

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

CRIMINAL APPLICATION NO. 6463 OF 2014

Rajendra s/o Kanhyalal Rasane,
Age: 48 years, Occ: Agri.,
R/o. Old Kaigaon, Tal. Gangapur,
Dist. Aurangabad.

...Applicant

versus

1. The State of Maharashtra.
2. Shivaji s/o Kachru Pandure,
Age: 64 years, Occ: Agri.,
R/o. Shanti Nagar,
Nevasa Phata, Tal. Nevasa,
Dist. Ahmednagar.

...Respondents

.....
Mr. Mobin H. Shaikh , Advocate for applicant
Mr. R.P. Phatke, A.P.P. for respondent No.1
Mr. S.D. Kotkar, Advocate for respondent No.2
.....

CORAM : N.W. SAMBRE, J.

DATE : 20th AUGUST, 2015

ORAL ORDER :

Learned Judicial Magistrate, First Class, Gangapur in Complaint bearing S.C.C. No. 160 of 2014 on 13/05/2014 has issued process against the present applicant for the offence punishable under Section 323, 506 of the Indian Penal Code, which is subject matter of challenge in the present proceedings.

2. Learned Counsel for the applicant made two-fold

submissions; (a) that the suit for injunction filed by original complainant non-applicant No. 2 herein bearing Regular Civil Suit No. 75 of 2015 is pending and the application for grant of injunction was already rejected by order dated 27/03/2015 by recording findings that the complainant non-applicant No.2 was not in possession of the property, (b) the dispute as is sought to be raised in the present proceedings is civil dispute as revenue entries are in favour of the present applicant.

3. While countering the above referred submission, learned Counsel for the complainant would urge that the present proceedings are not tenable as there is alternate remedy available to the present applicant. In addition to above, he would urge that the case of issuance of process is made out before learned trial Court and upon satisfaction thereof, the order of issuance of process came to be passed.

4. Upon perusal of the proceedings, it reflects that non-applicant – complainant has filed Regular Civil Suit No. 75 of 2015 in which he moved the application for grant of temporary injunction restraining the present applicant from causing obstruction in the cultivation as well as peaceful possession of the plaintiff over the suit property i.e. Gat No.206.

5. Learned trial Court, while dealing with the said prayer,

has recorded the findings that the revenue entries in relation to the property is in favour of present applicant and present non-applicant complainant has failed to demonstrate his possession over the suit property.

6. Once the matter is already *subjudice* before the learned Civil Court, in my opinion, for the same cause, it will be inappropriate for the present non applicant – complainant to initiate criminal proceedings. The Civil Court, upon appreciation of documentary and oral evidence, will decide the entitlement of present non-applicant complainant to injunction as prayed for. In view thereof, in my opinion, the order of issuance of process passed by learned trial Court, which is in ignorance of above, is not sustainable.

7. In view thereof, the order impugned dated 13/05/2014 passed in S.C.C. No. 160 of 2014 by learned Judicial Magistrate, First Class (Court No.2) Gangapur and proceedings initiated thereto, are hereby set aside.

8. Criminal Application stands allowed in above terms.

[N.W. SAMBRE, J.]