

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 178 OF 2007

1. Shivaji S/o Shrirang Bhise,
Age: 52 years, Occu: Agril &
Service, R/o. Bhokaramba,
At present R/o. Civil Hospital
Quarters, Tq. Renapur,
District: Latur.
2. Ashatai W/o Shivaji Bhise,
Age: 50 years, Occu: Household
& Agri., R/o. Bhokaramba, At
present R/o. Civil Hospital Quarters,
Tq. Renapur, District: Latur. ...Petitioners

Versus

Balasaheb S/o Annasaheb Malge,
Age: 45 years, Occu: Agri,
R/o. Village Bhokaramba,
Tq. Ranapur, Dist. Latur. ...Respondent

...
Advocate for Petitioners : Mr. N.B. Patekar h/f Mr. P R Katneshwarkar
Advocate for Respondent : Mr. Sachin S. Deshmukh
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CORAM : V. K. JADHAV, J.
DATED : 1st SEPTEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order passed in R.C.C. No. 808 of 2005, dated 21.2.2006, passed by the 5th Joint J.M.F.C. Latur and confirmed by learned Additional Sessions Judge, Latur dated 9.2.2007, in criminal revision application No. 87 of 2006, original

accused Nos. 1 and 2 have preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) The respondent original complainant filed a complaint before the Magistrate bearing R.C.C. No. 808 of 2005 alleging therein that the present petitioners alongwith other accused persons committed offences punishable under Sections 447, 427, 120-B r.w. 34 of I.P.C. It is stated in the complaint that the complainant and his cousin Gunderao agreed to purchase the land Gat No. 173 admeasuring 1 Hectare and 73 R situated at village Bhokarmaba, Tq. Renapur, District Latur from mother-in-law of accused No.1 by name of Gangubai Malge. However, the complainant and said cousin Gunderao constrained to institute a civil suit against said Gangubai Malge for the relief of specific performance of contract. In the said suit, they have also succeeded in obtaining an order of temporary injunction on 10.10.2005. It is alleged in the complaint that on 27.10.2005 in between 1.00 to 4.00 p.m. the petitioners accused in furtherance of their common intention by taking undue advantage of absence of the complainant and his cousin said Gunderao, unauthorizedly entered in the land of the complainant and taken away the crops and thereby caused loss to the complainant worth of Rs.20,000/-. On the basis of these allegations, learned Magistrate

has issued process for the offences punishable under sections 447, 427, 120-B r.w. 34 of I.P.C. and the learned Additional Sessions Judge has confirmed the said order in revision, as mentioned above. Hence, this writ petition.

3. Learned counsel for the petitioners submits that, in fact, the present petitioners have no concerned with civil dispute between the parties. It has also merely alleged in the complaint that at the instance of present petitioners, the other accused persons illegally entered in the field of respondent complainant and forcibly taken away the crops worth Rs.20,000/-. It is nowhere stated in the complaint that in what way the present petitioners are concerned with the said dispute. There is inordinate delay in filing the complaint. The civil dispute is going on between the complainant and said Gunderao on one side and original accused Nos.3 to 8 on the other side. In the said civil litigation, both the parties are claiming their possession over the land in dispute. Learned counsel submits that even accepting the allegations made in the complaint as it is, prima facie, no case is made out against the present petitioners. As per the allegations made in the complaint, they were not present at the time of incident and hence it is not clear from the allegations made in the complaint that in what way they have instigated the other accused persons to enter into the field and forcibly take away the crops.

4. Learned counsel for the respondent complainant submits that it has specifically alleged in the complaint that at the instigation of present petitioners, other accused persons entered in the field of complainant illegally and caused loss to him by forcibly taking away the crops worth Rs.20,000/-. There are eye witnesses to the incident and even prima facie case is made out against all accused for having committed offences punishable under Sections 447, 427, 120-B r.w. 34 of I.P.C. Learned Magistrate has rightly issued process against all accused and the said order is also confirmed by the Additional Sessions Judge in the revision. Learned counsel submits that no interference is required.

5. Admittedly, the civil dispute is pending between the respondent complainant and the original accused Nos 3 to 8. Both the parties have instituted civil suit against each other. Even the learned Additional Sessions Judge, on perusal of the documents placed on record, observed that both the parties are claiming their possession over the land in dispute.

6. In the backdrop of civil dispute pending between the parties, it is pertinent to note here that the present petitioners are no way concerned with the said civil dispute between the respondent

complainant and the original accused Nos. 3 to 8. Even though the incident shown to have been occurred on 27.10.2005, and a private complaint to that effect came to be filed in the court on 23.11.2005 i.e. after near about a month. It has stated in the complaint that the complainant had approached the concerned police station. However, no action was taken by the police on his complaint. Learned Magistrate as well as learned Additional Sessions Judge have not given any reference in their respective orders about copy of the complaint if lodged in the police station. Apart from this, merely it has alleged in the complaint, the present petitioners have instigated other accused persons to enter in disputed field and at their instance, the accused Nos. 3 to 8 forcibly took away the standing crops worth Rs.20,000/-.

7. In the backdrop of said civil litigation, the instigation by the present petitioners to other accused persons without giving any details thereof in the complaint, appears to be without any base. Learned Magistrate as well as the learned Additional Sessions Judge have not considered the same. Furthermore, it appears that civil dispute is being converted into the criminal case.

8. In view of the above discussion, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby allowed in terms of prayer clauses "C" and "D".
- II. Criminal writ petition is accordingly disposed of. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/