

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

CRIMINAL REVISION APPLICATION NO. 44 OF 2015

Mohammad Zafrur Rehman s/o. Mohd. Abdul.. Applicant
Rehman.

Versus

Mohammad Riazur Rehman s/o. Mohd. Abdul .. Respondents
Rehman & Ors.

Mr. A.S. Barlota, Advocate for the applicant.
Mr. U.S. Mote, APP for respondent/State.

**CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 23.03.2015**

P.C. :-

1. Heard. The applicant herein is the original complainant in R.C.C. No.80081 of 1996, which was filed before the Judicial Magistrate, F.C., Aurangabad. The complainant had presented the complaint on 31.10.1996 against the respondents alleging therein that that he is working as a teacher at Maulana Azad High School, Aurangabad. He is also an agriculturist, cultivating agricultural land which is situated at Phulambri. The complainant has further alleged that he is in actual possession of land although his brothers and sisters have got respective share in the property. There was no

partition between the brothers. According to the complainant he had sown jowar crop in an area of 2 acres. He had distributed the yield amongst his kins as share holders of the said property. However, original accused Nos.1 & 2 had refused to accept their respective share. According to the complainant, the relations were strained between the brothers as they had challenged exclusive possession of the complainant over land Gat No.545. It is specifically stated in the complaint that he had filed Civil Suit for partition and separate possession in which the Civil Court at the time of filing of the complaint had granted temporary injunction against original accused No.1. According to the complainant on 20th October, 1996, between 5 p.m. to 7 p.m. accused No.1 with the help of accused Nos.2 & 3 had forcibly sown gram crop in an area to the extent of 30 Gunthas in-spite of the fact that he had been restrained by the Court by way of temporary injunction. He had requested the accused not to indulge into illegal activities. However, they had entered the land against the order of the Civil Court and hence they had committed offences punishable under sections 447, 426, 427 r/w 34 of the Indian Penal Code. The complaint was verified and Judicial Magistrate, F.C. had issued process against the accused by order dated 01.07.1997.

2. It appears from the record that till 2008, the complainant had made an attempt to prosecute his complaint diligently. Thereafter, he had not attended the proceedings. Therefore, by order dated 11.06.2010, learned J.M.F.C. had dismissed the complaint under section 256 of Cr.P.C. and had acquitted the accused of the charges levelled against them.

3. The applicant herein being aggrieved by the order passed in favour of the respondents had filed Criminal Revision No.250 of 2010. In-fact, the revision was not maintainable as the accused have been acquitted of all the charges. Learned Counsel for the applicant submits that since the order dated 11.06.2010 did not indicate that it was an order passed under section 256 of Cr.P.C., the complainant had preferred the Revision. However, the learned Sessions Judge had been kind enough to treat the same as appeal and had considered the impugned order. The learned Sessions Judge has rightly observed that the applicant herein had not taken effective steps to secure the presence of the respondents. He remained absent before the Court consistently and even on 11.06.2010 he was not present and therefore the learned Magistrate was justified in dismissing the complaint and acquitting the accused persons. The learned Sessions Judge has also considered

the quantum of the sentence to be imposed for the offences alleged. In any case, prima facie, it appears that it was civil dispute between the brothers over the partition of land. The complainant has stated in the complaint itself that he has availed civil remedy. Learned Magistrate had assigned justifiable reason for dismissing the complaint under section 256 of Cr.P.C. However, it is true that section 256 of Cr.P.C. was not mentioned in the order. In any case, the learned Sessions Judge has taken overall view about the variation in the complaint, the provision of law and quantum of punishment and has dismissed the appeal by assigning just and sound reasons. No interference is warranted in the revision.

4. The Criminal Revision Application stands dismissed.

[SMT. SADHANA S. JADHAV, J.]