

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

CRIMINAL APPLICATION NO. 5337 OF 2015

HANUMANT S/O SURYABHAN JADHAVAR
VERSUS
VIJAYKUMAR S/O DATTOBA JADHAVAR AND OTHERS.

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Advocate for Applicant : Mr. Thombre Chandrakant V.

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CORAM : V.K. JADHAV, J.
Dated: August 22, 2016

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PER COURT :-

1. Being aggrieved by the order passed by the Judicial Magistrate First Class, Kallam dated 20.2.2012 below Exh.1 in Criminal M.A. No.38 of 2009 and confirmed by the learned Additional Sessions Judge-3, Osmanabad by passing judgment and order dated 3.7.2015 in Criminal Revision Application No.48 of 2012 the original complainant had preferred this application.

2. Brief facts, giving rise to the present application are as follows :-

Father of petitioner-original complainant is the owner of land block No.257 admeasuring 1H 14R situated at village Ratnapur Tq. Washi. The applicant-

original complainant is cultivating the said land and he had raised Tur crop for the season 2002-2003. On 13.1.2003 the respondents/original accused around 06.30 p.m. entered into the said land and started loading said Tur in a bullock cart. They threatened to ampute the limbs of the complainant. The accused no.1 Vijaykumar gave slap to the complainant and threatened to kill him. On the next day, the applicant-original complainant had informed the incident to the Yermala Police Station. Thus he was constrained to file a complaint before the Magistrate. Initially, the learned Magistrate has directed the investigation into the matter as provided under section 156 (3) of the Criminal Procedure Code, however, the concerned police station submitted "B" summary report. The learned Magistrate has again afforded an opportunity to the complainant to lead evidence before issue process. The applicant-original complainant has examined himself before the Court and also examined one more witness in his support. However, the learned Magistrate dismissed the complaint on 20.2.2012 by holding that no prima facie case is made out against the respondents/accused.

Being aggrieved by the same, the applicant-original complainant has preferred criminal Revision Application No.48/2012 and the learned Additional Sessions Judge-3, Osmanabad by its judgment and order dated 3.7.2015 rejected the said Criminal Revision Application. Hence, this Criminal Application.

3. The learned counsel for the applicant-original complainant submits that, on 13.1.2013 respondent-accused entered into the field of the applicant-original complainant and forcibly took Tur crop in their bullock cart. Furthermore, they have also given him life threats and respondent no.1-accused had also slapped the complainant. Even on the next day, the applicant-original complainant had lodged the complaint in the police station, however, the police refused to register the crime on the ground that the dispute is of civil nature. The learned counsel submits that, the learned Magistrate has given an opportunity to the complainant to substantiate the allegations made in the complaint and accordingly the applicant-original complainant has examined himself and also examined one more witness

in support of the allegations made in the complaint. The learned counsel submits that prima facie there is sufficient evidence on record to issue process against the accused, however, the learned Magistrate has erroneously dismissed the complaint. The learned Additional Sessions Judge, Osmanabad has also not taken into consideration the same and rejected the Criminal Revision Application.

4. The learned Magistrate in paragraph No.6 of his order observed that, at the time of consolidation of the land, land gat no.275 was given to accused no.1, but illegally by M.E.No.466 name of the father of the complainant was entered in respect of the said land. It is also a part of record that, the complainant's father had preferred the writ petition before this Court but no interim relief was granted. Learned Magistrate has further observed that, on perusal of the judgment of the Deputy Director of Land Records, it appears that, Mutation No.466 of the complainant's father is illegally sanctioned. Against said order, the complainant's father had filed an appeal before the Revenue Minister and

said appeal also came to be dismissed. It further appears from the order of the Magistrate that witness Shahaji has not deposed about the incident as narrated by the applicant-original complainant. The learned Additional Sessions Judge, Osmanabad has also considered the evidence on record and observed that the evidence is not worthy of credence to hold that prima facie case against respondent-accused.

5. In view of the above observations and considering the civil litigation, revenue dispute and other evidence on record, I do not find any fault in the impugned judgment and order passed by the Judicial Magistrate First Class, Kallam and confirmed by the learned Additional Sessions Judge, Osmanabad. The applicant-complainant has miserably failed to make out a prima facie case against the respondents-accused. I do not find any substance in the Criminal Application. Criminal Application is therefore dismissed.

(V.K. JADHAV, J.)

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