



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.872 OF 2025

1. Nijamoddin Mohamad Khan
Aged: 58 years, Occu. Business,
R/o Deoka Malaka Kuwarpur
Nainital – Uttarakhand.
2. Taher Hussain Shaikh
Age: 39 years, Occ. Agri & Business,
3. Aleem Saleem Shaikh
Age: 29 years, Occ. Agri & Bisiness,
4. Shaikh Shoeb Shaikh Chand
Age: 24 years, Occ. Agri & Business,
Appellants No. 2 to 4 R/o. Plot No.24,
M-Sector, N-6 CIDCO, Chh. Sambhajinagar
5. Akhtar Hussain Hasmlah Chaudhary
Age: Major, Occ. Business,
R/o. Plot No.201, South City, Tisgaon,
Tal & Dist. Chh. Sambhajinagar,
6. Shaikh Suleman Abdul Kadar
Age: 55 years, Occ. Business,
7. Shaikh Chand Abdul Kadar
Age: 60 years, Occ. Business,
Appellant No. 6 and 7 R/o. Plot No.24,
M-Sector, N-6, CIDCO, Chh. Sambhajinagar,
8. Mohd. Mufid Nathani Mohd Riyaj Nathani
Age: 31 years, Occ: Business,
R/o. Navin Mondha, Aurangabad ... **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Police Inspector, MIDC Waluj
Police Station, Chh. Sambhajanagar
2. Laxminarayan Chotelal Rathod,
Age: 62 years, Occ: Business,
R/o. Thakur Niwas, Giriraj Hsg.
Society, Pandharpur, M.I.D.C.,
Waluj, Aurangabad

... RESPONDENTS

....

Mr. Shaikh Ashraf Patel, Advocate for the Appellant
Mr. S. S. Dande, APP for Respondent No.1 - State
Mr. U. L. Telgaonkar, Advocate for Respondent No.2 (Appointed
through the Legal Aid)

....

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : April 06, 2026

PRONOUNCED ON : April 20, 2026

JUDGMENT :-

1. Heard Mr. Shaikh Ashraf Patel, the learned counsel for the Appellant, Mr. Dande, the learned APP for respondent No.1 and Mr. Telgaonkar, the learned counsel for respondent No.2.

2. By the present appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant / accused takes exception to the order dated 16.05.2025 passed in Criminal M. A. No.179 of 2024 by the learned

Special Court (SC & ST Act), Aurangabad, whereby the process against the present appellant i.e. original accused Nos. 1 to 7, 9 and 10 are issued for the offence punishable under Sections 3(1)(f) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The present appellants are the original accused Nos. 1 to 7, whereas the appellant No.8 is the original accused No.9 and respondent No.2 is the original complainant in Criminal M.A. No.179 of 2024.

4. Respondent No.2 has filed Criminal M.A. No.179 of 2024 and claimed that he is the General Power of Attorney holder of one Fakiri Kisan Gangave, who is the member of Scheduled Tribe. The said Fakiri Kisan Gangave was having land bearing Gut No.311 Survey No.191, admeasuring 25 Acres and 25 Gunthas at village Waluj (Bk). The said land of Fakiri Kisan Gangave is directed under Section 36 of the Maharashtra Land Revenue Code. As per the revenue record 7/12 extract, the accused No.1 / appellant No.1 in collusion with revenue authorities carried out mutation pretending that he had purchased the land from said Fakiri Kisan Gangave by

giving false description of field boundaries. According to the complainant / respondent No.2, the appellant No.1 / accused No.1 encroached upon the land of said Fakiri Kisan Gangave and created false and fabricated sale-deeds about the said field with an intention to deceive said Fakiri Kisan Gangave. So also, the accused / appellants are trying to grab the land of Fakiri Kisan Gangave, allotted to her. Therefore, the appellants / accused have committed an offence punishable under Section 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Further, the accused with their common intention, disposed off the land of triable and interfered with peaceful possession over the land of the tribal person. Therefore, the appellant / accused have committed the offence under Section 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. On 16.05.2025, the learned trial Court passed the impugned order and issued process against the present appellants / accused for the offence 3(1)(f) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Being aggrieved by the said order, the present appellants filed the present appeal.

6. The learned counsel appearing for the appellants canvassed that respondent No.2 is the complainant. However, he does not belong to Scheduled Tribe community. Respondent No.2 complainant pleaded that he is the General Power of Attorney of one Fakiri Kisan Gangave, who is the member of Scheduled Tribe Community. However, Fakiri Kisan Gangave has not filed complaint. Therefore, the complaint at the behest of respondent No.2, is not maintainable. Therefore, the learned trial Court could not consider the locus standi of respondent No.2 to file the said complaint. However, without considering the locus of the present respondent No.2, the learned trial Court passed the impugned order and issued process against the present appellants / accused for the offence punishable under Section 3(1)(f) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

7. It is further canvassed that, the learned trial Court called the report under Section 202 of Cr.P.C. from the Investigating Officer. Accordingly, the Investigating Officer sought information from the Sub-Registrar, Gangapur who informed that no permission of the Collector is required to sale purchase land of Gut No.311, Survey

No.191 of village Waluj (Bk), Taluka Gangapur, as the said land is Class-1 land as per the revenue record of 7/12 extract. The Sub-Registrar further informed that 75 R land standing in the name of Fakiri Kisan Gangave is subject to Section 36 and 36A of the Maharashtra Land Revenue Code as per the order passed by the learned Sub-Divisional Officer, Vaijapur and as per the revenue record i.e. Khasra Pahani and 7/12 extract, the land admeasuring 3 Hectare 22 R is standing in the name of appellant No.1 / accused No.1 Nijamoddin Mohammad Khan and the said land is not tribal land. Therefore, there is no ingredients are absent to constitute an offence punishable under Section 3(1)(f) and 3(10)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, the learned trial Court failed to consider the said legal aspect of the matter and passed the impugned order in mechanical manner, hence, prayed for quashing and setting aside the same.

8. Per contra, the learned counsel for respondent No.2 canvassed in vehemence that the present appellant / accused in collusion with the revenue authorities, transferred the tribal land without permission of the revenue authorities i.e. Collector under Section 36 and 36A of the Maharashtra Land Revenue Code of the

tribal person Fakiri Kisan Gangave. So also, in furtherance of their common intention, knowingly the said Fakiri Kisan Gangave is of Scheduled Tribe category, her land was transferred without prior permission and intentionally inserted and intimidated in the public view. Therefore, as per the provisions of Section 3(1)(f) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the offence is constituted and the learned trial Court passed the impugned order on 16.05.2025 and issued process against the appellant / accused which is just and proper and no interference is called to justify the impugned order, hence prayed for dismissal of the appeal.

9. It is a matter of record that, respondent No.2 is the General Power of Attorney of one Fakiri Kisan Gangave. It is not in dispute that said Fakiri is the member of Scheduled Tribe community. As per the 7/12 extract, 75 R land out of Gut No.311 is standing in the name of Fakiri Kisan Gangave. According to the appellants / accused, total 25 Acres and 25 Gunthas of agricultural land bearing Gut No.311 Survey No.191 of village Waluj (Bk), stands in the name of owner Fakiri Kisan Gangave. However, the said land has been transferred without permission of the revenue authority i.e. Collector

under Section 36 of the Maharashtra Land Revenue Code. The present respondent No.2 who is the General Power of Attorney holder of Fakiri Kisan Gangave stated about pending of suit for perpetual injunction before the learned Civil Judge Junior Division, Gangapur against the accused No.1 / appellant No.1 Nijamoddin Mohamad Khan. Though the present respondent No.2 alleged that the land of Fakiri Kisan Gangave, the member of Scheduled Tribe, has been transferred illegal by the appellant No.1 / accused No.1, however the said Fakiri Kisan Gangave is not party complainant to the complaint. Further, respondent No.2 / complainant has not filed the said complaint through the original land owner Fakiri Kisan Gangave. No doubt, the present respondent No.2 / informant claims that he is the General Power of Attorney Holder for Fakiri Kisan Gangave. However, as per the power of attorney, it does not appear that the present respondent No.2 / complainant is authorised to file criminal complaint on behalf of Fakiri Kisan Gangave, the member of tribal community. Therefore, to my mind, the present respondent / complainant is having no locus to file such complaint.

10. As per the law dictionary, the meaning of the word "By" used to signify that an act was performed directly by a person or

authorised community, often under its own power or as an authorized officer in a company. Therefore, it denotes that the person singing or acting is the immediate agent or the community itself. The words "on behalf of", indicates that an individual is acting as a representation for another person or community (the member). It implies an agency relationship.

11. In the case in hand, though respondent No.2 informant alleged that the land of Fakiri Kisan Gangave has been transferred by the present appellant No.1 / accused No.1 without prior permission of the revenue authority i.e. Collector under Section 36 of the Maharashtra Land Revenue Code. However, the said fact is required to be stated by the owner of the land who is the member of Scheduled Tribe. However, the said member of Scheduled Tribe did not come forward to lodge the complaint. Therefore, it itself creates purpose about the locus of the present respondent No.2 / complainant to lodge the said complaint.

12. Needless to say that, as per the scheme of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the said findings are constituted against the non scheduled caste or scheduled

tribe person if any act which is provided under Section 3 of the Act is done by the member of other community than the scheduled castes / scheduled tribes. Therefore, the said findings are not "rem". No doubt, as per the provisions of Section 154 of Cr.P.C., any person can said wheel of criminal law in motion if cognizable offence is made out. However, In the circumstances of the present case, it appears that the present respondent No.2 is trying to canvass that the appellants / accused persons have committed offence under Section 3(1)(f) and (1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, though the victim has not come forward and no any such complaint is lodged by her.

13. Nonetheless, it further submits that, the learned trial Court passed an order under Section 202 of Cr.P.C. and called the report from the concerned Investigating Officer. Accordingly, the Investigating Officer submitted report stating that as per the report of the Sub-Registrar, Gangapur, no permission of the Collector is required for sale / purchase of the land bearing Gut No.311 as the said land is Class-1 land as per the entries in the revenue record 7/12 extract. The Sub-Registrar further informs that the land 75 R standing in the name of Fakiri Kisan Gangave is subject to permission under

Section 36 and 36A of the Maharashtra Land Revenue Code. In view of the decision of the learned S.D.P.O., Vaijapur, it is further informed that Khasra Pahani extract and 7/12 extract did not appear that the land admeasuring 3 Hectare 22 R, which is standing in the name of accused No.1 Nijamoddin Mohammad Khan is "either Scheduled Caste community holder or tribal holder land". Therefore, if there is any contravention of Sections 36 and 36A of the Maharashtra Land Revenue Code, the Collector, i.e., the revenue authority, has the power to initiate appropriate proceedings under the Maharashtra Land Revenue Code in respect of any transfer of tribal land made in violation of the provisions of Sections 36 and 36A of the said Code. However, respondent No.2 has not brought any substantial material on record to show that the land which is subject matter of the complaint is prohibited under Section 36 and 36A of the Maharashtra Land Revenue Code. Therefore, to my view, the offence under Section 3(1)(f) and 3(1)(g) does not constitute. However, the learned trial Court overlooked the provisions of law as well as the contents of the complaint, passed the impugned order which is not sustainable in the eyes of law. Accordingly, the impugned order is liable to be quashed and set aside.

14. In view of above discussion I proceed to pass the following order:-

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned order dated 16.05.2025, passed by the learned Special Judge (SC & ST Act), Aurangabad in Criminal M.A. No. 179 of 2024 is hereby quashed and set aside.
- (iii) The complaint bearing Criminal M.A. No.179 of 2024 is hereby dismissed. No order as to costs.
- (iv) The fees of the appointed counsel Mr. U. L. Telgaonkar, shall be quantified as per rules and be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[Y. G. KHOBRAGADE, J.]

SMS