

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1493 OF 2014

Dayaram s/o Bhaga Gavali (Mistri) ... **Petitioner**
R/o Village Varud, Taluka Sindhkhedha
District Dhule
At present R/at Plot No. 47 & 48
Ambika Nagar-2, Udhana
Taluka and District Surat (Gujrat)

VERSUS

- 1) The State of Maharashtra
Through Secretary, Home Minister,
Mantralaya, Mumbai (M.S.)
- 2) The Superintendent of Police
Dhule, District- Dhule
- 3) Deputy Superintednent of Police,
Sindhkheda Division,
Shindhkheda, District Dhule
- 4) The Police Inspector
Nardana Police Station
Taluka Shindhkheda, District Dhule
- 5) Dhudkabei w/o Mohan Devre
- 6) Mohan s/o Trambak Devre
- 7) Paresh s/o Mohan Devre

R 5 to 7 R/o Devre Building,
Near Subhash Statute
House No.7, Old Dhule,
Taluka and District Dhule

- 8) Shravan s/o Atmaram Sutar ... **RESPONDENTS**
R/o Village Varud Taluka Shindhkheda
District: Dhule

Mr. Ujwal Patil, Advocate for the petitioner
Mr. K. M. Suryawanshi, APP for the Respondents-State.

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

DATE : 25th March, 2015

JUDGMENT (Per Smt. I. K. Jain, J.)

Rule. Rule is made returnable forthwith by consent of the parties. Writ Petition is heard finally.

2. Learned APP is also heard.

3. The petition is filed under Article 226 of the Constitution of India seeking direction against respondent No. 4 to register crime under sections 397, 325, 504, 506 r/w 34 of the Indian Penal Code against respondent Nos. 5 to 8 as per order dated 25.06.2012 passed by Ld. JMFC Shindhkheda, District Dhule in R.C.C. No. 71 of 2012 and to investigate the same. The petitioner is also seeking directions against respondents 1 to 3 to take appropriate departmental action against the then officer incharge of Nardana Police Station, Taluka Shindhkheda/Respondent No.4 for not registering the crime as stated above.

4. It is the case of petitioner that Ramchandra Bhaga Mistri is real brother of petitioner. He is having agricultural land Gat No. 472 at village Varud. According to petitioner he and his brother cultivate

the said land and they are in its possession. There is dispute in respect of the said agricultural land between petitioner and his brother on one side and respondent Nos. 5 to 8 on the other. Petitioner filed Criminal Complaint No. 71/2012 before the Judicial Magistrate, First Class, Shidhkheda against respondents 5 to 8 for the offences punishable under sections 397, 325, 504, 506 r/w 34 of the Indian Penal Code. The learned J.M.F.C. Shidhkheda, vide order dated 25.06.2012 forwarded the same for investigation under section 156(3) of the Code of Criminal Procedure.

5. According to petitioner, on 28.02.2012, he and his brother were at Surat. He received telephonic call that respondents 5 to 7 entered his agricultural land and they were cutting ready crop of *Dadar*. On receipt of telephonic call, they came to village Varud at around 9 p.m. on the same day. On 29.02.2012, in the morning, petitioner found respondent Nos. 5 and 7 cutting crop from the agricultural land of petitioner. That time, petitioner obstructed them but respondents 5 and 7 snatched away Rs.5,000/- from upper pocket of his shirt and respondent Nos. 5 to 8 beat him. Thereafter, brother of petitioner came to the land. Petitioner informed him about the incident. Duo went to Talathi office to collect 7X12 extract of Gat No. 472 which was to be submitted to the Police station. It is alleged that at around 11 a.m. on that day, when petitioner and his brother were at Varud

Bus Stand, Respondents 5 to 8 went there, abused and threatened Ramchandra. As petitioner rescued his brother, respondents 5 to 8 assaulted him. They lifted him and dashed against the ground. Petitioner sustained grievous injury to his right leg.

6. After the incident, petitioner and his brother went to Nardana Police Station for lodging complaint against respondents 5 to 8. Respondent No.4 asked the brother of complainant-petitioner to first take petitioner to Hospital. Accordingly, petitioner was admitted at Kutir Hospital, Nardana. Thereafter he was admitted to Dhule District Hospital. Ramchandra gave complaint to respondent No.4. On 27.03.2012, complaint was also sent by registered post to register the crime against respondents 5 to 8. As respondent No. 4 did not register the crime, he filed RCC No. 71 of 2012 before the learned Magistrate.

7. It is the main grievance of petitioner that despite direction in RCC No 71 of 2012, respondent No. 4 did not register the complaint under section 397 of the Indian Penal Code against respondent Nos. 5 to 8 and continued with investigation in Crime No. 38 of 2012 for the offences punishable under sections 325, 323, 504, 506 r/w 34 of the Indian Penal Code, which are bailable offences. It is alleged that to save respondents 5 to 8 from section 397 which is non bailable,

respondent No.4 avoided to register crime under section 397 IPC. In this back ground, petitioner seeks writ of mandamus against respondents 1 to 3.

8. Learned APP submitted affidavit in reply of respondent No.4. He made statement that respondent No. 4 has implemented the order dated 25.06.2012 passed by the Learned Judicial Magistrate, First Class, Shindhkhedda and supplementary statements of witnesses came to be recorded during investigation. It is submitted that section 397 of the Indian Penal Code is added and charge sheet has been filed on 31.08.2012 bearing RCC No. 122 of 2012.

9. In view of the statement made on behalf of respondents, the criminal writ petition becomes infructuous. Hence disposed of. Rule is discharged.

(SMT. I. K. JAIN, J.)

(T. V. NALAWADE, J.)