

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

CRIMINAL APPLICATION NO. 2478 OF 2008

01. Pandharinath S/o. Suryabhan Kardile,
Age: 65 years, Occ: Agril,
R/o : Narla, Tq. Paithan, Dist. Aurangabad.
02. Dada S/o. Pandharinath Kardile,
Age: 40 years, Occ: Agril,
R/o. As above.
03. Anil S/o. Pandharinath Kardile,
Age: 35 years, Occ: Agril,
R/o. As above.
04. Namdeo S/o. Pandharinath Kardile,
Age: 32 years, Occ: Agril,
R/o. As above.
05. Sou. Dwarkabai W/o. Pandharinath Kardile,
Age: 60 years, Occ: Household,
R/o. As above.
06. Sou. Padmabai W/o. Dada Kardile,
Age: 35 years, Occ: Household,
R/o. As above.

... **APPLICANTS**
(Ori. Accused)

VERSUS

1. Anil S/o. Bhimrao Vairale,
Age: 33 years, Occ: Agril,
R/o. At present Vaijapur,
Tq. Vaijapur, Dist. Aurangabad.
2. The State of Maharashtra,
Through Police Station Paithan.

... **RESPONDENTS**
(R.1 Ori. Compt)

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Mr. A. G. Deshmukh, Advocate for Applicants.

Ms Pratibha Bharad, Advocate for Respondent No.1.

Mrs. D. S. Jape, APP for Respondent No.2 / State.

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 29th August, 2018.

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

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of case bearing R.C.C. No.59 of 2008 (New number is R.C.C. No.280 of 2008), which is pending in the Court of learned Judicial Magistrate First Class, Paithan, District Aurangabad. The case is filed for the offence punishable under Sections 379 read with 34 etc. of the Indian Penal Code.

2 Both the sides are heard.

3 There was civil dispute between the Complainant side, Respondent No.2 and the Applicants. Applicant No.1 is dead, so the

proceeding of Applicant No.1 is disposed of as abated.

4 Civil suit was filed by Applicant No.1 bearing Regular Civil Suit No.85 of 1998 in respect of the disputed land. Relief of temporary injunction was granted in his favour and against the Complainant. Allegations are made by the Complainant that on 1st October, 2007, the Accused persons caused damage to the irrigation system and took away the pipes used in the system and thereby committed the offence of theft. It is the contention that the material was worth Rs.20,000/- and damage was also caused to his irrigation system. Police made investigation as per the order made by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure and charge-sheet is filed. Copy of spot *Panchanama* shows that the damage was caused to the system and at some places, the pipes were missing. There is material like statements given by other persons, who witnessed the quarrel which took place after the aforesaid incident. They have given statements that during quarrel, Accused persons, Applicants admitted that they had done it and it was open to the Complainant to do whatever he wanted to do. Though there is no recovery, it appears that due to the order of

temporary injunction in favour of the Applicants, they had probably done something to the irrigation system. In view of these circumstances, this Court holds that there is sufficient material atleast against the male persons of the family of the Applicants. It does not look probable that the female persons like Applicant Nos.5 and 6 had played active role in the incident or they had caused damage to the irrigation system of the Complainant. Possibility of implication of all the Applicants to pressurize them cannot be ruled out as civil suit was pending. In the result, the following order is passed:

ORDER

- I. The application of Applicant Nos.5 and 6 is allowed.
- II. The learned counsel for Applicant Nos.2 to 4, on instructions, submits that he wants to withdraw the application of Applicant Nos.2 to 4. The application of Applicant Nos.2 to 4 is disposed of as withdrawn.
- III. Relief is granted to Applicant Nos.5 and 6 in terms

of prayer clause (II) of the amended proceeding.

IV. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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