

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 41 of 2015

Archana W/o Dinesh Tiwari.

.. Petitioner.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. S.G. Ladda, Advocate, for petitioner.

Shri. V.D. Godbharle, Additional Public Prosecutor, for
respondent No.1.

Shri. Shambhuraje Deshmukh, Advocate, for respondent
No.2.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 30th APRIL 2015

ORDER:

1) The proceeding is filed for quashing of First Information Report of Crime No.I-108/2014 registered in Police Station MIDC Waluj, Aurangabad for offences punishable under sections 420, 465, 468, 471, 447, 506, 34 of the Indian Penal Code. Both the sides are heard.

2) The crime is registered on the basis of report given by respondent No.2. It is his case that in the year 1993 he purchased one acre land from Gat No.239 of

Ghanegaon from Shitalprasad, father of the present applicant, under registered sale deed. It is his case that after selling the property to him and after selling some more portion to one Nikhil Deshmukh, Shitalprasad was having only 34 gunthas land in Gat No.239.

3) It is the case of the complainant that he was living at other station due to his service and so he was not regularly visiting the aforesaid land. It is contended that behind his back Shitalprasad made agreement with one brick kiln owner and allowed him to use this land for brick kiln purpose. It is contended that said agreement was notarized before the Notary on 7-3-2014. It is contended that when he got information about this agreement, he made enquiry with Shitalprasad and one Kailas Satpute and they said that the complainant would not be allowed even to enter the land. It is contended that by using threats and force Kailas Satpute and Shitalprasad are enjoying his property. It is contended that to defeat his right, Shitalprasad made present applicant Archana and others to file a suit for partition against him. It is contended that they have intentionally involved one Kailas

Satpute in the matter as he belongs to backward community and it will be difficult for the complainant to tackle him. It is contended by the complainant that when Shitalprasad is having only 34 gunthas land, he made agreement of 1 Acre 34 gunthas in favour of Kailas Satpute to cause loss to the complainant and the suit is also filed with the same intention.

4) Copy of plaint of Regular Civil Suit No.61/2013 is produced on the record. It is filed in the Court of the Civil Judge, Junior Division, Gangapur by present applicant Archana and other members of the family of Shitalprasad. In the suit it is claimed that the five plaintiffs have equal share in the property and the sale deed to the extent of their share executed in favour of the present complainant is not binding on them.

5) The statement was made by learned counsel for applicant that the land had come to Shitalprasad from his mother. The sale deed was executed in the year 1993 and the suit came to be filed in the year 2013. Plaintiff Nos.4 and 5, son and daughter of Shitalprasad have give their age as 19 years and 15 years in the suit and the first three

issues are the elder daughters of Shitalprasad. It is contended in the suit that the land was given by way of mortgage to the complainant and it was not out and out sale though sale deed is executed. No relief is claimed as against the person who is said to be actually using the land. In suit it is contended that it is ancestral land. It appears that the so called agreements were made by Shitalprasad with person like Kailas Satpute. In respect of this circumstance there are specific allegations and documents are also produced. Copy of complaint given to police by present applicant is produced and it shows that the applicant is admitting that said Satpute is inducted by them in the property. Thus there is active involvement of the present applicant.

6) Learned counsel for the applicant placed reliance on some reported cases as (1) **(2006) 8 SCC 581 (Sheela Devi v. Lal Chand)**; and, (2) **2014(5) Mh.L.J. 434 (Full Bench) (Badrinarayan Shankar v. Omprakash)**. He submitted that the applicant needs to be treated as coparcener and she has right in the property and filing of the suit cannot become offence. This Court is avoiding to

discuss the position of law. The relevant facts are mentioned. The sale deed was executed in the year 1993 when there were only two daughters to Shivprasad and the sale deed came to be challenged in the year 2013.

7) The learned counsel for the applicant placed reliance on a case reported as **2008 ALL MR (Cri) 952 (Abasaheb Yadav v. State of Maharashtra)**. In this case, the Apex Court has discussed the point as to when the High Court is expected to exercise inherent powers under section 482 of the Code of Criminal Procedure. In the present case it cannot be said that there is no criminal intention. The actions show that it is a case of trespass and the applicant is involved in the act of trespass and she is making some false contentions to defeat the claim of the complainant. It is not possible to quash and set aside the First Information Report in view of the facts of the present case.

8) In the result, the writ petition stands dismissed. Interim relief stands vacated.

Sd/-
(INDIRA K. JAIN, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)