

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

CRIMINAL WRIT PETITION NO.402 OF 2017

1. Ayub s/o Babu @ Lalmiya Shaikh,
Age 30 years, Occu. Agri. & Business
 2. Idris s/o Babu @ Lalmiya Shaikh,
Age 32 years, Occu. Agri. & Business
 3. Lalmiya @ Babu s/o Khajamiya Shaikh,
Age 60 years, Occu. Agri.,
All R/o Kazi Mohalla, Latur,
Taluka and District Latur
- ..Petitioners

Versus

1. The State of Maharashtra,
through Police Inspector, Shirur
Anantpal Police Station,
Taluka Shirur Anantpal,
District Latur
 - 1-A. The Investigation Officer,
Shirur Anantpal Police Station,
Taluka Shirur Anantpal,
District Latur
 2. Ajgar s/o Yakubsab Shaikh,
Age 41 years, Occu. Agri.,
R/o Bibril, Taluka Shirur Anantpal,
District Latur
- ..Respondents

Mr T.M. Venjane, Advocate for petitioners
Mr S.R. Yadav, A.P.P. for respondents no.1 and 1-A,
Mrs Madhaveshwari D.Thube-Mhase, Advocate for respondent no.2

**CORAM : R.M. BORDE AND
A.M. DHAVAL, JJ.**

DATE : 14th June 2017

ORAL JUDGMENT (Per R.M. Borde, J.)

Heard.

2. Rule. Rule returnable forthwith. With the consent of parties,
petition is taken up for final disposal at admission stage.

3. The petitioners are praying for quashment of the F.I.R. lodged against them pursuant to registration of C.R. No.139/2016 on 1st November 2016 at Police Station, Shirur Anantpal, District Latur, for offence punishable under Section 379 read with Section 34 of the Indian Penal Code. It is alleged in the F.I.R. that the Soybean crops belonging to the informant have been stolen by the petitioners. It is stated in the F.I.R. that the crops worth Rs.20,000/- belonging to complainant had been transported in a tractor on 1st November 2016 by the accused.

4. The learned Counsel appearing for petitioners has invited our attention to the decree passed by the Civil Judge, Senior Division, Nilanga in Regular Civil Suit No.306 of 1986 on 26th June 1986. The suit was presented by Imam Saheb Mohd. Shaikh and Lalmiya Mohd. Shaikh against Khayum Pasha claiming decree of perpetual injunction against the defendants therein in respect of land Survey No.76/A. The suit presented by the plaintiff came to be decreed in terms of the compromise. The defendants therein admitted the possession of the plaintiffs in respect of suit property. Another litigation being Special Civil Suit No.18/2010 was presented by Imam Mahamadsab Shaikh and Lalmiya Shaikh against Ismail Turabsab Shaikh, Mastan Turabsab Shaikh, Mahamad Turabsab Shaikh and Sadat Turabsab Shaikh claiming a decree of cancellation of sale-deed and perpetual injunction. It was claimed by the plaintiffs in the said suit that one Khayyum Shaikh was original owner of the property. He died three years prior to presentation of suit and during lifetime, he executed agreement of sale in favour of plaintiffs therein. It is stated that the possession of the suit property has been handed over to plaintiffs. The

agreement of sale was signed by Gul Mohammad, Sayyad Usman, Ram Reddy, Asad Ali Patel. After demise of Khayyum, the original agreement of sale dated 7.3.1986 was in possession of defendants. On the basis of agreement to sell, the plaintiffs filed Regular Civil Suit No.306/1986 claiming decree of perpetual injunction against Khayyum Shaikh. Said suit was compromised on 26th June 1986 and in the said compromise, Khayyum Shaikh admitted possession of the plaintiffs over the suit property and assured that he will not obstruct the possession of plaintiffs. The compromise decree has attained the finality. The trial Court decreed the suit on 15th December 2011. An appeal presented by the defendants against the said decree was dismissed. This Court, in its order dated 21st June 2013 passed in Civil Application No.5549 of 2013 in Second Appeal No.288 of 2013 has observed that the respondents in the appeal i.e. original plaintiffs Imam Mahmadsab Shaikh and others appear to be in possession of the suit property and as such, has refused to stay the decree of perpetual injunction, which is operative against the defendants in the said suit.

5. The complainant herein is the cousin brother of Mastan Turabsab Shaikh - defendant No.2 in Special Civil Suit No.18/2010, who has lost litigation in trial and appellate Courts. It appears that there is judicial declaration in respect of factum of possession of the petitioners. There is absolutely no material to demonstrate the possession of the informant over the suit property. The basic ingredients for considering the offence of theft i.e. the ownership of the goods, which alleged to be stolen has not prima facie appear to be of the informant. There is absolutely no material to demonstrate that

the informant was in possession of any of the agricultural property, where the crop of soybean could be harvested. It appears from the spot panchnama that the crops have been harvested in land Survey No.76/A, which land is in possession of petitioner and such a finding is recorded in Special Civil Suit No.18/2010 and High Court also while dealing with application for grant of interim relief presented by original defendants in the suit has recorded such finding.

6. In view of above, there is sufficient material to draw an inference that the present complaint is outcome of civil dispute initiated against the petitioners.

7. For the reasons recorded above, the criminal proceedings initiated against the petitioners are unsustainable and deserve to be quashed. As such, the criminal proceedings initiated against the petitioners pursuant to lodging of C.R. No.139/2016 registered on 1st November 2016 at Police Station, Shirur Anantpal, District Latur, for offence punishable under Section 379 read with Section 34 of the Indian Penal Code stand quashed.

8. Rule is made absolute in above terms.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)