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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1086 OF 2017

WITH

CRIMINAL APPLICATION NO.679 OF 2017

Raosaheb Namdeo Aasabe & Ors.

..Applicants.

V/s.

The State of Maharashtra

..Respondent.

AND

Vasant Bhiku Asabe

..Intervenor.

Mr.Kuldeep Patil i/b. Mr.Prashant S. Hagare for the Applicants.

Mr.S.V. Gavand, APP for the Respondent-State.

Mr.Sanjiv Kadam i/b. Mr. B.S. Shinde for intervenor.

CORAM : T.V.NALAWADE, J.

DATED : 16 AUGUST 2017

P.C.:-

This is an application for anticipatory bail in C.R.No. 566/2016 for offence punishable under section 420, 465, 471 read with 34 of the IPC registered with Indapur police station, Pune. Heard both the sides. The papers of investigation were made

available for perusal.

2. The material collected shows that there was dispute over over the common bandh, boundary between the land of the complainant and land of the present Applicants. It appears that a Civil Suit was filed by Respondents but they failed in the suit. However, the Civil Court had not given any decree of recovery of portion which was allegedly encroached by the complainant's side. One proceeding was filed before the revenue authority raising the boundary dispute under the Maharashtra Land Revenue Code but no order was made by the concerned authority in favour of the Applicants for getting possession of the portion which was allegedly encroached by the complainant's side.

3. The allegations are made in the F.I.R. that the present Applicants prepared and created false record of order of the revenue authority of removal of encroachment and getting orders of police protection for removal of encroachment and thereby they committed the aforesaid offence.

4. Record like application made by Applicant No.1 Raosaheb Aasabe before the Talathi on 26 May, 2016 is produced. It can be seen that Talathi had no powers to pass any order or refer the dispute to the Circle Officer under the provisions of the Maharashtra Land Revenue Code. Then, there is a copy of the order made by the Tahsildar to Indapur police station showing that the revenue office had made the aforesaid order of removal of encroachment of 0-43R from Gut No.115 of Vasant Bhiku Aasabe from village Babulgaon and police were expected to give protection for removal of this encroachment and for giving possession of the encroached portion to Raosaheb Aasabe.

5. Learned counsel for the Applicants submitted that there is no record of order made by the competent revenue authority of removal of encroachment and so it cannot be said that false record or order of the revenue authorities is created by the Applicants. This submission is not at all acceptable. The record shows that some proceeding was started before the Tahsildar but in that proceeding, no order was passed by the Tahsildar. The aforesaid record is

sufficient to show that even though there was no order of Civil Court or competent authority for removal of encroachment, attempt was made by Raosaheb Aasabe to take possession of the so called encroached portion. There is a possibility that the Tahsildar was under the influence of Raosaheb Aasabe due to which police protection was given. The decision of the Civil Court does not show that any counter-claim was made by Raosaheb Aasabe in the said suit for removal of the encroached portion and so there was no question of giving decree of such nature. Only the suit of the complainant's side was dismissed in which the complainant had claimed that they were owners of the property and they were challenging the measurements made at the instance of Applicant Raosaheb Aasabe. Thus, the material as can be seen shows that, Raosaheb Aasabe created false records when there was no order for removal of encroachment. This record however, does not show the involvement of the other Applicants in the crime. In view of these circumstances, this Court holds that no protection can be given to Applicant No.1 Raosaheb Namdeo Aasabe but relief can be given to Applicant Nos.2 and 3. In the result, the following order:-

- (i) The application of Applicant No.1 Raosaheb Namdeo Aasabe for anticipatory bail is rejected. Consequently, the interim relief granted to him also stands rejected;
- (ii) The application of Applicant No.2 Dashrath Namdeo Aasbe and 3 Anil Namdeo Aasbe is allowed. Interim bail granted to them is confirmed;
- (iii) The criminal application for intervention is allowed and in view of disposal of the main application, the same is also disposed of.

(T.V.NALAWADE, J.)