
(2013) 03 BOM CK 0165

In the Bombay High Court

Case No : Criminal Application (Apl) No. 373 of 2012

Vinayak and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Penal Code, 1860 (IPC) — Section 406

Scheduled Castes And Scheduled Tribes Orders (Amendment) Act, 2002 — Section 3, 3(iv)(v), 3(vi)(v)

Citation : (2013) ALLMR(Cri) 1586

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.L. Khapre, for the Appellant; T.A. Mirza, APP for the respondent
No. 1 and Respondent No. 2 absent though served, for the Respondent

Judgement

A.B. Chaudhari, J.—Rule. Rule is made returnable forthwith and heard by consent of the parties. By this application, the applicants have challenged the order below Exh. 1 in Regular Criminal Case No. 55/2012, pending on the file of the Judicial Magistrate First Class, Akot and consequent First Information Report No. 101/2012 registered on 24-5-2012.

2. In support of the application, learned Counsel Mr. R.L. Khapre, vehemently, argued that the order impugned u/s 156(3) of Cr.P.C. was passed by the learned Trial Court and consequently, the First Information Report No. 101/2012 was registered after the period of lapse of about 30 years for which there is absolutely no explanation and non-applicant No. 2's action was clearly malafide and with deliberate intention to harass the applicants. He then argued that even according to the non-applicant No. 2, he belongs to Scheduled Caste so also the applicants. Even then without going through these facts, the Trial Court has passed the impugned order in relation to offences u/s 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which shows total non-application of mind. He then argued that perusal of the first information

report itself shows that no offence is made out and still the trial court has directed investigation u/s 156(3) of the Code of Criminal Procedure. He then argued that the record before the Court is contrary to what is alleged in the complaint u/s 3(vi)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and, therefore, without giving any reasons and ignoring those important documents and admitted facts, the Trial Court could not have passed the impugned order. He relied upon the decision of the Supreme Court in the case of *Thermax Ltd. and Others Vs. K.M. Johny and Others*,

3. Per contra, learned APP Mr. T. A. Mirza argued that as a matter of fact, the Police Station Officer, Akot did not register the offence at the inception as the complaint filed by the non-applicant No. 2 appeared to be of civil nature. However, according to him, since the Magistrate has passed the order u/s 156(3) of Criminal Procedure Code, there was no alternative to the Police Station Officer, but to register the First Information Report. Therefore, no fault can be found out with the non-applicant No. 1. He, therefore, left it to this Court to pass the appropriate order.

4. The non-applicant No. 2 though served is absent.

5. We have heard learned Counsel for the applicants. We have gone through the First Information Report carefully. We have gone through the order impugned. We have gone through the documents on record.

6. Perusal of the First Information Report or the complaint before the Judicial Magistrate First Class, Akot u/s 156(3) of Criminal Procedure Code shows that the applicants as well as non-applicant No. 2 belong to Scheduled Caste. In fact, there is averment in the complaint by non-applicant No. 2 itself that the applicant No. 1 is his son and Sadashiv is his brother. Obviously, no offence u/s 3(iv)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is at all made out. That apart, it is further stated in the petition u/s 156(3) of Cr.P.C. by the non-applicant No. 2 that on 14-12-1981 the applicant No. 1 had purchased the field in his name, but as a matter of fact, it was a benami transaction of purchase made by the non-applicant No. 2 in the name of his alleged son applicant No. 1. It is thus clear that the benami transaction is being sought to be pressed into service by the non-applicant No. 2 to say that there is criminal breach of trust u/s 406 of the Indian Penal Code.

7. It is thus clear that the report is filed by non-applicant No. 2 after more than 30 years. That apart, reading of the complaint itself shows that the non-applicant No. 2 felt aggrieved only when the applicant No. 1 had made resale on 18-5-2011 to the other applicants, but then that cannot be a cause of action for the offence alleged to have been committed in the year 1981. At any rate, though the allegation made by non-applicant No. 2 that the applicant No. 1 is his son, in the entire record including the School Leaving Certificate, it is shown that the applicant No. 1 is not the son of the non-applicant No. 2, but he is the son of his brother Sadashiv. At any rate, according to us, the dispute appears to be

clearly of civil nature and has been brought before the Court after 30 years resulting into unnecessary harassment to the applicants. The Trial Court also without applying its mind carefully to the facts stated in the complaint and without verifying the documents referred to in the complaint, mechanically, passed the order impugned u/s 156(3) of the Code of Criminal Procedure, which we do not approve of. The citation cited by Learned Counsel Mr. R. L. Khapre and in particular paragraph No. 16 & 29 thereof clearly cover the present case.

8. In the light of the above discussion, we find that this application must be allowed. In the result, Rule is made absolute in terms of prayer clause (1) as modified, which reads thus:-

(1) Quash and set aside order below Exh. 1 passed by Judicial Magistrate First Class, Akot in Regular Criminal Case No. 55/12 directing the investigation by police by registration of FIR bearing FIR (Magistrate Case) No. 101/12 registered on 24/5/12 at Annexures-13 & 14 respectively.

Costs made easy.