

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

CRIMINAL APPLICATION NO.306 OF 2017

Sandeep Sadashiv Bhalerao, .. Applicant
Age-32 years, Occu-Agriculture,
R/o. Basmat Road, Parbhani,
Dist. Parbhani

Versus

1. State of Maharashtra .. Respondents
Through Police Station Bori,
Tq. & Dist. Parbhani
2. Dattatraya S/o. Sakharam Nakode,
Age-57 years, Occu-Service,
R/o. Somvar Peth Vasmata,
Tq. Vasmata, Dist. Hingoli

Mr.P.R. Katneshwarkar, Advocate h/f Mr.V.P. Kadam,
Advocate for the appellant
Mr.M.M. Nerlikar, APP for the respondent/State

**CORAM : S.S.SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 26.07.2017

PRONOUNCED ON : 01.09.2017

J U D G M E N T [PER:S.M. GAVHANE, J.]

. The applicant who is arrayed as accused No.8 against whom and 11 others Crime No.100/2016 for the offence punishable under Section 379 r/w 34 of the Indian

Penal Code (for short the IPC) has been registered in Police Station Hatta, Tq. Vasmat, Dist. Hingoli has filed this application under Section 482 of the Code of Criminal Procedure to quash and set aside the said crime against him.

2. The facts giving rise to this application, in short, are as under:-

A. Respondent No.2 the Circle Officer of Hatta, Tq. Vasmatn, Dist. Hingoli has lodged the complaint/First Information Report on 09.12.2016 in Police Station Hatta, alleging that on 25.11.2016 he received instructions from the Tahasildar, Vasmat for collecting information regarding illegal stock of sand made within the area of Tahasil, Vasmat. On the basis of said information he made inspection of different sites. He noticed that the accused persons had shifted illegally collected sand from one place to another place without permission of the competent authority. The accused had committed theft of Government property. It is alleged that in the year 2014-2015 sand to the extent of 100 brass was stored by the applicant-accused illegally in the field Gut No.443 of village Hatta of one Maruti Ramaji Dhage. When the said fact was noticed by the Revenue Officer charge was created over the said land Gut No.443 to the extent Rs.

1,03,900/- as per the mutation entry No.4383 dated 07.08.2015. On the basis of above FIR aforesaid crime was registered against the applicant and 11 others.

B. According to the applicant the land Gut No.443 is in the name of Maruti Ramaji Dhage and it is situated at village Hatta not at village Karanjala. On 14.12.2016 he has deposited an amount of Rs.1,03,900/- i.e. an amount of charge created on the above said land and then he filed an application to Tahasildar, Vasmat and pointed out that the stock of sand i.e. 100 brass is of the year 2014-2015. According to the applicant no details are given in the FIR as and when the sand was shifted for storing. The sand is still lying in the field of Maruti Ramaji Dhage. It is mentioned in the FIR that the said sand is of the year 2016-2017 but actually it is of the year 2014-2015. As such the authorities have prepared panchanama of the said sand twice and it is shown that it is of the year 2016-2017. Thus, according to the applicant the FIR under Section 379 of the IPC against him is nothing but abuse of process of law. The offence under Section 379 of the IPC is not made out against him. On the above grounds, he has prayed to quash and set aside the crime against him.

3. Learned counsel for the applicant has made

submissions in the light of above referred grounds and more particularly on submitting that the FIR/complaint lodged against applicant is absolutely false and concocted and even if entire allegations in the FIR are taken as it is without adding or subtracting anything prima facie case is not made out against him for the offence under Section 379 r/w 34 of the IPC and claimed to quash and set aside the crime No.100/2016 registered in Police Station Hatta, Tq. Vasmat, Dist. Nanded against the applicant.

4. On the other hand learned APP appearing for respondent/State submitted that on the basis of allegations in the FIR and statements of witnesses and panchanama of spot of incident prepared by the Circle Inspector Hatta ingredients of offence under Section 379 of the IPC regarding theft of 100 brass sand and illegally storing the same in the land Gut No.443 of Maruti Ramaji Dhage are prima facie attracted and that the investigation in the said crime is in progress. It is further submitted that it is not the case that the FIR and other materials collected by the Investigating Officer do not disclose the commission of any offence and make out a case against applicant so as to quash and set aside the crime registered against the applicant. Thus, learned APP has claimed to dismiss the application.

5. We have carefully considered the submissions made on behalf of the applicant and the respondent/State so also we have perused the copies of investigation papers submitted alongwith report of the Investigating Officer stating that there is sufficient evidence against the applicant and requesting to allow to file the charge-sheet against the applicant.

6. Before advertng to the FIR and other materials collected by the Investigating Officer to see, whether applicant's request to quash and set aside the crime against him is to be granted or otherwise by invoking the provision of Section 482 of the Code of Criminal Procedure, it is necessary to refer the law laid down by the Hon'ble Supreme Court in the Case of **State of Hariyana Vs Bhajanlal, AIR 1992 SC 604.** The Hon'ble Supreme Court in Para No.102 held thus:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Ch. XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under S. 482 of the Code

of which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officer under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;

3. Where the controverted allegations

made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the applicant;

4. Where the allegations in the FIR do not constitute a cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under Section 155(2) of the Code;

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code of concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and /or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. Bearing in mind the law laid down by the Hon'ble Supreme Court in the above decision we shall proceed to consider the aspect whether there is prima facie case or otherwise against the applicant for the offence of theft. On careful perusal of the FIR dated 09.12.2016 lodged by the informant/respondent No.2 it discloses that on directions of Tahasildar, Vasmat in respect of illegal excavation of the sand from pond of the Purna river in the year 2016-2017 the informant who is Circle Inspector of Tahasil Office, Vasmat visited the different spots. He found illegal storage of the sand of all the twelve accused and particularly 100 brass sand of the applicant was found illegally stored in the field Gut No.443 of Maruti Dhage situated at Karanjala, worth Rs.2,86,100/-. Panchanama in this respect prepared by respondent No.2 also reflects that illegal storage of 100 brass sand of the applicant. The statements of witnesses recorded by the Investigating Officer also disclosed the same. It is

pertinent to note that some of the statements of the witnesses confirmed that 100 brass sand as above was of the applicant. Another aspect to be noted is that as per the case of the applicant he paid an amount of Rs. 01,03,900/- of charge on the land Gut No. 443, which indicates his concern to the 100 brass sand which was allegedly found in the field Gut No. 443 of Maruti Ramaji Dhage. Thus, above referred materials prima facie disclosed the offence of theft of sand against the applicant. It is not the case that the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused. So also, it is not the case that the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against accused in the light of law laid down by the Hon'ble Supreme Court in the case of **State of Hariyana** (Supra) so as to say that the crime registered against the applicant for the offence under Section 379 is liable to be quashed and set aside.

8. In view of the above discussion the arguments advanced by the learned counsel appearing for the applicant and the ground taken by the applicant in the application that the sand mentioned in the FIR is

actually of the year 2015-2016 and the same sand has been shown of the year 2016-2017 as per panchanama and therefore investigation of the allegations in the FIR in respect of theft of the said sand is nothing but abuse of process of law, is not acceptable at this stage. For the reasons discussed above we hold that no case is made out by the applicant to quash and set aside the crime No. 100/2016 for the offence under Section 379 r/w 34 of the IPC registered against him and others at Police Station Hatta, Tq. Vasmat, Dist. Hingoli. Therefore, application is liable to be dismissed.

9. The observations made herein above are prima facie in nature and confined to the adjudication of this application and learned trial Judge shall not in any manner get influenced by the said observations during trial of the case, which may be filed on the basis of crime registered against the applicant and others.

10. The application stands dismissed accordingly. In view of the dismissal of the application, the interim relief granted during the pendency of this application stands vacated.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]