

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

CRIMINAL APPLICATION NO. 4689 OF 2013

1. Kashinath S/o. Bhimrao Yerge,
Age: 60 yrs, Occ: Agri.
2. Ramesh S/o. Bhimrao Yerge,
Age: 57 yrs, Occ: Agri.
3. Ashok S/o. Bhimrao Yerge,
Age: 54 yrs, Occ: Agri.
4. Gangadhar S/o. Kashinath Yerge,
Age: 35 yrs, Occ: Agri.
5. Kailas S/o. Ramesh Yerge,
Age: 35 yrs, Occ: Agri.
6. Ram S/o. Ashok Yerge,
Age: 20 yrs, Occ: Agri.
7. Rukhminbai W/o. Kashinath Yerge,
Age: 55 yrs, Occ: Household,
8. Shakuntalabi w/o. Ramesh Yerge,
Age: 52 yrs, Occ: Household,
9. Mahadevi w/o. Ashok Yerge,
Age: 50 yrs, Occ: Household,
10. Mahadevi w/o. Kailas Yerge,
Age: 30 yrs, Occ: Household,

All R/o. Village Achegaon, Tq. Deglur,
Dist. Nanded.

... **APPLICANTS**
[Ori. Accused]

VERSUS

- 1 The State of Maharashtra,
Through Police Station Deglur,
Dist. Nanded.
- 2 Satish S/o Venkatrao Patil,
Age: 38 years, Occu: Agril,
R/o. Malkapur, Tq. Deglur,
Dist. Nanded.
[At present R/o. Deshpande Galli
Deglur, Dist. Nanded].

... RESPONDENTS
[Res No.2 ori. Complainant]

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Mr. N. G. Kale, Advocate for Applicants.
Mr. S. J. Salgare, APP for Respondent No.1.
Mr. M. V. Ghatge, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for
Respondent No.2.

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WITH
CRIMINAL APPLICATION NO. 268 OF 2017
IN
CRIMINAL APPLICATION NO. 4689 OF 2013

The State of Maharashtra,
Through the Police Inspector,
Police Station Degloor, Dist. Nanded.

... APPLICANTS
(Ori. Respondent No.2)

VERSUS

1. Kashinath S/o. Bhimrao Yerge,
Age: 60 yrs, Occ: Agri.
2. Ramesh S/o. Bhimrao Yerge,
Age: 57 yrs, Occ: Agri.
3. Ashok S/o. Bhimrao Yerge,
Age: 54 yrs, Occ: Agri.

4. Gangadhar S/o. Kashinath Yerge,
Age: 35 yrs, Occ: Agri.
5. Kailas S/o. Ramesh Yerge,
Age: 35 yrs, Occ: Agri.
6. Ram S/o. Ashok Yerge,
Age: 20 yrs, Occ: Agri.
7. Rukhminbai W/o. Kashinath Yerge,
Age: 52 yrs, Occ: Household,
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Age: 52 yrs, Occ: Household,
9. Mahadevi w/o. Ashok Yerge,
Age: 50 yrs, Occ: Household,
10. Mahadevi w/o. Kailas Yerge,
Age: 30 yrs, Occ: Household,

All R/o. Village Achegaon, Tq. Deglur,
Dist. Nanded.

11. Satish S/o Venkatrao Patil,
Age: 38 years, Occu: Agril,
R/o. Malkapur, Tq. Deglur,
Dist. Nanded.

... RESPONDENTS

[Ori. Petitioner, Respondent No.11 is
Ori. Respondent No.2]

...

Mr. S. J. Salgare, APP for Applicant / State.

Mr. N. G. Kale, Advocate for Respondent Nos.1 to 10.

Mr. M. V. Ghatge, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for
Respondent No.11.

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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 FIR No.162 of 2013, registered with Deglur Police Station, District Nanded, for the offences punishable under Sections 143, 447 and 379 of the Indian Penal Code.

2 Both the sides are heard.

3 The crime is registered on the basis of report given by Respondent No.2 Satish Patil. The submissions made by both the sides and record produced show that there is a dispute between Applicants on one side and the family of Respondent No.2 Satish Patil on the other in respect of land admeasuring 1 Hectare 20 Ares from Gat No.73 of village Achegaon. Respondent has made allegations that Applicants have no concern with the land, but on 21st August, 2013, between 10:00 am and 06:00 pm, the Applicants formed unlawful assembly, entered his field, harvested Moong crop and took away the crop and thereby committed the aforesaid offences. The value of crop is given as Rs.24,000/-.

4 Between these two parties, there is a litigation in respect of aforesaid land. It is the case of Applicants that in favour of Applicant Ashok Yerge, agreement of sale was made by Dhanba Patil, predecessor of Satish Patil and under the agreement dated 29th October, 1987, possession was also given of the disputed portion. It is contended that total consideration for sale was Rs.45,000/- and an amount of Rs.15,000/- was given on the date of agreement. Immediate transfer was not possible as the land was Inam land and necessary permission of the revenue authority was to be obtained by Dhanraj Patil. Other documents were created in the year 1989 to enable Ashok to enter his name in the crop cultivation column of 7/12 extract. Similar document was created in the year 1992 also and to these documents Venkatrao, father of Satish was signatory as per the case of Applicants.

5 As the dispute started in the year 1995, first suit bearing Special Civil Suit No.21 of 1995 was filed for relief of injunction by Ashok Patil. Temporary injunction was granted by the Civil Court, but subsequently, suit was withdrawn and then suit for specific performance of aforesaid contract bearing Regular Civil Suit No.191

of 2000 was filed. Suit was decreed on 6th February, 2004 by the Trial Court and finding was given that Applicant, Ashok was in possession of the land right from the date of the aforesaid agreement. This decision was challenged by filing first appeal in the District Court by the Respondent, Venkatrao and Regular Civil Appeal No.34 of 2005 came to be decided on 30th September, 2013. The appeal was allowed and the District Court set aside the decision of the Trial Court. It was submitted that the decision of the District Court is challenged by Ashok by filing second appeal in this Court and the said second appeal is still pending.

6 Submissions were made and record was shown to this Court in respect of revenue proceedings. Many revenue proceedings were started in respect of entry made in the crop cultivation column of 7/12 extract. In those proceedings, orders were made in favour of Ashok and the name of Ashok was shown in the crop cultivation column.

7 The learned counsel for Respondent, first informant, submitted that as the District Court has held that the possession was always with the first informant's family, it cannot be said that no theft

of crop was committed by the Applicants. It can be said that the appeal was decided in favour of first informant on 30th September, 2013 and FIR was given on 26th August, 2013 in respect of alleged incident dated 21st August, 2013. On the day of incident, there was a decree of specific performance and also permanent injunction in favour of present Applicants. Even the revenue authority had given finding that the present Applicant, Ashok was in possession of the land and he was personally cultivating the land. These circumstances cannot be ignored. It can be said that there was a dispute between two sides, but on the day of incident, there was a decree of permanent injunction in favour of Applicant, Ashok. That decree was given in February 2004. For committing the offence of theft, illegality is required to be shown and dishonest intention as mentioned in Section 378 of the Indian Penal Code needs to be shown. In view of the aforesaid circumstances, it cannot be said that there was an offence of theft committed.

8 The learned counsel for Respondent and the learned APP submitted that there are statements of adjacent owners showing that Respondent was in possession. This contention cannot be accepted

for present purpose as there are document of aforesaid nature and as there was a decree of the Trial Court of permanent injunction in favour of Applicants. In view of these circumstances, this Court holds that nothing can be achieved if the Applicants are asked to face the trial for the aforesaid offences. In the result, the following order is passed:

ORDER

- I. Criminal Application No.4689 of 2013 is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. Rule is absolute in those terms.
- IV. Criminal Application No.268 of 2017 filed by the State is disposed of.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]