

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 787 OF 2005

- (1) Kisan s/o Keshavrao Mudgalwar,
Age : 52 years, occupation business,
R/o : at Amalner, Post - Kaigaon,
Tq. : Gangapur, Dist. Aurangabad.
- (2) Sanjay s/o Kisan Mudgalwar,
Age : 30 yeas, occu. driver,
R/o : As above.
- (3) Tatu s/o Kisan Mudgalwar,
Age : 23 yeas, occu. business,
R/o : As above.
- (4) Kantabai w/o Kisanrao Mudgalwar,
Age : 48 yeas, occu. household and
agriculture, R/o : As above.

... APPLICANTS

VERSUS

- (1) The State of Maharashtra.
[Copy to be served on A.G.P. of
the Hon'ble High Court,
Bench at Aurangabad]
- (2) Narayan s/o Penttanna Puram,
Age : 65 years, occu. agril,
R/o : at Amalner, Post - Kaigaon,
Tq. : Gangapur, Dist: Aurangabad.
(ORI. COMPLAINANT).

... RESPONDENTS

...

Mr. K. M. Nagarkar, Advocate for the Applicant.
Mr. S. P. Tiwari, APP for Respondent No.1.
Ms. Asha Rasal, Advocate for Respondent No.2.

...

CORAM : **V. K. JADHAV, J.**

DATE : 17th November, 2016.

ORAL JUDGMENT:

. By this criminal application, the Applicants seek quashing of the order of issuance of process dated 17th March, 2005, passed by the learned Joint Judicial Magistrate First Class, Gangapur, Aurangabad in S.C.C. No.331 of 2005.

2 Brief facts giving rise to the present criminal application are as follows:

Respondent No.2 – original Complainant has filed a private complaint against the Applicants bearing S.C.C. No.331 of 2005 for having committed offence punishable under Sections 447 and 427 read with 34 of the Indian Penal Code. The learned Magistrate after recording the verification statement of the Complainant and on perusal of the complaint and after hearing the arguments of the Complainant's counsel, issued process against the Applicants – original Accused for the offence punishable under Sections 447 and 427 read with 34 of the Indian Penal Code. Hence, this criminal application.

3 The learned counsel for Applicants submits that Respondent No.2 – original Complainant has suppressed the material facts in respect of the decree passed in R.C.S. No.185 of 1996, which now attained the finality. Applicant No.4 had instituted said suit bearing R.C.S. No.185 of 1996 against Respondent No.2 – original Complainant and others for decree of partition and separate possession and the learned Civil Judge Junior Division, Gangapur decreed the said suit with costs. The learned Judge has perpetually restrained the defendants from causing obstruction to the Plaintiff's (Applicant No.4 herein) possession over the suit House No.426, 427 till the partition is effected. Respondent No.2 – original Complainant fought the litigation upto the High Court and finally lost it. Thus, the judgment and decree passed in said R.C.S. No.185 of 1996 has attained finality. The learned counsel submits that by suppressing these material facts, Respondent No.2 – Complainant has filed private complaint before the Judicial Magistrate First Class, Gangapur, alleging therein that present Applicant No.4 alongwith her husband and two sons, illegally demolished the house situated in aforesaid land No.426, 427, which is subject matter of the said suit.

4 The learned counsel further submits that even in respect of one incident occurred on 6th/7th June, 2004, Applicant No.4 – Kantabai has filed a complaint before the Judicial Magistrate First Class, Gangapur bearing M.A. No.237 of 2004 against present Respondent No.2 and four others for having committed offence punishable under Sections 379, 291, 504, 506 and 442 read with 34 of the Indian Penal Code. The learned counsel submits that in order to counterblast the said complaint with some malafide intention, Respondent No.2 – original Complainant by suppressing the material facts filed the aforesaid complaint before the Court and the learned Magistrate has mechanically issued the process.

5 The learned counsel for Respondent No.2 – original Complainant submits that the Applicants had an alternate remedy to challenge the order of issuance of process before the Sessions Court and thus, this criminal application is not maintainable. The learned counsel submits that at the time of issuance of process, there is no question of giving opportunity of hearing to accused persons and thus, the proposed defence of the accused cannot be considered at the time of issuance of process. The learned counsel submits that

there are specific allegations in the complaint that the Applicant / Accused entered into the filed where House No.426, 427 are situated and illegally demolished the same. The learned counsel submits that the Magistrate has rightly issued the process by considering the verification statement and the allegations made in the complaint. No interference is required.

6 On careful perusal of the decree passed in R.C.S. No.185 of 1996, it appears that Defendant Nos.1, 2, 4 and 5 therein including present Respondent No.2 came to be perpetually restrained from causing obstruction to the Plaintiff's (Applicant No.4 herein) possession over the suit House No.426, 427 till the partition is effected. Being aggrieved by the same, present Respondent No.2 alongwith other defendants preferred Regular Civil Appeal No.224 of 1998 and the learned Additional District judge, Aurangabad, vide its judgment and decree dated 28th June, 2002 partly allowed the appeal with certain modification in respect of landed property and house property with regard to the share of Applicant No.4 herein and confirmed rest of the judgment and decree passed by the Trial Court. Even though said judgment and decree passed by the Civil Court has

attained finality, by suppressing the material facts, Respondent No.2 has approached the Court by filing private complaint, which is numbered as S.C.C. No.331 of 2005 by making allegations that Applicant No.4 alongwith her husband and two sons demolished House No.426, 427 by making criminal trespass. It further appears from the record that present Applicant No.4 has filed a private complaint before the Judicial Magistrate First Class, Gangapur, Aurangabad against Respondent No.2 herein and four others by giving reference to the judgment and decree passed in her favour in R.C.S. No.185 of 1996. Even though the judgment and decree in the aforesaid suit was in force, it has brought to the notice of the Court by way of filing of the complaint that present Respondent No.2 alongwith some other persons tried to disturb the possession of present Applicant No.4 over the house property and even forcibly taken away tin-sheet and other property. It, thus, appears that to counterblast the said complaint by suppressing the material facts of civil litigation, Respondent No.2 has filed a complaint before the Magistrate at Aurangabad. In view of this, the order of issuance of process passed by the Magistrate is liable to be quashed and set aside and further the complaint bearing S.C.C. No.331 of 2005 is liable to be dismissed.

Hence, the following order:

ORDER

- I. The criminal application is hereby allowed.
- II. Order dated 17th March, 2005, passed by the Joint Judicial Magistrate First Class, Gangapur, Aurangabad in S.C.C. No.331 of 2005, is hereby quashed and set aside.
- III. Complaint bearing S.C.C. No.331 of 2005, is hereby dismissed.
- IV. Rule is made absolute in aforesaid terms.
- V. Criminal application is accordingly disposed of.

[V. K. JADHAV, J.]

ndm