

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

CRIMINAL APPLICATION NO. 359 OF 2018

Shriram s/o Bhausahab Ghanwat,
Age 27 years, Occu : Advocate,
R/o : Bhavi Nimgaon, Tq : Shevgaon,
District: Ahmednagar.

APPLICANT
... (Orig. Accused No.3)

VERSUS

1. The State of Maharashtra,
through its Police Station in-charge,
Shevgaon, Tq. Shevgaon, Dist.
Ahmednagar.

(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay
Bench at Aurangabad)

2. Mohan s/o Ramdas Ghanwat,
Age 55 years, Occu : Agriculture
R/o : Bhavi Nimgaon, Tq. Shevgaon, Dist.
Ahmednagar.

... Respondents
(Orig. Complainant)

Mr. Narendra B. Patekar for the Applicant.

Mr. R. V. Dasalkar, APP for Respondent No. 1 – State.

Mr. Yuvraj Kakade for Respondent No. 2.

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

DATE: : 2nd July, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The applicant – the original accused No. 3 challenged the first information report bearing Crime No. I – 396/2017, registered against him and other two accused persons at Shevgaon Police Station District Ahmednagar for the offences punishable under Section 379, 452, 427, 447, 323, read with Section 34 of the Indian Penal Code.

3. We have heard learned counsel Mr. N. B. Patekar appearing for the Applicant, learned APP, Mr. R. V. Dasalkar for Respondent No. 1 – State and learned counsel Mr. Yuvraj Kakade for Respondent No. 2.

4. The original complainant i.e. respondent No. 2 lodged a complaint to the Police Station on 11.11.2017 alleging that the other accused Nos. 1 and 2 are his real brothers and there was partition between the complainant and the accused persons. It is further alleged that during partition, the complainant was allotted eight and half acres of land out of Gut No. 526 and in that land there was banana crop. The brothers of the complainant have no concerned with the said land. Fifteen days prior, his

other two brothers namely Bhausahab Ramdas Ghanwat and Raosaheb Ramdas Ghanwat have stolen the banana crop. Again eight days prior to the incident, they have entered the field and taken away banana crop of Rs.60,000/-. They have also cut down the water pipeline. The other accused persons entered into his house and assaulted him. On the basis of the complaint lodged by the complainant, offence came to be registered against the present applicant and other two accused persons. The present applicant is appears to be son of Bhausahab Ghanwat who is brother of the complainant. Looking to the contents of the first information report, it appears that there is absolutely no allegation against the present applicant Shriram Bhausahab Ghanwat, however, in the concluding para, the essence of the allegations are reproduced and while reproducing the same, name of the present applicant is inserted. So from the contents of the first information report, it appears that there are allegations of theft, assault etc. against the real brothers of the complainant namely Bhausahab and Raosaheb. There are absolutely no allegations against the present applicant.

5. On perusal of the papers, it appears that the respondent No. 2 and others have filed Regular Civil Suit No. 277/2017 in the Court of Civil Judge, Junior Division at Shevgaon for partition and separate possession including Land Gut No. 526. From the copy of the complaint filed in the Court of Judicial Magistrate, First Class at Shevgaon, relating to the alleged

date of offence, on 27.09.2017, it appears that the respondent No. 2 has specifically contended that there was no partition of ancestral property by metes and bounds.

6. Further, on perusal of the contents of the criminal complaint of the alleged incident dated 29.11.2017, the respondent No. 2 contended there in that there was no partition amongst the respondent No. 2 and the other accused persons and other co-sharers. However, in the complaint, the respondent has taken a specific contention that there was partition between him and his other brothers. On this back-ground, the first information report is lodged against the present applicant and the other two accused persons. There are some allegations against accused Bhausahab and Raosaheb, however, there are no allegations against the present applicant.

7. In view of the above, and on the back-ground of the litigation between the parties and the fact that there is no allegation against the present applicant, we are of the opinion that the first information report involving the present applicant is the out come of the civil and criminal litigations pending between the parties.

8. In view of the above, we are of the opinion that the first information report as against the present applicant is without any base and

specific allegations. Hence, it needs to be quashed and set aside to the extent of present applicant.

9. Hence, the application is allowed.

10. Relief is granted in terms of prayer clause (B) only to the extent of present applicant.

11. Rule is made absolute to that extent only.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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