

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 271 OF 2014

Pandurang S/o. Raghunath Raut,
Age-57 Years, Occu-Service as Assistant
Police Inspector, Ambhi Police Station,
Tal-Bhoom, Dist-Osmanabad.

... **APPLICANT**

VERSUS

01. The State of Maharashtra,
Through the Deputy Superintendent of Police,
Office of Deputy Superintendent of Police,
Bhoom, Tal-Bhoom, Dist-Osmanabad.

02. Appa S/o. Dashrath Satpute,
Age-30 Years, Occu-Agriculture,
R/o. Ingoda, Tal-Paranda, Dist-Osmanabad. ... **RESPONDENTS**

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Mr. A. R. Devakate, Advocate for Applicant.
Mr. S. J. Salgare, APP for Respondent No.1 / State.
Mr. G. R. Syed, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 19th July, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of
Criminal Procedure for relief of quashing of C.R. No. M-02 of 2014,

registered with Ambhi Police Station, Taluka Bhoom, District Osmanabad, for the offences punishable under Sections 166, 167, 188, 211, 212, 213, 218, 219, 323, 504, 506 and 109 of the Indian Penal Code and also for quashing and setting aside the proceeding of Criminal Miscellaneous Application No.254 of 2013, pending in the Court of Judicial Magistrate First Class, Paranda, District Osmanabad.

2 Both the sides are heard.

3 Miscellaneous proceeding was filed before the Judicial Magistrate First Class by Respondent No.2 and prayer was made to refer the matter to police for investigation under Section 156(3) of the Code of Criminal Procedure. Present Applicant, Pandurang Raut was working as Assistant Police Inspector of Ambhi Police Station at the relevant time. The other Accused are the persons with whom Complainant, Appa Satpute had dispute over the agricultural land and also officers of the land record, survey office. Decree of partition and possession was given in favour of the Accused and against the Complainant by the Trial Court. That decision was challenged by the Complainant by filing Regular Civil Appeal No.380 of 2012 in District Court, Osmanabad. By order dated 19th October, 2013, the District

Court had granted stay to the decree in the following terms:

“1 Judgment and decree passed by Joint Civil Judge Junior Division Paranda, in R.C.S. No.126/1987 dated 8.11.2012, is stayed to the extent of delivery of separate possession, to the decree holders, till further orders.

2 Inform accordingly.”

4 The incident in question took place on 21st November, 2013. Allegations are made that on that day, the officers of land record came to the disputed land for measurement alongwith decree holders. It is contended that prior to that day, the Complainant had informed about the stay granted by the District Court of aforesaid nature to the office of land record and also to the police station. It is contended that all the Accused persons came to the land and when he obstructed the measurement, present Applicant, police officer was called by the officers of the land record to the spot. It is contended that by giving threats, measurement was completed and after that he went to the police station to give report against the officers of land record and the decree holders. It is contended that when he requested present Applicant to record the FIR, the Applicant gave

abuses and gave threats to him. Allegations are made that his signatures were also obtained on some papers to show that in his presence the measurement was taken and he had no dispute about the measurement. By making aforesaid allegations, prayer was made to take action against all the Accused. Initially, order was made under Section 156(3) of the Code of Criminal Procedure, but subsequently, order came to be made under Section 202 of the Code of Criminal Procedure.

5 The State has filed reply and it is the contention of the State that no incident had taken place as mentioned in the complaint. Thus, the State has supported the Applicant.

6 The order, which was made by the Trial Court is already quoted. It is not disputed that decree of partition was given in favour of the Plaintiff by the Trial court. When there is no stay to complete the aforesaid formalities like taking measurement and prepare a draft partition, the measurement can be made and proposal of partition can be made by the revenue authority. Stay was also not granted by the Appellate Court to prevent the revenue authority and so there was no illegality in the steps or action, which the revenue officers were taking.

The present Applicant was only helping them for discharging the duty. It is clear that the Complainant was interested in obstructing that work. In view of these circumstances, this Court holds that it will be abuse of process of law if the Applicant is asked to fact the trial in the case. In the result, the following order is passed:

ORDER

- I. The Application is allowed to the extent of present Applicant.
- II. Relief is granted in favour of present Applicant in terms of prayer clauses (B) and (C).
- III. Rule is made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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