

(2020) 08 MP CK 0221

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 3749 Of 2020

Dhirendra Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 393, 438
Indian Penal Code, 1860 — Section 409, 420, 467, 468, 477A
Madhya Pradesh Land Revenue Code, 1959 — Section 165, 165 (7B)
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(2)(v), 14A

Citation : (2020) 08 MP CK 0221

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : Sankalp Kochar, Sanjeev Singh, A.K. Rawat

Final Decision : Dismissed

Judgement

This Second criminal appeal has been filed under Section 14 (A) of SC/ST (Prevention of Atrocities) Act against the order dated 18/03/2020 passed by Special Judge, SC/ST (Prevention of Atrocities) Act, Tikamgarh, whereby learned Special Judge rejected the Bail Application No.176/2019 filed by the appellant Dhirendra Singh under Section 438 of the Cr.P.C. to get anticipatory bail in Crime No.448/2017 registered at Police Station Prithvipur, District Tikamgarh for the offence punishable under Sections 420, 467, 468, 477-A, 409 of the IPC and Section 3(1)(r), 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, who apprehends his arrest in the crime.

In total this is the second appeal filed by the appellant and earlier appeal filed by the appellant was dismissed on merits vide order dated 24.06.2020 passed in Cr.A.No.2859/2020.

As per prosecution case on 13/02/2017 complainant Munnalal lodged a written report at Police Station Prithvipur, District Tikamgarh averring that in the year

1968-69, the land measuring 2.900 hectares situated at village Khiston was allotted by the Government to his father Durgai on lease. Thereafter, his father Durgai cultivated the said land till the year 1983 and after his death, he and his brother Summa cultivated that land. In the year 1985, they sold that land to co-accused Alam Kachhi, Kallu Kachhi, Harkishan Kachi, Munna Kachhi, Lalle Kachhi, Jamuna Kachhi, Kashiram Kachhi, Mulu Kachhi, Dhanu Kachhi, Basante Kachhi, Ramsewak, Puni Kachhi, Ramphe Kachhi, Gorelal Kachhi and Chandilal Kachhi by registered sale deed dated 23/06/1985. Thereafter, they got their names mutated on that land vide order dated 03/03/1985. But, the then, Collector set aside that mutation order vide order dated 24/03/1986. Thereafter, the land was again mutated in the names of complainant Munnalal and his brother Summa. In the year 2006, abovementioned co-accused Alam Kachhi and others again filed an application for mutation of the said land in their names on the basis of said sale deed. On that application, in the year 2006 appellant Dharendra Singh the then Nayab Tehsildar, Prathvipur on the report of co-accused Pradeep Kumar Khare, the then Patwari wrongly mutated that land in the names of co-accused Alam Kachhi and others. Thus, appellant in connivance with other co-accused committed fraud with the complainant. On that Police registered Crime No.448/2017 for the offence punishable under Sections 420, 467, 468, 477-A, 409 of the IPC and Section 3(1)(r), 3(2)(v) of the SC/ST (Prevention of Atrocities) Act against the appellant and other co-accused persons. Appellant filed an application under Section 438 of the Cr.P.C. before the Trial Court for grant of anticipatory bail, which was rejected, against which present appeal has been filed.

Learned counsel for the appellant submitted that the appellant is innocent and has falsely been implicated in the matter. The co-accused Alam Kachhi, Kallu Kachhi, Harkishan Kachi, Munna Kachhi, Lalle Kachhi, Jamuna Kachhi, Kashiram Kachhi, Mulu Kachhi, Dhanu Kachhi, Basante Kachhi, Ramsewak, Puni Kachhi, Ramphe Kachhi, Gorelal Kachhi and Chandilal Kachhi filed an application alongwith the sale deed for mutation of the said land on their names, on which he got notice published and thereafter as per Rule passed the mutation order in favour of co-accused Alam Kachhi and others on the basis of sale deed. At that time nobody filed any objection. The appellant did not know the fact that earlier also the land was mutated on the names of co-accused Alam Kachhi and others, on the basis of said sale deed and that order was rejected by the Collector. Co-accused Alam Kachhi and others and complainant himself did not disclose this fact, so the appellant in discharge of his official duties on the basis of the report of co-accused Pradeep Kumar Khare, the then Patwari passed the order of mutation. Hence, no offence is made out against the appellant. He further submitted that the complainant and his brother were the owners of the said land, so they had the right to sell that land. Even If it is assumed that initially said land was allotted by the Government to the complainant's father Durgai on lease in the past, still, before the date of sale, the complainant had become the owner of the land by operation of law and hence he had the right to sell the said land

without the permission of Collector. The provisions of Section 165 of the Revenue Code did not apply in that case. He further submitted that on the representation of appellant, D.S.P. Prathvipur enquired into the matter and gave the report that no offence is made out against the appellant. Even then, Police wrongly registered the offence against the appellant. Even, the mutation order passed by the appellant has also been set aside by the Dy. Collector, Prathvipur vide order dated 08/03/2018. The appellant is a Government servant and is ready to cooperate in the investigation and trial. On the strength of aforesaid, learned counsel prayed for grant of the anticipatory bail.

Learned counsel for the State as well as learned counsel for the objector opposed the prayer and submitted that the sale deed on the basis of which appellant passed mutation order in favour of co-accused in the year 2006, was executed in the year 1985. The land which was mutated by the appellant in favour of co-accused Alam Kachhi and others was the Government land, which was given to the father of complainant Durgai on lease who belonged to Scheduled Caste community. According to the provisions of Section 165 of the M.P. Land Revenue Code, 1959, the said land could not be sold by the lease holder without the permission of the Collector. Appellant knowing the fact that the seller belonging to Scheduled Caste community was the leaseholder and not the owner of the land and was given the land on lease, mutated said land in favour of co-accused Alam Kachhi and others, which clearly shows that the appellant in connivance with co-accused Pradeep Khare, the then Patwari and Alam Kachhi and others mutated said land in favour of Alam Kachhi and others. So, the appellant should not be released on anticipatory bail.

This is the Second criminal appeal filed by the applicant under Section 14 (A) of SC/ST (Prevention of Atrocities) Act against the order dated 18/03/2020 passed by Special Judge, SC/ST (Prevention of Atrocities) Act, Tikamgarh. Earlier appeal filed by the appellant against the same order was dismissed on merit by this Court vide order dated 24.06.2020 passed in CRA No.2859/2020. So looking to the provisions of Section 393 of Cr.P.C. this second appeal filed against the same order is not maintainable.

Since the rejection of First appeal there has been no change in circumstance. Apex Court in the case of State of M.P. v. Kajad, (2001) 7 SCC 673 observed "It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] and various other judgments.

It is alleged that the said land, which was government land, was allotted by the Government to complainant's father Durgai on lease in the year 1968-69. In the Khsara of the year 1974 -1979 filed by the appellant himself in support of his application, the name of Durgai was mentioned as leaseholder which prima facie

shows that the said land was allotted by the Government to complainant's father Durgai on lease.

According to the provisions of Section 165 (7-B) of the Code, which reads as under :--

"Notwithstanding anything contained in Sub-section (1), a person who holds land from the State Government or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes Bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reason to be recorded in writing." such types of land could not be transferred without the permission of the collector. As also held by the divisional bench of this court in the case of Mulayam Singh And Anr. vs Budhuwa Chamar And Ors. reported in 2002 (2) MPHT 140.

In the notice published by the order of appellant himself, it is mentioned that the complainant who belongs to Scheduled Caste community was the leaseholder of the land. This prima facie shows that at the time of passing mutation order appellant had known the fact that the complainant who sold the land is a member of Scheduled Caste community and lease holder of the land. Even then the appellant muted said land in favour of co-accused Alam Kachhi and others against the provisions of Section 165 of M.P. Land Revenue Code, 1959 in the year of 2006 on the basis of sale deed which was executed in the year 1985. So looking to the facts and circumstances of the case and the contention of learned counsel of the State/respondent no.1, this Court is not inclined to grant anticipatory bail to the appellant.

Hence appeal is rejected.