

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2637 OF 2015

[Kerba s/o Nagoji Jatewad and another vs The State of Maharashtra and another]
AND

CRIMINAL APPLICATION NO. 2735 OF 2015

[Dr. Umakant s/o Narayanrao Shelke vs The State of Maharashtra and another]

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri H.F.Pawar, advocate for applicants in both Applications
Smt. S.G.Chincholkar, A.P.P. for State in Cri.Appln.No.2637/2015
Shri U.S.Mote, A.P.P. for A.P.P. for State in Cri.Appln.No.2735/2015

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CORAM : V.M.DESHPANDE, J.

DATED : 17th June, 2015

PER COURT :-

1] These two Applications are for anticipatory bail.

Applicants in Criminal Application No. 2637 of 2015 are Government servants and they are discharging their duties in the office of Deputy Director of Land Records.

Applicant No.2 Manohar is a Surveyor and applicant no.1 Kerba was Deputy S.L.R.

Applicant Dr. Umakant Shelke in Criminal Application No. 2735 of 2015 is a land owner of Gat Nos. 251, 253, 254.

The aforesaid land is situated at village Bakli, Taluka Nilanga, District Latur.

2] These three applicants are apprehending their arrest in connection with Crime No. 18 of 2015 registered with Police Station Shirur Anantpal, District Latur, for the offences punishable under Sections 465, 466, 467, 468, 471, 474, 489, 420, 427, 168, 406, 409, 200, 201, 34 of the Indian Penal Code.

3] Heard Shri Hemantkumar Pawar, learned counsel for applicants in both these applications; Smt. S.G.Chincholkar, learned Additional Public Prosecutor in Criminal Application No. 2637 of 2015 and Shri U.S.Mote, learned Additional Public Preosecutor in Criminal Application No. 2735 of 2015, for the respondent/State.

4] In the year 2014, an application was filed by first informant/complainant Acchut Kulkarni in the court of Judicial Magistrate, First Class, Nilanga under Section 156 (3) of the Code of Criminal Procedure. Those proceedings were registered as R.C.C. No.6 of 2014. By the said complaint, it was complained by the complainant that the applicants have only made a show of measurement in respect of the land. Complainant is having his adjacent land to the land owned by applicant Dr. Umakant. According to the complaint, Dr. Umakant submitted an application for measurement of his land. The complaint further states that in pursuance to this, on 28.4.2005 applicant Manohar came to the spot, however, no prior notice of measurement was given to the adjacent land holder. It is also stated that notice was not given to the complainant also. However, perusal of the complaint shows that at the time of measurement the complainant was present. The complaint further alleges that the land was not properly measured by applicant no.2 nor he fixed the boundaries and also it is alleged in the complaint that the required fees was not deposited by applicant Dr.Umakant.

With these basic statement of facts and allegations the complaint was filed.

5] The learned Magistrate passed order under Section 156 (3) of the Code of Criminal Procedure. In pursuance to the same, first information report was lodged against the applicants.

6] During the course of hearing, learned counsel for the applicants invited my attention to the averments made in the application filed on behalf of Dr.Umakant, in which it has been stated that there is a long standing dispute between applicant Dr. Umakant and complainant Acchut, resulting into filing of the suit, culminating into passing of the decree in favour of Dr. Umakant, which was questioned by filing Regular Civil Appeal before the District Court and said appeal was dismissed on 4.3.2014. Said particular statement of facts made in the application are not controverted by the State.

Further my attention was drawn by the learned counsel to page 46 of compilation of Criminal Application No. 2637 of 2015. It is a panchanama, which shows that the land was measured as per the procedure and after completion of measurement and after fixing the boundaries, the panchanama was drawn. The said panchanama is signed by six persons who are the adjacent land holders. What is pertinent to note is that the said panchanama is drawn in presence of the Head Constable and also the lady Head Constable.

7] It is reported during the course of the submission by the learned Additional Public Prosecutor that departmental inquiry was conducted against applicant Kerba and Manohar and the said departmental proceedings resulting into stoppage of one increment to Kerba and Manohar.

8] Thus, it is crystally clear that for the act of 2005, which is being termed as inaction on the part of the Government servant by the complainant, a complaint under Section 156 (3) of the Code of Criminal Procedure was filed in the year 2014.

The nature of statement of facts averred in the complaint would disclose that at the most the applicants have

committed certain lapses and since it has been reported by the learned Additional Public Prosecutor that for those lapses departmental inquiry was already conducted.

Further the applicants are having deep roots in the society. They are Government servants. Therefore, the possibility that they will not be available to the course of justice is remote.

Custodial presence of the applicants is not at all warranted, in as much as all the documents are available in the office at Shirur Anantpal. Presently applicant no.1 is discharging his duties at Kinwat, District Nanded and applicant no.2 is discharging his duties at Nilanga. Therefore, they do not have any control over the office situated at Shirur Anantpal. That leads me to pass the following order.

ORDER

- (i) Both Criminal Applications are allowed.
- (ii) Interim order, passed by the Vacation Judge on 19.5.2015 in Criminal Application No. 2637 of 2015 and interim order passed on 29.5.2015 by the Vacation Judge in Criminal Application No. 2735 of 2015 stand confirmed.
- (iii) Applications are disposed of.

(V.M.DESHPANDE, J.)

dbm/crap2637.15