

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 2979 OF 2003

Purushottam Gopal Turwadekar @ karmakar
& Anr. ..Applicants
(org. accused nos.1 and 2)

v/s.

The State of Maharashtra. ..Respondents

Mr. Shekhar Ingawale for the Applicant
Mrs. G.P.Mulekar , APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 24, 2016.**

JUDGMENT.

1. This is an application under Section 482 of Cr.P.C. challenging the order dated 07.03.2002 and 25.3.2003 whereby the learned JMFC, Dapoli, and the learned Addl. Sessions Judge, Khed rejected the application for discharge.

2. Mr. Ingawale, learned Counsel for the applicants has submitted that the FIR as well as the other material on record does not prima

facie disclose sufficient ground to proceed against the applicants. He has submitted that by order dated 30.9.1999, the Division Bench of this Court had directed the Project Authority not to execute any work of the project unless and until the notification under Section 13(1) of the Land Acquisition Act is published and the final area of the land is notified and the final area of the land is declared and the possession of the land is taken over after following due procedure laid down in the Land Acquisition Act, 1894. The learned counsel for the applicants has submitted that despite the said order, the Asst. Engineer, Minor Irrigation, Mandangad, and some others entered in their property under Survey no. 18. He has submitted that the applicants had merely questioned him as to how they had entered his property without his permission. The learned counsel for the applicants submits that the applicants have not committed any offence and there being absolutely no material to proceed against the applicants, they be discharged.

3. The learned APP for the State submitted that the FIR as well as the other material on record prima facie indicates that the First

Informant Shri Dilip Jakar who is a public servant had been to the property of the applicants in order to survey the same and that the applicants had obstructed him and prevented him from discharging his duty and further threatened him to cause his death.

4. I have perused the records and considered the submissions advanced by the learned counsel for the applicants and the learned APP for the State.

5. The applicants herein are the accused in Criminal Case No.374 of 2000 pending on the file of the J.M.F.C., Dapoli. The said case was filed pursuant to the FIR lodged by Dilip Murlidhar Jakar,, Asst. Engineer, Grade 2, Minor Irrigation Project. It is not in dispute that the first informant is a public servant within the meaning of Section 21 of IPC.

6. The records reveal that the applicants herein had filed a petition challenging the acquisition of his property. A perusal of the petition reveals that the applicants had sought by prayer clause

(bb) writ of mandamus directing the respondent project authority not to execute the work of the project unless and until the notification under Section 13(1) of the Act is published and the final area is declared and possession of the land is taken over after following the due procedure laid down in the land acquisition act. The said petition was disposed of by order dated 8.9.1999. The short question falling for consideration is whether the applicant had obstructed the respondent no.1 from discharging his official duty. A perusal of the said order passed by the division bench of this Court indicates that the learned AGP had made a statement that the Government would not acquire the land of the applicants without following due process of law, in view of which rule was made absolute in terms of prayer clause (bb).

7. Section 3(a) reads as under:

“3A. For the purpose of enabling the [State] Government [for the Commissioner] to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the [State] Government in the Public Works Department, or any other officer either generally or specifically authorized by the [State] Government in this behalf [or as the case may be, any officer authorised by the Commissioner], and for his servants and workmen,-

(i) to enter upon and survey and take levels of any land in such locality,

(ii) to mark such levels,

(iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose, an

(iv) where otherwise the survey cannot be completed and the levels taken to cut down and clear away any part of any standing crop, fence, or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier atleast seven days notice in writing of his intention to do so.”

8. The FIR prima facie indicates that on 9.4.2002, the first informant along with the contractor and four other labourers had visited the property under Survey no.18 in order to take preliminary survey. He submitted that at about 11.30 a.m. while they were conducting the survey, the applicants herein came to the property and questioned him as to who had authorized him to conduct the survey. It is further alleged that the applicants snatched the level patti and stand (instrument used for marking the boundary) and threw away the same and further threatened to cause their death.

The first informant had further stated that the applicant had prevented him from discharging his duty and had further abused him in filthy words.

9. The statements of other witnesses namely Raju Kamble, Dattaram Kamble, Suresh Ghadi also prima facie indicate that the applicants herein had obstructed the first informant from discharging his duties and further abused them in filthy words and threatened to cause their death. The FIR and the statements of witnesses recorded under Section 161 of Cr.P.C. therefore prima facie disclose the offence alleged. The records indicate that the first informant and the contractor had entered the property in order to conduct the survey and to mark such levels. The case of the complainant is covered by the provisions of section 3A of Land Acquisition Act, and as such the submission of the learned counsel for the applicant cannot be accepted that the complainant was not entitled to enter the property. The records indicate that the government employees had entered the property to discharge their duty. The applicants had obstructed them, abused them and threatened to cause their death. The FIR as

well as the supporting statements prima facie indicate that there are sufficient grounds to prosecute against the applicants for offence as alleged. Hence, the application has no merits and the same is dismissed.

10. Rule is discharged.

(ANUJA PRABHUDESSAI, J.)