

(1)

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

CRIMINAL WRIT PETITION NO. 134 OF 2016

Dhondiba s/o Raosaheb Kadam,
Age – 47 years, Occu. Service &
Agriculture, R/o Deshmukh Galli,
Bhokar, District Nanded

..PETITIONER
(Ori. Complainant)

VERSUS

1. The State of Maharashtra,
Through Police Station, Bhokar,
District Nanded
 2. Balaji s/o Pandharinath Nyalamwar,
Age 62 years, Occu. Business,
R/o Manjulanagar, Bhokar,
Dist. Nanded
 3. The Chief Executive Officer,
(23/01/2013), Municipal Council,
Bhokar, Dist. Nanded
- ..RESPONDENTS

Mr Gopal D. Kale, Advocate for petitioner;
Mr A.R. Kale, Addl. Public Prosecutor for respondent no.1
Mr S.C. Yeramwar, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 31st March, 2016

ORDER :

The petitioner, complainant in Regular Criminal Case No.24 of 2014, has questioned the order of dismissal of the complaint, passed by Judicial Magistrate First Class, Bhokar on 8th August, 2014 and upheld in Criminal Revision No.16 of 2014 which was dismissed by learned Additional Sessions Judge, Bhokar on 23rd October, 2015.

(2)

2. The sum and substance of the claim of the petitioner is, after issuing a release letter in favour of respondent no.2 Balaji, land bearing Gat No.409, as is stated in the release letter dated 23rd January, 2013 is with an intention to commit a crime by grabbing the property of the petitioner, who claims to be the owner of the said land. Learned Counsel appearing on behalf of the petitioner then would submit that, even if presuming that the proceedings are not tenable against respondent no.2, the same could be tenable against respondent no.3, i.e. an authority who in spite of the notice of the petitioner has not withdrawn or taken any corrective steps. According to him, both the Courts below have lost sight of the above referred aspect of the matter.

3. Learned Counsel appearing on behalf of respondent no.2 opposed the petition on the ground that both the Courts below have rightly considered the nature of the claim made in the complaint case. According to him, in view of pendency of civil suit, the Courts below were right in rejecting the complaint.

4. With the assistance, I have perused the orders passed by the Courts below. It is required to be noted that admittedly there exists a civil dispute between the parties, which is pending before the competent civil court vide Regular Civil Suit No.39 of 2014.

(3)

5. Apart from above, the claim that the land Gat No.409 is owned by the petitioner and respondent no.2, by taking recourse to the criminal act has issued the release letter, has hardly any basis, as both the Courts below have rightly observed that the appropriate remedy for the petitioner is to take corrective steps in regard to the said release letter.

6. In absence of any *prima facie mens rea*, in my opinion, the Courts below were right in dismissing the complaint. In view thereof, no case is made out for interference. Criminal Writ Petition, therefore, stands rejected.

(N.W. SAMBRE, J.)

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