

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1229 OF 2014

1. Govardhan s/o. Sadashiv Chaudhari,
Age 55 years, Occu. Agriculture,
2. Yuvraj s/o. Govardhan Chaudhari,
Age 30 years, Occu. Agriculture,
3. Vikas s/o. Govardhan Chaudhari,
Age 27 years, Occu. Agriculture,
4. Tanaji s/o. Madhukar Chaudhari,
Age 32 years, Occu. Agriculture,
5. Dhanaji s/o. Madhukar Chaudhari,
Age 32 years, Occu. Agriculture,

All R/o. Deogaon (Kh.), Tal. Paranda,
Dist. Osmanabad.

....Applicants.

Versus

1. The State of Maharashtra
Through Police Station Paranda,
Tal. Paranda, Dist. Osmanabad.
2. Vishnu s/o. Bajarang Ubale,
Age 44 years, Occu. Agriculture,
R/o. Deogaon (Kh.), Tal. Paranda,
Dist. Osmanabad.

....Respondents.

Mr. A.A. Nimbalkar, Advocate for applicants.

Mr. S.J. Salgare, APP for respondent No. 1/State.

Mr. S.Y. Mahajan, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : 02/08/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 34/2014 registered in Paranda Police Station, District Osmanabad for the offences punishable under sections 379, 506 r/w. 34 of Indian Penal Code. Both the sides are heard.

2) The crime is registered on the basis of report given by respondent No. 2 against the applicants. Allegations are made that in incidents dated 3.2.2014 and 4.2.2014 present applicants forcibly harvested Jawar crop which was standing in the land of first informant and by taking away the crop dishonestly, they committed the offence punishable under section 379 of IPC. The value of foodgrains is given as Rs.50,000/-.

3) The submission was made that for the present proceeding the applicants are not disputing that they did harvest the crop. It is their contention that the land where the crop was standing belongs to the applicants. The record is produced like copy of panchanama prepared in executing proceeding which was filed in Regular Civil Suit No. 173/1991. It shows that on 21.6.2004 possession of some portion from land Gat No. 77 was given to the applicants under decree of partition. Admittedly, in the said suit, the

first informant was not party. The first informant had purchased 60 R. portion from this land under registered sale deed in the year 2003 from one of the successor of original owner. The submissions made show that civil suit was filed by first informant for relief of injunction bearing R.C.S. No. 161/2003 against the present applicants and decree of permanent injunction was given in his favour on 4.2.2010 in respect of disputed property. This decision was challenged by filing Regular Civil Appeal No. 8/2014 (Old No. 92/2010) and District Court, Bhoom dismissed the appeal. It was submitted that second appeal is filed by the present applicants against the decision on 23.3.2015 and the said appeal is pending. However, the submissions do not show that in the second appeal the decree of injunction given in favour of first informant is stayed.

4) The aforesaid discussion shows that on the date of incident in view of the sale deed and decree of permanent injunction the first informant was in possession. Crop from that land was harvested and taken away. In view of these circumstances, it cannot be said that there is no material at all against the present applicants. The learned counsel for applicants placed reliance on some observations made by the Apex Court in the case reported as **(2013) 10 Supreme Court Cases 705 [Anil Kumar and Ors. Vs. M.K. Aiyappa and Anr.]**. The facts and circumstances of each and

every case are always different. In the present case, relevant material is already quoted by this Court. This Court holds that no relief can be granted in favour of the applicants. In the result, the application is dismissed. Interim relief is vacated. Rule is discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/