

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

CRIMINAL APPLICATION NO. 3991 OF 2014

Vemullapalli Murli Mohan,
Age Major, Occu. Business,
R/o. Kukatpalli, Hyderabad (AP) **....Applicant.**

Versus

1. The State of Maharashtra,
THROUGH, The Secretary,
Home Deptt., Mantralaya,
Mumbai 32 and
Police Station Officer,
Police Station, Biloli,
Dist. Nanded.
2. Sandip s/o. Sahdev Aarak
Age 37 years, Occu. Service - PSI,
Police Station, Biloli,
Dist. Nanded.
(Resp. No. 2 deleted as per
Court's order dt. 2.9.2014) **....Respondents.**

Mr. R.R. Sancheti, Advocate for applicant.

Mrs. V.S. Choudhary, APP for respondent No. 1/State.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 25, 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. 11/2014 registered in Biloli Police Station, District Nanded for offences punishable under sections 392, 353, 379, 149, 120-B, 201 etc. of Indian Penal Code,

section 7 (1) of Criminal Law Amendment Act, section 26 of National Green Tribunal Act and also section 48 of Maharashtra Land Revenue Code. Chargesheet is also filed in that crime.

2) The crime was registered on the basis of report given by Police Sub Inspector, who was attached to Biloli Police Station. This police station had specific information on 13.2.2014 that some persons were collecting sand in river bed of Manjra at Ganjgaon in the night time and they were taking away the sand collected in trucks. After receiving the information, police went there with video recording cameras like handy-cam. When they were doing shooting of the incident, the persons who had gathered there for collecting sand and for transporting sand, rushed towards police and said that the recording material needs to be snatched and taken away and those persons need to be assaulted. A handy-cam which police were using was virtually snatched by these persons and they gave message to their boss like Raviseth, Chagan Thakkar. They were quarreling and giving threats to police. Ravi and one more person came there and Ravi gave instruction to the men who had gathered there. He asked one Tony to go away with handy-cam which was taken over by them. Then they pushed and pulled the police officers and they questioned them as to how they were there. Message was already given to police station to send more staff and more staff came there. After that many

persons from accused side ran away, but the persons like Ravi and Chagan Thakkar were taken in custody.

3) The names of persons, who were there and who were quarreling with police were collected. Information was given by the persons, who were taken in custody that present applicant was contractor and on his instruction, they were there with trucks. There were 12 trucks, loaded with sand and there was no record whatsoever with those persons in respect of the sand. Force was used against police and as no record was shown in respect of sand, the report was given and crime came to be registered for aforesaid offences.

4) The learned counsel for applicant submitted that applicant was not present on the spot and the provisions of IPC cannot be used against him. This submission is not at all acceptable. It is the case of applicant that the place where the excavation of sand was going on, was given to him and he had purchased the right to collect the sand from that site. It was submitted that considering the quantity of sand which he was allowed to collect, it cannot be said that the persons who were sent by him were committing the offence either under IPC or under Mines and Minerals Act. He submitted that when applicant was not present on the spot, it cannot be said that he committed the offence punishable under section 353 of IPC.

5) The papers of investigation were made available and they show that the statements of some persons including who had gathered there for applicant were recorded. The persons had acted as per instruction given by Ravikumar and they had taken away the camera and keys of the motorcycle of police and he had run away. There is specific allegation that there was no record in respect of permission with those persons. When permission is given, transport passes are issued and each truck driver needs to carry transport pass with him, if he is carrying the sand in his truck. Further, as per the conditions, excavation of the sand can be done in the day time and not in the night time. The incident took place in the night time.

6) The learned counsel for applicant took this Court through the permission given to him by Collector. The permission dated 22.1.2014 shows that for the year 2013-14 (till 30.9.2014) permission was given to the applicant to collect the sand at Ganjgaon from the aforesaid river bed. The quantity of the sand which could have been collected was 15600 brass. The papers like copies of panchanamas are produced and it is the case of State that more quantity was excavated and quantity which was taken away was 16626 brass. Further, there is allegation that no transport passes were with the transporters on that night. The theft of sand is ordinarily

committed by contractors like the present applicant by doing such activity. As the permission is with them, generally nobody obstruct them. Only on few occasions such incidents are detected.

7) The learned APP placed reliance on some observations made by the Apex Court in the case reported as **AIR 2015 SC 75 [State of NCT of Delhi Vs. Sanjay]**. In similar case, the Apex Court has laid down that in such cases, not only the provisions of Mines and Minerals Act are applicable, but the provisions of sections 379 and 114 of IPC are also applicable and police are entitled to take action in such cases. There cannot be dispute over the proposition. When the Government property, mineral, is removed without permission, the offence punishable under section 379 of IPC is committed. In view of the aforesaid material, it cannot be said that false allegations are made against the applicant. In the result, the application is dismissed. Interim relief is vacated. Rule stands discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/