

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

CRIMINAL APPLICATION 1683 OF 2017

Datta s/o Sanjay Bondhare
Age 30 years, Occu:Agriculture
R/o Akhada Balapur, Tq.Kalamnuri
Dist.Hingoli

... APPLICANT

Versus

1] The State of Maharashtra,
Through Akhada Balapur
Police Station, Tq.Kalamnuri
Dist.Hingoli.

2] Bhimrao s/o. Laxmanrao Chafale
Age 58 years, Occu : Agriculture
R/o Pimpri (kh) Tq.Kalamnuri
Dist.Hingoli.

.. RESPONDENTS

Mr.M.V.Ghatge, Advocate for applicant.
Mr.M.M.Nerlekar, APP for Respondent No. 1.
Mr.R.K.Ingole, Advocate for respondent No.2.

**CORAM : S.S.SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 10/11/ 2017.
PRONOUNCED ON :22/11/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

1] Rule. Rule is made returnable forthwith. Heard finally
with the consent of all the parties.

2] This is an application under Section 482 of Cr.P.C. seeking quashment of the FIR No.0267/2016 dated 02/12/2016 registered with Akhada Balapur Police Station, Tq. Kalamnuri, Dist.Hingoli for the offences punishable under Sections 420, 468, 471,218,211 of IPC.

3] Shortly stated, the facts leading to the filing of this Application are as under :

The respondent no.2 filed complaint before the learned JMFC, Hingoli seeking direction under Section 156(3) of the Cr.P.C. with the allegation that his father was a protected tenant in the land admeasuring 1 Hectare 60 Are out of land Gat no.20 at village Pimpri (Khurd) Tq. Kalamnuri. His father was in exclusive possession of that land till his death. After his demise, the respondent no.2 and his brother have been in continuous and peaceful possession of the land. Shamrao Sonaji Chafale who is the accused no.1 named in the FIR had instituted Regular Civil Suit No.68/2005 against the respondent no.1 in the Court of Civil Judge, Junior Division, Kalamnuri, seeking perpetual injunction to not to obstruct his possession in the said land. However, the Suit was dismissed. Thus the possession of the respondent no.1 and his brother in the land was endorsed. Accordingly, they instituted Special Civil Suit No.71/2015 in the Court of C.J.S.D. Hingoli for declaration of their title to that land. Even earlier, when the very same land was purchased by one Premrao Vithoba Dhande in an Execution Proceeding bearing Regular Darkhast No.9/1971 and the purchaser had attempted to get mutated his name in the revenue record of the land, his application was rejected and even the appeal preferred by Premrao was dismissed. In spite of such state of affairs, it is alleged

in the FIR that the accused no.1 Shamrao and the accused no.2 therein i.e. the present applicant in collusion with the concerned Talathi took bogus entry about possession of the present applicant in the land by drawing sham panchanama. Thus he alleged that the present applicant alongwith other accused prepared false record with a view to grab the land.

4] It seems that the learned Magistrate obliged respondent no.2 by passing order of investigation under Section 156(3) of the Cr.P.C. In pursuance of direction, the impugned FIR has been registered.

5] We have heard learned Advocate for the applicant, as also learned APP and the learned Advocate for the respondent no.2. We have also perused the affidavit in reply filed by the respondent no.2.

6] According to the learned advocate for the applicant, the learned JMFC has passed order under Section 156(3) of the Cr.P.C. without application of mind. The applicant has already been arraigned as a co-defendant in Special Civil Suit No.71/2015 and the dispute is purely of civil nature. The complaint has been filed with ulterior intention to pressurize the applicant. No tenancy certificate has been issued in favour of the father of the respondent no.2 even though they are claiming to be protected tenants. Lastly, learned advocate submitted that the applicant is a *bona fide* purchaser of the land. Since the revenue entries did not mention about any tenancy, no fault can be found with the applicant in purchasing the land much less attributing him with any malice. According to the learned advocate dispute of civil nature has been sought to be brought under criminal jurisdiction.

7] The learned advocate also referred to the decision in the case

of Narasamma and others V/ State of Karnataka and others; 2009(4) All M.R. 969 and the decision of the Division Bench of this Court in the case of Rashmi w/o Satish Khandvikar and another V/s The State of Maharashtra and another in Criminal Application No.3127 of 2016 decided on 17/10/2016 to which one of us (S.S.Shinde,J.) was a party.

8] *Per contra*, learned advocate for the respondent no.2 vehemently submitted, relying upon the decision in the case of Lalmuni Devi (Smt) V/s State of Bihar and others; (2001) 2 SCC 17, that merely because there is also a civil dispute, that cannot be the reason to ignore if the act simultaneously amounts to an offence under the law. The learned advocate also submitted that inspite of knowledge of the pending litigation, in collusion with Shamrao, the applicant has purchased his land. They hand in glow with the revenue authorities also attempted to draw a false panchanama depicting possession of Shamrao to prove their claim and therefore, all the necessary ingredients for constituting offences are made out in the complaint. The learned advocate also submitted that already an order of injunction has been passed in favour of the respondent no.2 in the Special Civil Suit No.71/2015 and Application for temporary injunction restraining the defendants therein including the present applicant to obstruct their possession. Right in the teeth of such order, the applicant is bent upon to obstruct the possession. He also referred to the documents to show that in the previous litigation being the auction purchaser of the land, the claim for mutation by the auction purchaser was refuted by the revenue authorities and even the appeal was dismissed. Thus, the learned advocate submitted that there is no merit in the application and the same is liable to be rejected.

9] At the outset, it is necessary to state that the scope of the present inquiry is limited to ascertain whether all the necessary ingredients for constituting the offence registered against the applicant can be made out from reading the contents of the FIR. *Prima facie* all the necessary ingredients constituting offences are discernible, from the allegations. As is laid down in the case of Lalmuni Devi (supra), a dispute can have a civil as well as criminal flavour and merely because civil litigation is pending, one cannot *ipso facto* take out the criminality involved.

10] We do not intend to go into the disputed factual aspects but suffice for the purpose to observe that the documents on record clearly show that since long possession of the respondent no.2 and his brothers in the land has been confirmed by judicial and quasi judicial authorities, that too to the knowledge of Shamrao Chafale who is the vendor of the applicant. It seems highly improbable that the applicant has not been aware about such previous litigation or was naive in purchasing the land which has been in dispute. We deem it necessary to make it clear that we do not wish to transgress into the realm of civil dispute, but are pointing out this circumstance only to judge the probabilities since that is one of the circumstances which need to be scrutinised as falling under Category No.1 of the seven categories laid down in the case of State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604 .

11] There is yet another reason which needs special reference for us not to intervene in the criminal process at this juncture. As is mentioned in the application itself, though applicant has cursorily mentioned that the FIR has been registered in pursuance of the order passed by the learned JMFC by invoking power under Section 156(3) of the Cr.P.C. without application of mind, already the applicant has impugned that order by filing

Criminal Revision Application No.23/2016 which is pending before the learned Additional Sessions Judge, Hingoli. If such is the state of affairs, when the order on the basis of which the impugned FIR has been registered is under judicial scrutiny elsewhere, so long as the order passed by the learned Magistrate is not set aside, according to us, it is premature to simultaneously consider as to whether the FIR can be quashed.

12] The attempt of the learned advocate to rely upon the decision in the case of Narsamma (supra) is redundant. It is trite that the evidentiary value of the revenue record is well settled and the entries would certainly reflect as to who is in possession on the date when the entries are taken. However, we do not see as to how this principle can be invoked to resolve the instant controversy where the scope of the inquiry is limited.

13] It is necessary to also bear in mind the recent decision of the Supreme Court in the case of **HDFC Securities Limited and others Vs. State of Maharashtra and another [9 (2017) 1 SCC 640]** wherein it has been observed as under :

“27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 04.01.2011 passed by the learned Magistrate under Section 156(3) of Cr.P.C. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) Cr.P.C. requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only

after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage, the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitioners under Article 227 of the Constitution of India or under Section 482 Cr.P.C., at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 Cr.P.C. should be sparingly used.”

14] For all these reasons, we see no sufficient ground to quash the FIR.

15] The Application is rejected. Rule is discharged.

16] It is made clear that the above observations are confined to the decision of this application only and shall neither influence the Investigating Officer nor the trial Court in the discharge of their function/duty.

umg/
(MANGESH S. PATIL,J.)

(S.S.SHINDE,J.)