

Other Misc. Criminal Application 20/2022

ORDER BELOW EXH.1 & 55

(Dt.10.09.2025)

Perused the record, application Exh.55 say of complainant on it.

2] Heard ld. advocate for both sides on point of framing the charge. In addition to oral argument, ld. advocate for complainant has submitted written notes of Argument Exh.61.

3] Complaints case in brief is that, he belongs to Scheduled caste. He is owner of S.No. 99/1 area 4.21 H.R. of village Lokhandi, Tah. Samudrapur. Accused no.1 and 2 hatched conspiracy, has got executed the registered sale deed of said land fraudulently, misrepresenting him that it is a mortgage deed. His mother who is also the signatory to the mortgage deed is no more. Then accused no.1 transferred said land to accused no.2, with malafide intention to deprive the complaint from said property. Complainant is in possession of said property. Accused no.2 tried to get measured said land through private surveyor in the month of April 2022 and is trying to take forcible possession of said land. Accordingly, process is issued against accused for offence punishable under section 3(g) of S.C. and S.T. (Prevention of Atrocities) Act and sections 420, 504 and 506 r/w. 34 of Indian Penal Code.

4] During the course of evidence before charge, complainant has examined him at Exh.43, CW2 Kamlakar Khadse at Exh.44, CW3 Shrihari Chafle and CW4 Ramesh Patil.

5] Complainant no.1 has deposed that, in the year 2015, he

borrowed Rs.1,90,000/- from accused no.1 and mortgaged his property to him. Accused no.1 taken him to Tahsildar's Officer and obtained his signature on document pretending it as mortgage deed. He is in possession of said property. He repaid entire loan amount time to time to accused no.1. He requested accused no.1 for redemption of mortgage, however, accused no.1 told him that, he had repaid only interest. Then accused no.1 sold the disputed property to accused no.2. Both accused used to come to his field and threatened him and his wife. Accused no.2 further told him that, he would measure that property and take possession forcibly.

6] CW2 Kamlakar Khadse who is adjoining cultivator has deposed that, 8 to 9 years ago complainant had mortgaged the disputed land to accused no.1, who is money lender. Complainant informed him that, accused no.1 sold said land to accused no.2. Disputed land is in possession of the complainant.

7] CW3 Shrihari Chafale has deposed that, he got knowledge from the complainant that, complainant had borrowed loan Rs.1,90,000/- on interest from accused no.1.

8] CW4 Ramesh Patil has deposed that, accused no.1 is engaged in illegal money lending. He advanced loan of Rs. 1,90,000/- to the complainant on the condition that he shall mortgage his property. After completion of harvesting season, complainant had repaid the loan. But, he does not know how much interest (extra amount) was repaid by the complainant. Complainant is in possession of disputed land. Dispute arose when accused no.1 alongwith others went to disputed land to measure it. Complainant informed him that sale deed was got executed from him under the

pretext of executing mortgage deed.

9] Complainant has produced death certificate of his mother, his caste certificate, revenue documents, certified copy of registered sale deed document no. 784/2015 dt. 20/04/2015 executed by him and his mother jointly in favour of accused no.1 in respect of 2.10 H.R. out of S.No. 99/1 total area 4.21 H.R., certified copy of sale deed executed by accused no.1 in favour of accused no.2 i.e. document no. 902/2016 dt. 02/05/2016 and copy of N.C. report dt. 21/4/2022. Complainant has closed his evidence before charge by filing pursis Exh.49.

10] Accused have also produced copies of sale deeds, mutation entry, N.C. receipt dt. 31/7/2023, notice issued by complainant dt. 10/1/2021, noticed issued by accused no. 1 to the complainant on 16/2/2020 and 11/7/2023, inquiry report dt 28/1/2022 of Assistant Registrar, co-op. societies, copy of plaint in RCS no. 67/2023 pending before CJJD, Samudrapur, caste certificate of accused no.1 and 2 disclosing that, they belongs to Scheduled Tribe and Scheduled Caste respectively.

11] Ld. advocate for complainant has argued that, complainant belongs to Scheduled caste. Complainant borrowed money from accused no.1. Accused no.1 has got executed the sale deed of disputed property by misrepresenting that it is a mortgage deed. Complainant has repaid entire loan. Complainant is in possession of suit property. However, accused no.1 executed sale deed of said property in favour of accused no.2 to deprive the rights of complainant in the disputed property and to dispossess him from the said land. Accused no.2 came to the disputed property and tried

to measure the same. Thereby, he tried to dispossess the complainant from disputed land. Accused no.2 has filed the suit for possession on the basis of bogus sale deed. Caste of accused no.1 is Gond Gowari, which is not the Scheduled Caste. There is no caste validity certificate of accused no.1. Hence, there is sufficient material available on record to frame the charge for offence punishable under section 3(1)(f)(g) of S.C. & S.T. (Prevention of Atrocities) Act, and sections 420, 504 & 506 of IPC. He has relied upon the case law ***State of Maharashtra Vs. Keshao Sonone AIR 2021 SC 122.***

12] Ld. advocate for the accused has argued that, there is no evidence that accused are not belonging to Scheduled Caste or Scheduled Tribe. On the contrary, accused had produced their caste certificates showing that, they also belongs to Scheduled caste and Scheduled Tribe. Hence, proceeding under S.C. & S.T. (Prevention of Atrocities) Act not attracted against them. Moreover, admittedly, accused no.1 sold the disputed property to accused no.2. Accused no.2 has filed suit for removal of encroachment of complainant over disputed land. Complainant himself illegally dispossessed accused no. 2 from the disputed land. On the contrary, accused no.2 has filed suit and claiming possession from complainant by following due process of law. Hence, no offence under the S.C. & S.T. (Prevention of Atrocities) Act is made out. He has further submitted that, complainant and his mother had executed registered sale deed in favour of accused no.1. Inquiry report is suppressed by the complainant, which reflects that, it was not money lending transaction. Moreover, complainant is signatory to the sale deed executed by accused no.1 in favour of accused no.2. Under such circumstances, offence punishable u/s. 420 of IPC is not made out.

There is no evidence at all about threat or provocation to break public peace. Hence, accused are entitled for discharge and complainant is liable to be dismissed.

13] To support the contention, ld. advocate for the accused has relied upon the following case laws :

(i) ***Mathura Singh Vs. State of Jharkhad 2002 Cr.L.J. 3798***, wherein Hon'ble Jharkhand High Court held that, '*in view of Rule 7 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules 1995, investigation of offences committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent. Noncompliance of said provision vitiates the investigation*'. Similar ratio is laid down in the case of ***Dhanraj Singh Vs. State of M.P 2005 Cri.L.J. 3782***. However, this is the complaint case. Process is issued u/s. 204 of Cr.PC. and not on the basis of investigation made by police. Therefore, these case laws are not applicable to the case in hand.

(ii) ***Shakuntala Devi Vs. State of U.P 2003 Cri.L.J. 687***. Wherein Hon'ble Allahabad High Court held that, "*when civil remedy is available, criminal case is not barred and each case has to be decided on the basis of its peculiar facts and circumstances to find out whether on the fact of a criminal offence is made out or not*". This case law is favourable to complainant.

(iii) ***Sardar Amik Singh Vs. State of U.P 2002 Cr.L.J. 3665***. Wherein Hon'ble Allahabad High Court held that, "*the dispute between the parties is regarding non-completion of plant by the petitioner, which caused losses to the complainant. Petitioner has his own version for not completing the plant. Therefore, the dispute between the parties is purely of civil nature and no ingredients of*

cheating has been disclosed in the case”.

(iv) ***Jagdish Chand Vs. State and others 1995 Cr.L.J.***

2253. Facts of said case are as follows; “Accused no.1 is husband and accused no. 2 and 3 are in-laws of the daughter of complainant. They used to harass his daughter. On 25.08.1987 by a clever device, complainant daughter was murdered through electrocution by all the accused. However, complaint was filed on 12.04.1988, I.O. has recorded statements of parents of deceased and others and found that, it was an accident, and postmortem of dead body was waived off. On the basis of same, Id. Metropolitan Magistrate came to the conclusion that, filing of complaint after lapse of 8 months appears to be after thought and the evidence is fabricated on the part of the complainant, and dismissed the complaint filed for the offence u/s. 392, 304B, 304 & 498A r/, 34 of IPC. Considering the peculiar facts of the case, Hon’ble High Court confirmed the said order. Facts of above case laws (iii) and (iv) are totally different. Hence, these case laws are not helpful to the accused.

(v) In the case of ***Devisingh Vs. State of M.P 2003 Cri.L.J. 147.*** Hon’ble M.P. High Court held that, “*to attract the section 3(i)(v) of S.C. & S.T. (Prevention of Atrocities) Act, there has to be actual dispossession from land or premises belonging to the members of the category of Scheduled Caste or Scheduled Tribe, or interference with the enjoyment*”. There cannot be any dispute about this legal principle.

14] Relevant portion section 3(i)(f)(g) of S.C. & S.T. (Prevention of Atrocities) Act, are read there :

Section 3 punishment for offences of atrocities :

(i) Whoever not being a member of a Scheduled Caste or

a Scheduled tribe,

(f) Wrongfully occupies or cultivates any land owned by or in the possession of or allotted to, or notified by any competent authority to be allotted to a member of a Scheduled Caste or Scheduled Tribe, or get such land transferred.

(g) Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interference with the enjoyment of his rights, including forest rights, including over any land or premises or water or irrigation facilities or destroy the crops or takes away the produce therefrom.

15] Section 3 of S.C. and S.T. (Prevention of Atrocities) Act, is not applicable to the member of Scheduled Caste and Scheduled Tribe. However, there is no averment in the complaint that, accused are not belongs to the Scheduled Caste or Scheduled Tribe. So also, none of the complainant witness has deposed about the caste of the accused. Not only this, complainant has not produced any document to show that, accused are not the members of Scheduled Caste or Scheduled Tribe. On the contrary, accused had produced the copies of their caste certificates disclosing that accused no.1 belongs to Gond-Gowari the Scheduled Tribe and accused no.2 belongs to Scheduled Caste. As such it reveals that accused no.1 belongs to caste Gond-Gowari. Accused have produced copy of caste certificate of accused no.1 that, he belongs to Gond-Gowari, Scheduled Tribe. Ld. advocate for the complainant has placed his reliance on the case of ***State of Maharashtra Vs. Keshao Sonone AIR 2021 SC 122*** and argued that, Gond-Gowari case is extinct and they are not Scheduled

Tribe. However, in the said case, Hon'ble Apex Court held that, *"the High Court is not correct in its view that, Gond-Gowari shown in item No.28 in Entry 18 of Scheduled Tribe Order 1950, is not a sub-tribe of Gond. The validity of the caste certificate to Gond-Gowari has to be tested on the basis of affinity test as specified in Government Resolution of 24/4/1985"*. This case law supports the contention of accused that, accused no.1 is Scheduled tribe person.

16] Moreover, there is no evidence that, accused no.1 and 2 had dispossess the complainant from disputed land or obstruct his enjoyment over said property. The allegation in the complaint is that accused had applied to Dy. SLR for measurement. He had apprehension that he would be subjected to victimized. There is no sufficient allegation that any accused had insulted or threatened him. So also, no specific incident about threat or insult is mentioned in the complaint. No doubt, complainant has produced N.C. receipt regarding incidence dated 20.04.2022. However, none of witness has deposed about said incident. On the contrary, complainant has deposed vaguely that, accused no.1 and 2 used to come and threaten him that they would get measure the land and dispossess him. Except this there is no other evidence. There is no evidence that, accused no.1 or 2 obstructed his possession illegally. On the contrary, sale deed of disputed property executed by accused no.1 in favour of accused no.2 bears the signature of complainant as attesting witness. Under such circumstances, it can not be said that, accused no.1 had sold the disputed land to accused no.2 without consent of the complainant. Even assuming that at the relevant time, complainant was in possession of disputed property and being purchaser accused no.2 has tried to get measure the land, then also, by no stretch

imagination it can be said that, accused no.2 tried to dispossess or interfered in the enjoyment of property by the complainant illegally. More particularly, when the accused has only tried to get measure the land and he had filed suit for possession of disputed property.

17] According to complainant himself, he had taken money and executed registered sale deed of disputed property in favour of accused no.1 in the years 2015. According to the complainant, it is loan transaction. However, there is nothing on record about the agreed rate of interest on alleged loan. On the contrary, complainant has deposed that, he paid Rs.1,90,000/- only time to time, without specifying said dates. He has not obtained any receipt of payment, though registered sale deed was executed by him in favour of accused no.1. He has not filed any suit challenging said sale deed. There is no role of accused no.2 at the time of execution of sale in favour of accused no.1. On the contrary, complainant signed as attesting witness to subsequent sale of disputed property made by accused no.1 in favour of accused no.2, who belongs to Scheduled Caste. Under such circumstances, in my view, by no stretch of imagination it can be said that, accused no.1 has got executed the sale deed by misrepresenting him as mortgage deed. According to complainant himself that, there is no delivery of disputed property and accused no.2 is trying to take forcible possession, whereas, it is a version of accused no.2 that, complainant has dispossessed him from disputed land, hence, he has filed suit for recovery of possession. As such it reveals that, the dispute is regarding nature of transaction and delivery of possession in consequence of it. There is nothing to show that, the alleged acts of executing sale deeds having any nexus with the caste of complainant. Said dispute is purely civil dispute.

18] In view of above discussion, in my view there is no case against the accused made out, if unrebutted, would warrant their conviction for offence punishable u/s. 3(i)(f)(g) of S.C. & S.T. (Prevention of Atrocities) Act, and sections 420, 504, 506 r/w. 34 or 120-B of IPC. Therefore, accused are entitled for discharge. In the result, I proceed to pass the following order :

ORDER

- (1) Application Exh. 55 is allowed.
- (2) Accused no.1 and 2 are discharged under section 245(1) of Cr.P.C. and their bail bonds stands cancelled.
- (3) Proceeding is closed.

Date : 10.09.2025

(Dhanraj Y. Kale)
Additional Session Judge,
(Court no.2), Hinganghat.

CERTIFICATE

I affirm that the contents of this P.D.F file are same word to word, as per the assigned order.

*Anil Nakhate
Stenographer (Grade-1)*