up. Accused Nos. 5 and 6 are sons of accused No.1. Accused No.4 is said to be a person allegedly a co-owner of the plot. Accused No.2 is a person who was called by the parties on the spot on 01.05.2024, when the appellants found respondent No.1 on the spot along with others. The role alleged against respondent Nos. 2 and 3 is that they are the persons who told others to

put cement poles and limestone powder marking. Thereafter, the appellants called police. Police came to the spot, however, did not take any action. The police failed to take cognizance even after narrating the incident of the events on that day. It is the allegation that though the appellants asked for ownership documents, the accused persons could not furnish the same. Since all the accused came there, the case was made out of criminal conspiracy. The details of other cases are given. It is alleged that the accused persons voluntarily obstructed the appellants and prevented them from proceeding into their own plot, which amounts to wrongful restraint. It is further alleged that there is mischief committed by the accused persons. There are allegations of trespass, forgery of documents, wrongful occupation of plots and on all these allegations it is argued that a case is made out even under the MCOC Act.

09. Looking to the complaints as it is, what is seen is that the dispute is over the property i.e. open plot. Merely because the appellants happen to be persons from Scheduled Caste, will not make out a case attracting the provisions of the Atrocities Act. What appears is that the case is of a Civil nature.

10. In the judgment of **Lalita Kumari (supra)**, the Hon'ble Apex Court held that when cognizable offence is made out, it is duty of the police authority to register complaint under section 154 of the Cr.P.C. In the judgment of **Pradeep Nirankarnath Sharma (supra)**, the Hon'ble Apex court by relying on the judgment of **Lalita Kumari (supra)**, stated that registration of FIR is mandatory under section 154 of the Cr.P.C., if the information discloses the commission of a cognizable offence. Scope of preliminary enquiry is limited to situations where the information received does not *prima facie* disclose a cognizable offence but requires verification. It is held that preliminary enquiry must be conducted in every case before registration of FIR. The appellants' case, therefore, is that there was no question of conducting any preliminary enquiry and offence ought to have been registered.

11. On going through the FIR, as already observed, it purely appears to be a case of civil dispute. There is nothing to show that cognizable offence was made out requiring investigation at the hands of police. This Court finds that there is no merit in the appeals. No case is made out calling for interference in the impugned orders. The Trial Court has rightly passed orders. No illegality or perversity is shown in the impugned orders. The complaint is not outrightly rejected, but the

complainant is directed to appear for recording verification statement. Till now no verification is recorded. It is thus seen that the appellants are interested only in using police machinery. The motive clearly appears to bring pressure on the respondents. This Court, therefore, does not find merit in the appeals.

12. The Criminal Appeals, therefore, stand dismissed.

[KISHORE C. SANT, J.]