

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION NO.80 OF 2021

BETWEEN:

Sri Lokanath,
Aged about 62 years,
S/o C.Ramaiah,
Residing at No.413,
6th Block, Rajajinagar,
Bengaluru-560010.

...Petitioner

(By Sri V.B.Shivakumar, Advocate)

AND:

1. State of Karnataka,
By Halsuru Gate Police Station,
Bengaluru-560002.
2. Sri Srisangam Priya,
Aged about 35 years,
S/o Sri Ramaiah,
"Sridhama", 9th Cross,
3rd Link Road, Jayanagara West,
Tumakuru District-562102.

...Respondents

(By Sri R.D.Renukaradhya, HCGP for R1;
Sri N.R.Naik, Advocate for R2)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the entire proceedings in LXX Additional City Civil and Sessions Judge and Special Judge at Bengaluru in Spl.Case No.438/2020 in Crime No.58/2020 filed by the 1st respondent for

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having taken cognizance for the offence punishable under Sections 172, 173 of IPC and Section 3(1)(F), 3(1)(g) of SC/ST (POA) Act annexure-D and Costs of the petition.

This Criminal petition coming on for admission, this day, the court made the following:

ORDER

The petitioner being the accused in Special C.C.No.438/2020 on the file of Additional City Civil and Sessions Judge, and Special Court for trial of offences under SC/ST (Prevention of Atrocities) Act has preferred this petition under section 482 of Cr.P.C., for quashing the said proceedings in connection with offences punishable under Sections 172 and 173 of IPC and Sections 3(1)(f) and 3(1)(g) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC/ST Act' for short).

2. I have heard Sri V.B.Shivakumar, learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1 and Sri N.R.Naik, learned counsel for respondent No.2.

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3. Pursuant to FIR lodged by the second respondent at the first respondent police station, investigation was taken up and thereafter, charge sheet came to be filed against the petitioner for the aforesaid offences. The allegations found in the charge sheet against the petitioner are that although the petitioner is the owner of land to an extent of 5 acres 4 guntas only in Sy.No.153/4 of Herohalli village, Yeshwanthpura Hobli, he laid claim on 3 acre 03 guntas of land in Sy.No.153/5, belonging to the second respondent and then obtained the revenue records to his name besides getting the land converted for non agricultural purpose. His intention is to grab the second respondent's land. He preferred an appeal before the Assistant Commissioner, Bengaluru North Sub-Division. After the said appeal was dismissed, he preferred a revision petition, RP No.175/2008-09, to the Deputy Commissioner and it was also dismissed on 03.09.2009. Then the petitioner

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preferred a writ petition to the High Court, challenging the order of the Deputy Commissioner and obtained an interim order. Again, the petitioner preferred a review petition before the Special Deputy Commissioner, against the order in the revision petition. Then the second respondent approached the High Court by filing WP No.4438/2011 challenging the review petition. In the said writ petition, the petitioner preferred IA No.1/2017 and subsequently he withdrew that application. Suppressing all these proceedings, the petitioner preferred a new appeal i.e., RA(BN) No.347/2019-20 on 19.11.2019 and he also filed a suit, O.S.No.331/2017. Thus the petitioner is involved in continuous litigations only with an intention to grab the property of the second respondent. It is further alleged that the petitioner did not appear before the investigating officer on 18.03.2020, despite service of notice to him in that regard.

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4. Sri V.B.Shivakumar, learned counsel for the petitioner argued that the petitioner is the absolute owner of totally 5 acres 22 guntas of land situated in Sy.Nos.153/3B and 153/5B. His land in Sy.No.153/3B measures 2 acre 34 guntas, and 153/5B measures 2 acre 28 guntas. He purchased this extent of land under a sale deed dated 26.09.1991 which was later on rectified on 04.10.1993. Annexure-E is the sale deed and Annexure-F is the rectification deed. The petitioner got entered his name in the revenue records after conducting phodi. The second respondent's father Ramaiah started a litigation disputing the petitioner's ownership in respect of 2.28 acres in Sy.No.153/5B. The claim of the second respondent over the said land is fictitious. The petitioner could not have obtained conversion of the land into non-agricultural purpose unless he was the owner of the land. He also filed a suit for declaration of title and injunction against the

second respondent's father Ramaiah in the Court of I Additional Senior Civil Judge, Bengaluru Rural District, and it is still pending. In the said suit, the petitioner obtained an order of temporary injunction against the second respondent's father. Then the petitioner filed an application under Order I Rule 10 CPC for impleading the second respondent as a party in the suit. He also preferred an appeal under Section 136(2) of Karnataka Land Revenue Act to set aside the order of Tahsildar dated 23.08.2019. So if the petitioner has been fighting to protect his property, it is quite strange that the second respondent went to the extent of making a false complaint against the petitioner under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The petitioner has every right to protect his land. The dispute is purely civil in nature. If the FIR is read, it makes out no offence against the petitioner at all, and therefore, the charge sheet filed

pursuant to the FIR is also illegal. In this view, the proceedings against the petitioner should be quashed as it is a clear abuse of process of Court.

5. The Government Pleader contended that since charge sheet is filed, the petitioner has to stand for trial. The allegations against the petitioner are not false and therefore, there cannot be interference under Section 482 Cr.P.C.

6. Sri N.R.Naik for the 2nd respondent argued that the 2nd respondent has made out a clear case that the petitioner has to face trial for the offences alleged against him. It is the clear intention of the petitioner that he wants to snatch the property of the 2nd respondent, who belongs to scheduled caste and for this reason, he has been continuously litigating before one or the other authority and the Civil Court. In fact, he has no *locus-standi* to prefer appeals or revision petitions before the revenue authorities. His only intention

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is to harass the 2nd respondent, and for this reason the police having held investigation, charge sheeted the petitioner. The charge sheet discloses ample evidence collected by the investigating officer. If in these circumstances, this court exercises inherent power under Section 482 of Cr.P.C., and quashes the charge sheet, it results in a great injustice being caused to the 2nd respondent. In support of his argument that the trial cannot be stalled, he has placed reliance on judgment of the Supreme Court in the case of **KAPTAN SINGH VS. STATE OF UTTAR PRADESH AND OTHERS [Cri.A.No.787/2021]**.

7. I have considered the arguments. The charge sheet clearly discloses that the petitioner is the owner of 5 acres 04 guntas of land in Sy.No.153/04. That means, the 2nd respondent admits the petitioner to be the owner of 5 acres 04 guntas of land. The petitioner has produced the

sale deed and the rectification deed. Since in the charge sheet it is stated that the petitioner is the owner of 5-04 acres of land, these documents may be looked into. Sale deed dated 26.9.1991 shows that the petitioner purchased 5.04 acres of land in Sy.No.153/4 of Herohalli village. The rectification deed dated 4.10.1993 contains recitals to the effect that in the sale deed dated 26.9.1991, the survey number was wrongly written. The land actually sold to the petitioner was comprised in two survey numbers, 153/3P and 153/5P. Inadvertently the survey number was typed as 153/4 and therefore, to rectify this mistake, a deed came into existence on 4.10.1993; however the total extent of land comprised under the correctly mentioned survey numbers was shown as 5.04 acres only. But in this petition, the petitioner has stated that at the time of conducting survey for the purpose of *phodi*, the right, title and interest of the petitioner was confirmed to 5 acres 22 guntas.

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Therefore it appears that the petitioner might have laid claim over 18 guntas of excess land and this might have led to controversy. According to the petitioner the 2nd respondent claims this property to be in existence in Sy.No.153/5B which is not identifiable. Anyway, as has been stated by the 2nd respondent in the FIR that has been lodged, there are several rounds of litigations before the revenue authorities, and that the petitioner has also filed a suit seeking declaration of his title. Parsing these circumstances, is it possible to say that all the litigations that the petitioner has undertaken would amount to offences under Section 3(1)(f) and 3(1)(g) of SC/ST Prevention of Atrocities Act. To answer this question, Sections 3(1)(f) and 3(1)(g) of SC/ST (POA) Act are necessary to be extracted here:

Section 3(1): Whoever, not being a member of a Scheduled caste or 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 a Scheduled Tribe, or gets such land transferred;

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

Explanation: For the purposes of clause(f) and this clause, the expression "wrongfully" includes—

(A) Against the person's will;

(B) Without the person's consent

(C) With the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) Fabricating records of such land;

8. In clauses (f) and (g), the word prominently appearing is 'wrongfully'. But the explanation which supplies meaning to the word 'wrongfully' is in relation to clause (f) only and therefore the prosecution case must be understood in this context.

9. The charge sheet alleges that the intention of the petitioner in getting the survey and revenue records transferred to his name and obtaining conversion into non-agricultural purpose illegally is to deprive the 2nd respondent of his property. In the charge sheet there is a reference to a number of documents which appear to have come into existence pursuant to sale deed executed in favour of the petitioner. In the charge sheet, the second respondent is shown as the owner of 3.03 acres of land in S.No.153/05, situate adjacent to the petitioner's land. Because of this reason, a dispute may be there between the parties, and the

petitioner may have approached the Revenue Authorities and the Civil Court, and this only shows that he has taken recourse to due process of law.

10. For invoking clause(f), the land of a member of scheduled caste or scheduled tribe must be wrongfully occupied or cultivated by a person not belonging to scheduled caste or scheduled tribe. That means, viewed from the angle of meaning of the word 'wrongfully' given in the explanation, the occupation or cultivation must be against the will of a member of scheduled caste or scheduled tribe, or without the consent of such member or even if consent is obtained, it must have been obtained by putting threat. The charge sheet does not disclose these ingredients. The last explanation i.e., (D) is about fabrication of records of the land upon which the prosecution might have founded its case. But even with regard to explanation 'D', it is possible to opine that since

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the petitioner's sale deed is not disputed, it is difficult to say that the revenue documents are fabricated, anyway the decision thereon will be taken by the Civil Court or revenue authorities. Therefore offence under Section 3(1)(f) of the Act is not made out.

11. Then so far as the offence under Section 3(1)(g) of the Act is concerned, the essential ingredient is wrongful dispossession or wrongful interference. There is no material indicating wrongful dispossession of second respondent from his land or wrongful interference with his land. If the premise of the litigation is seen, it is nothing more than a dispute between two adjacent land owners; it is pertinent to mention here that the petitioner disputes the very identity of the second respondent's land and therefore, a competent Civil Court can alone take a decision in this regard. For this reason Section 3(1)(g) is also not attracted.

12. Section 2(a) of the Act defines the word 'Atrocity' as an offence punishable under Section 3 of the Act. The source for enacting a special law for prevention of atrocity on the members of scheduled castes or scheduled tribes is Article 17 of the Constitution of India. The Act was enacted for eradication of untouchability, and to protect the members of scheduled caste or scheduled tribes from casteist attack and caste based discrimination. It is in this background that various offences are enumerated in Section 3. The primary requirement for invoking any of the offences under Section 3 is caste based attack or hatred towards that caste.

13. Unless the investigation indicates or reveals intention of a person not belonging to scheduled caste or scheduled tribe to commit any of the offences under Section 3 of the Act, in order to oppress or insult or humiliate or subjugate or

ridicule a member of scheduled caste or scheduled tribe as such person merely belongs to that caste, the offence under Section 3 cannot be invoked in the charge sheet. It is not as though in every crime, if victim happens to be a member of scheduled caste or scheduled tribe, an offence under Section 3 of the Act has been committed. If motive for crime is not casteist attack, the accused can only be charge sheeted for any of the offences under Indian Penal Code that can be appropriately invoked in the background of the incident of crime or under other law which can be applied as the facts and circumstances indicate. While the Act is essentially meant for protecting the members of scheduled caste or scheduled tribe from atrocity or oppression, at the same, it cannot be allowed to be misused. Therefore there is greater responsibility on the investigating officer to take decision wisely before filing the charge sheet.

14. In the case on hand, as already discussed, no offence of atrocity appears to have taken place. Then there remains two offences under Indian Penal Code, Sections 172 and 173 of IPC, both the offences relate to avoidance of summons or notice. Since the charge sheet materials do not disclose the offence under Section 3(1)(f) and 3(1)(g) of the Act, prosecuting the petitioner for two IPC offences amounts to abuse of process of court.

15. Before concluding, if the judgment of the Hon'ble Supreme Court in **Kaptan Singh** (Supra) is referred, what is held therein is that, after the charge sheet is filed, the matter stands on a different footing, and that the court, therefore, is required to consider the material evidence collected during investigation. The Supreme Court has given a word of caution that the High Court is not required to go into the merits of allegations or

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enter into the merits of the case which is permitted while exercising appellate jurisdiction. Strictly adhering to this principle, even if charge sheet allegations are considered on their face value, no offence under the Act or IPC is constituted. Hence, a clear case for interference under section 482 Cr.P.C., is made out. Consequently the following:

ORDER

Petition is allowed.

The proceedings in Special Case No.438/2020 on the file of LXX Additional City Civil and Sessions Judge and Special Judge, Bengaluru, against the petitioner are quashed.

**Sd/-
JUDGE**

Kmv/-