

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

Criminal Writ Petition No.1529 of 2014

1) Harjeetsingh s/o Puransingh Chugh,
Age 46 years,
Occupation: Agriculture & Business,
R/o Babadeep Singh Nagar,
Bhagatsingh Road, Nanded.

2) Sunil s/o Malhari Sonkamble,
Age 27 years,
Occupation : Labour,
R/o Rahul Nagar, CIDCO,
Nanded.

.. Petitioners.

Versus

1) The State of Maharashtra,
Through Department of
Home Affairs, Mantralaya,
Mumbai 400 032.

2) The Superintendent of Police,
Nanded, District Nanded.

3) Mr. Govind B. Umase,
Police Station In charge
Ardhapur Police Station,
Taluka Ardhapur,
District Nanded.

4) Devanand s/o Sattaji More,
Age 65 years,
Occupation : Agriculture,
R/o Village Barasgaon,
Taluka Ardhapur,
District Nanded.

.. Respondents.

Shri. Mrigesh D. Narwadkar, Advocate, for petitioners.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 and 2.

Shri. G.G. Suryawanshi, Advocate, for respondent No.4.

With

Criminal Application No.3017 of 2010

With

Criminal Application No.1519 of 2011

* Devanand s/o Sattaji More,
Age 51 years,
Occupation: Agriculture,
R/o Barasgaon, Taluka Ardhapur,
District Nanded. **.. Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Police Inspector
Police Station, Ardhapur,
Taluka Ardhapur, District Nanded.
- 3) Harjeetsingh s/o Puransingh Chugh,
Age 41 years,
Occupation: Business,
R/o Babadeepsingh Colony,
Bhagatsingh Road, Nanded,
Taluka and District Nanded. **.. Respondents.**

Shri. Sanjaykumar Chavan, Advocate, for applicant.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 and 2.

Shri. Mrigesh D. Narwadkar, Advocate, for respondent No.3.

**CORAM: T.V. NALAWADE &
Smt. I.K. JAIN, JJ.**

DATE : 8th APRIL 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The first proceeding is filed for the relief of quashing and setting aside the First Information Report of CR No.168/2014 registered in Ardhapur Police Station, District Nanded for offences punishable under sections 436, 429, 323, 506, 34 of the Indian Penal Code. Criminal Application No.3017/2010 is filed for quashing and setting aside First Information Report of CR No.122/2010 registered in the same Police Station for offence punishable under section 447, 34 of the Indian Penal Code. Criminal Application No.1519/2011 is filed by Devanand More for permission to produce some documents.

3) First Information Report of CR No.168/2014 is given by Devanand More in respect of alleged incident

dated 17-10-2014. His family has dispute with the petitioner of the first proceeding in respect of land Gat No.358 situated at Barasgaon. This land is standing in the names of his sons Satish and Balaji. They are residing at Nanded and it is the case of the complainant that they visit Barasgaon for cultivation of the land. According to him, this land has been in possession of the family of the complainant and they are protected tenants. It is contended that accused Harjeetsingh has created some dispute in respect of this land and civil litigation is pending between the two families. It is contended that out of this civil dispute, on the date of the incident, when he and his wife were present in the field along with one labour Laxmibai, Harjeetsingh and his associates Sunil Sonkamble and other two Sikh persons came to the land and they picked up quarrel. He has alleged that Harjeetsingh was holding small sword and one Sunil Sonkamble had come with plastic can containing kerosene. It is contended that these persons assaulted the complainant and his family members and then they poured kerosene on his hut and they set fire to the hut. According to him, all the household articles including hens

were totally burnt. He has contended that this incident was witnessed by neighbouring land holders but they did not show courage to come forward and intervene in the incident. He has contended that, as after the incident the accused persons had promised to settle the dispute, he did not approach police and due to that report was not given immediately. The report came to be given on 27-11-2014 and crime came to be registered for the aforesaid offences. Spot panchanama was drawn after registration of the crime. Some ash was noticed by police in the field but no household article was there.

4) The other crime mentioned in Criminal Application No.3017/2010 is registered on the basis of private complaint referred by the Judicial Magistrate to police by making order under section 156(3) of the Code of Criminal Procedure. There is allegation of Harjeetsingh that on 16-6-2010, 22-6-2010, 23-6-2010 and 24-6-2010 the accused persons including the applicant Devanand of the proceeding illegally entered his land with intention to take possession forcibly and they tried to do operation of sowing. Allegations are made that they had come with

tractor but when the complainant resisted they went away. It is contended that on 24-6-2010 he had approached police but no response was given by police and therefore he was required to file private complaint.

5) Devanand More has not referred the transaction like agreement of sale made by his sons with Harjeetsingh. Copy of judgment delivered by the Civil Judge, Senior Division, Nanded in Special Civil Suit No.39/2009 is produced by Harjeetsingh. It shows that in respect of aforesaid land suit was filed by Harjeetsingh for specific performance of contract, declaration and for injunction. It was also filed for setting aside compromise decree made in Regular Civil Suit No.90/2009. In that case Civil Court gave relief of specific performance and directed the sons of Devanand to execute sale deed. Relief of injunction is given by holding that Harjeetsingh is in possession and declaration is given that the compromise decree of Regular Civil Suit No.90/2009 is not binding on Harjeetsingh. Direction is also given to hand over the value of Soyabin crop which was harvested through Court Commissioner during pendency of the matter. The suit

was decided on 21-1-2010. First Appeal No.766/2010 filed by the defendants, sons of Devanand and the orders made in the first appeal show that this Court has granted stay to the execution of sale deed. Stay is refused in respect of the decree of injunction given in favour of Harjeetsingh. There is record produced like copy of agreement, copy of possession receipt showing that possession was handed over to Harjeetsingh by the sons of Devanand. This record is considered by the Civil Court. Thus, on 21-1-2010 when decision was given, the Court found that from the date of the suit i.e. March 2009 Harjeetsingh has been in possession of the suit property. In view of this circumstance, it was necessary for Devanand to show that he or his sons were in possession of the disputed land on 17-10-2014 and in spite of the decree of the Court they had made construction of hut on this land. There is no such record with Devanand. The delay of more than one month was caused in giving of the report. Submissions that Devanand and his sons are protected tenants of this land cannot be considered in the proceeding like the present one, particularly when decision of the Civil Court is in favour of Harjeetsingh. The other contention that

some proceeding is pending before the Maharashtra Revenue Tribunal cannot be considered as there is decision of the Civil Court. In view of these circumstances, allowing to prosecute Harjeetsingh and Sunil Sonkamble, the applicants, will amount to abuse of process of law. It is nothing but pressure tactics of Devanand. This Court holds that writ petition deserves to be allowed.

6) For the aforesaid reasons there is no alternative but to hold that Harjeetsingh was in possession of the disputed land on the dates mentioned by him in the private complaint. There was also decree in his favour which was given on 21-1-2010. As there are specific allegations and apparently the accused of this case are trying to show that they were in possession, it needs to be presumed that there is material to make out a case of trespass punishable under section 447 of the Indian Penal Code. Names of witnesses are there in the FIR given by Harjeetsingh. In the result, the second proceeding, Criminal Application No.3017 of 2010 deserves to be dismissed.

8) In the result, Criminal Writ Petition No.1529 of 2014 is allowed. The First Information Report given is hereby quashed and set aside. Rule is made absolute in those terms.

9) Criminal Application No.3017 of 2010 is dismissed. Rule is discharged.

10) Criminal Application No.1519 of 2011 filed for production of documents is allowed.

Sd/-
(Smt. I.K. JAIN, J.)

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

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