

Saraswathi And Anr Vs. The State

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Court : Karnataka Kalaburagi

Decided On : Sep-06-2022

Judge : P.N.Desai

Appeal No. : CRL.P 201173/2017

Appellant : Saraswathi And Anr

Respondent : The State

Advocate for Def. : Sri. Ganesh Naik

Advocate for Pet/Ap. : Sri. Mahantesh Patil

Judgement :

R1IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS
THE06h DAY OF SEPTEMBER, 2022 BEFORE THE HONBLE MR. JUSTICE
P.N.DESAI CRIMINAL PETITION NO.201173/2017 BETWEEN:

1. . SARASWATHI W/O BASAVARAJ KURUGOD, AGE:

56. YEARS OCC: HOUSEHOLD2. BASAVARAJ S/O MALLESHAPPA KURUGOD
AGE:

60. YEARS OCC: AGRICULTURE BOTH ARE RESIDENTS OF HIRENAGNUR
VILLAGE TQ: LINGASGURU NOW R/O BELLAM COLONY DIST: RAICHAUR-
584101. ..PETITIONERS (BY SRI. MAHANTESH PATIL, ADVOCATE) AND1.

THE STATE OF KARNATAKA REPRESENTED BY SPP HIGH COURT OF KARNATAKA BENCH AT KALABURAGI-585102 THROUGH RAICHUR WEST P.S RAICHUR-584101.

2. C.M. NARAYANA AMENDED S/O. MAREPPA, VIDE

ORDER

AGE:

48. YEARS, DTD1112.2018 OCC:ADVOCATE, 2 R/O. NO.8-10-27 HARIJANWADA, AMBEDKAR NAGARA HARIJANAWADA RAICHUR. ..RESPONDENTS (BY SRI: VEERANAGOUDA MALIPATIL, HCGP FOR R1 GANESH NAIK, ADVOCATE FOR R2) THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH THE FIR BEARING NO.SPL.(A) FIR NO.111/2017 IN CRIME NO.243/2017 DATED0510.2017 FOR THE OFFENCES PUNISHABLE U/SEC.3(i), 3(iv), 3(xiii) S.C/S.T ACT, REGISTERED BY THE RAICHUR WEST POLICE STATION AGAINST THE PETITIONERS. THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), praying to quash the FIR bearing No.Spl(A) FIR No.111/2017 in Crime No.243/2017 dated 05.10.2017 for the offences punishable under sections 3(i), 3(iv), 3(xiii) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') registered by the Raichur West Police Station, Raichur, against the petitioners.

2. It is contended by the petitioners that the petitioners are husband and wife. The petitioner No.1 is the absolute owner of open Plot No.75, bearing M.No.1-11-154/1-A/1 measuring 40 x 50 feet situated at Bellam Colony, Rampur road, Raichur. It is contended by the petitioners that in view of interference by one C.M. Narayana, petitioners filed a civil suit in O.S.No.374/2012 before the Prl. Civil Judge and JMFC, Raichur against C.M. Narayana and others suit for permanent injunction. The respondent therein filed written statement. The trial Court by order dated 26.09.2012 issued temporary injunction restraining the respondent therein

i.e., C.M. Narayan and others from interfering with the possession and peaceful enjoyment of the suit property by the petitioners. Thereafter, on 03.10.2017, the trial court passed an order permitting petitioner No.1 to coverup rain water harvesting tank and directed defendants not to cause any hindrance in covering up the said tank work. On 04.10.2017, the defendants therein objected for construction of rain water harvesting tank, but inspite of that on 05.07.2017, said C.M. Narayan filed a complaint before the police alleging that the petitioners have unauthorizedly put up construction and they have filed a false suit against him. Based on the said complaint, and FIR came to be registered 4 by the police. Aggrieved by the registration of the said FIR, this petition is filed to quash the FIR.

3. Respondent No.2 has filed written statement and his contention is that the petitioners have encroached into the 'Lavanya layout' which belongs to respondent.No.2 and they are trying to dig foundation for construction of residential building. Though he has admitted filing of suit against him, but denies that the dispute is civil dispute as shown in the FIR. His application for appointment of surveyor came to be rejected by the trial Court. Though he has objected for permitting the petitioners for covering up the rain water harvesting tank, the trial Court has permitted the petitioners. Hence, the respondent has filed a complaint before the police stating that the petitioners have encroached his property and put up the construction. Therefore, the ingredients of said SC/ST Act are attracted. He also admitted the said suit came to be decreed on 29.09.2018. He further sought this Court to dismiss the petition with a direction to the police to identify the property as claimed by the petitioners and further states that if the property of the petitioners falls in Sy.No.110 and 5 111 in Bellam colony, he is ready to withdraw the complaint and settle the dispute with the petitioners.

4. I have heard Sri. Mahantesh Patil, learned counsel for the petitioners and learned HCGP and Sri. Ganesh Naik, learned counsel for respondent No.2.

5. Learned counsel for the petitioners argued that the FIR registered by the respondent police is opposed to law and facts and circumstances of the case. The averments in the complaint itself shows that none of the ingredients of 3(1), 3(iv), 3(xiii) of SC/ST Act are attracted. The FIR lodged is nothing but just to harass

these petitioners. It is contended that said FIR is filed in order to settle the personal scores which is otherwise an ordinary civil dispute. He contends that suit in O.S.No.374/2012 is pending between the parties and interim order is operating and if the entire FIR is considered in the light of the dispute, then continuation of any such investigation would amount to abuse of process of Court and power of the police. Just to pressurize the petitioners, the FIR is filed. Under these circumstances, he prayed to quash the said FIR. 6

6. In support of his arguments, learned counsel for the petitioners relied on the following decisions:- 1. Gorige Pentaiah v. State of A.P. and Ors., (2008) 12 SCC531Para 13).

2. Asmathunnnisa v. State of Andhra Pradesh, (2011) 11 SCC259para

25) 3. Chandran Ratnaswamy v. K.C. Palaniswamy and Others, (2013) 6 SCC740paras 58 and 59).

4. Hitesh Verma v. The State of Uttarakhand and Ors, (2020)10 SCC710Para 16).

5. Mirle Varadaraj v. State of Karnataka and Another in Crl.P.No.6687/2019 DD2106.2022 (para-7, 8,

9) 7. Against this, learned HCGP for respondent. No.1- State and Sri. Ganesh Naik, learned counsel for respondent No.2 argued that since the complaint is of the year 2017 itself, the police need not go into the matter and give conclusion regarding the offences made out or not. If the 7 State is affected and if the police are directed to investigate the matter, then only the Court can consider quashing of the case or charge sheet, if any, filed. So at this stage, it is premature to quash the FIR. Hence, prayed to dismiss the petition.

8. I have perused the FIR.

9. The respondent No.2 is an Advocate by profession and he belongs to Scheduled Caste. Further, he has stated that the petitioners are having property on the Western side of said Bellam Colony and he has also stated that petitioner No.1 has purchased the property through a sale deed dated 31.03.2001 from one

Sudendra Rao S/o. Raghavendra Rao. The respondent No.2 has admitted about filing of suit by the petitioners. According to him, petitioners are trying to encroach and construct building in his property. So invoking the provisions of SC/ST Act, respondent No.2 has filed the complaint. This complaint came to be filed on 05.10.2017. Learned counsel drawn the attention of the Court to the proceedings wherein in the said suit filed on 17.09.2012, there was interim order and ex-parte order of temporary 8 injunction was issued. Thereafter, the said interim order is continued. The learned counsel also drew the attention of the Court to the proceedings of the Trial Court dated 04.10.2017 wherein it is mentioned that defendants therein have stated that they would not object for construction of the rain water harvest tank in the suit property and on the very next day, this complaint came to be filed. Ultimately, the suit came to be decreed on 29.09.2018. Certified copy of the judgment is produced wherein this complainant is defendant No.1 and there are two other defendants. It is also stated that the defendant No.1 who has filed written statement did not enter the witness box nor adduced any evidence despite giving opportunity and ultimately, the Court found the issues in the said suit in affirmative and decreed the suit.

10. I have perused the complaint averments also and copy of the written statement and the entire order sheet in this case, copy of which is produced before the Court.

11. The contention of the complainant who is defendant No.1 in the written statement is that he alleges encroachment and goes to the extent of stating that the 9 property of the plaintiffs is not at all in existence. On the other hand, he admits that the plaintiffs have purchased the suit property. Provisions of 3(1) (iv), 3(1) (viii) and 3(1) (xiv) reads as under:- 3. Punishments for offences of atrocities.- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- (i) xxxxxxxx (ii) xxxxxxxx (iii) xxxxxxxx (iv) wrongfully occupies or cultivates any land owned by , or allotted to, or notified by any competent authority to be allotted to, a member of a Schedule Caste or Scheduled Tribe or gets the land allotted to him transferred; (v) xxxxxxxx (vi) xxxxxxxx (vii) xxxxxxxx (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe; (ix) gives, any false or frivolous information to any public servant and thereby causes such public servant to use

his lawful power to the injury or annoyance of a 10 member of a Scheduled Caste or a Scheduled Tribe; (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; 12. On perusing the said provisions of SC/ST (POA) Act, in the light of FIR and the allegations in the complaint are considered, then it is evident that it is nothing but a civil dispute. The complainant himself is not sure as to exactly where his land comes. He alleges that the petitioners are trying to encroach his land and built a house. On the other hand, the suit is filed in the year 2012 itself, an interim order was also granted, permission was also granted to built a shed and ultimately the suit ended in decree. Admittedly no appeal is filed by this complainant and civil dispute in respect of said property has attained finality in the year 2018 itself.

13. The Hon'ble Supreme Court in the following decisions discussed the criminality in such cases as under:

1. Gorige Pentaiah v. State of A.P. and Ors., (2008) 12 SCC531Para 13). " On careful consideration of the prayer made in the second suit, it becomes abundantly clear that 11 respondent No.3 was not even in possession of the suit property on the date of incident and this fact has not been disputed by the learned counsel appearing for the State of Andhra Pradesh. When respondent No.3 was not even in possession of the land in question, the allegation made in the complaint, that the appellant demolished the wall on 14.6.2004, could not arise. The allegations are totally baseless and without any foundation. On the face of it, it looks that the criminal complaint filed by the respondent No.3 was totally false and frivolous. The complaint was filed with an oblique motive. In this view of the matter, charges under sections 427 and 447 are also wholly illegal and unsustainable in law."

2) Asmathunnnisa v. State of Andhra Pradesh, (2011) 11 SCC259para

25) "In a recent decision in M. Mohan v. The State 2011 (3) SCALE78this Court again had an occasion to consider the case of similar nature and this court held that if all the facts mentioned in the complaint are accepted as correct in its entirety and even then the complaint does not disclose the essential ingredients of an offence, in such a case the High Court should ensure that such frivolous

prosecutions are quashed under its inherent powers under section 482 of the Cr.P.C."

3) Chandran Ratnaswami V. K.C. Palaniswamy and Others, (2013) 6 SCC740(paras 58 and 59). "As noticed above, in the three writ petitions filed by respondent No.1, though not against the appellant but against the C.B.I. in respect of different transactions, the High Court dismissing all those writ petitions observed that the modus operandi of the writ petitioner (respondent No.1) was to defraud the person or entity and thereafter approach the Courts with multiple proceedings in order to distract attention from his own misdeeds. 12 Neither the High Court nor the Magisterial Court have ever applied their mind and considered the conduct of the respondent and continuance of criminal proceedings in respect of the disputes, which are civil in nature and finally adjudicated by the competent authority i.e. the Company Law Board and the High Court in appeal. "

4. Hitesh Verma V. The State of Uttarakhand and Ors., AIR 2020 SC5584(Para 16). " There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe."

5) "Mirle Varadaraj vs. State of Karnataka and Another in CrI.P.No.6687/2019 DD2106.2022 (para-7,8, 9)

"7. The filing of the suit by the sisters of the 2nd respondent and also the challenge to the revenue sketch and the sub-division effected in favour of the petitioner-accused which culminated in dismissal of the petition clearly establishes that the allegations made in the FIR arises out of dispute relating to the title between the parties in respect of the subject land. The apex court in the case of Hitesh Verma

(supra) has held as under: 13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

8. Although the offences are covered under the SC/ST Act, pre-existing dispute being civil in nature between the parties arising on account of possession over the property would not disclose an offence under the Act.

9. In view of the preceding analysis, I am of the considered view that the dispute between the parties is purely civil in nature, but however given a criminal texture and it would be an abuse of process of law if investigation is allowed to be continued. "

1. 14. In the light of these principles and looking into the present averments in the petition, the averments in the complaint, FIR, the proceedings of the civil suit and decree, interim orders, and other materials are considered, then, in my considered view, it is nothing but a civil dispute pending long before filing of this complaint and dispute is in respect of alleged encroachment and possession over an immovable property. The entire complaint does not disclose any criminal offence when compared with the ingredients of FIR.

15. In the decisions referred above, the Hon'ble Supreme Court has clearly held that allowing such FIR and permitting continuation of any investigation based on such FIR, which is purely a civil dispute in nature, and as no element of criminal activities or ingredients of SC/ST Act are attracted, particularly, the purpose for which the said Act is enacted, then it is nothing but the civil suit was given a criminal offence colour just to add it, such FIR is allowed to stand is nothing but an abuse of process of law. On the face of it, the complainant and FIR discloses such FIR cannot be allowed to continue. In the result, I proceed to pass the following:

15.

ORDER

Criminal petition filed under Section 482 of Cr.P.C. is hereby allowed. The impugned FIR bearing No.Spl.(A) FIR No.111/2017 in Crime No.243/2017 dated 05.10.2017 of Raichur West Police Station, registered for the offences punishable under Sections 3(i), 3(iv), 3(xiii) of SC/ST (POA) Act, 1989, is hereby quashed.
Sd/- JUDGE *MN/-/sdu

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