

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4801 OF 2013

- 1) Chandoji s/o Lobhaji Puyyed,
Age : 65 years, Occ.: Agril. &
Business,
- 2) Gangadhar s/o Chandoji Puyyed,
Age : 45 years, Occ.: Agril. &
Business,
Both R/o.: Kamatha (at present
New Mondha), Tq. & Dist.
Nanded.

...**Applicants**

Versus

- 1) The State of Maharashtra,
through Police Station Airport at
Nanded, Taluka and District
Nanded, through it's In-charge
Police Officer.
- 2) Vishwanath s/o Chandoji Puyyed
Age : 41 years, Occ.: Business,
R/o.: Kamatha (Khurth), Taluka
and District - Nanded.

...**Respondents**

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Advocate for Applicants : Mr. S.N. Janakwade

APP for Respondent No.1/State : Mrs. D.S. Jape

Advocate for Respondent No.2 : Mr. H.V. Patil

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

DATE : 26TH 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 present applicants have challenged the proceeding bearing Miscellaneous Application No. 221/2013 and the order passed thereon. The respondent No. 2 herein filed a complaint before the Judicial Magistrate First Class at Nanded, alleging that there was no partition between the respondent No.2 and the applicants. They were having landed property bearing Gat No.234 admeasuring 39 R, adjacent to Nanded Bypass Road. The applicants have started excavation from the land, since the year 2001 and the applicants getting different types of mines and minerals (Murum), the same were sold and they have earned in lakhs of rupees. Such excavation was without permit, permission and license from the Government and thereby, they have caused a

huge loss to the Government. It is further contended that the aforesaid land is yet to be partitioned. The complaint of the complainant was referred under Section 156(3) of Code of Criminal Procedure for investigation. On the basis of which the first information report No.71/2013 is registered at Police Station Airport, Nanded, on 17.06.2013. By filing separate Application bearing Criminal Application No.1465/2014, the respondent No. 2 has produced on record the certain documents i.e. copy of sale deed and copy of notice given to the applicants by Tahsildar, Nanded about the penalty for illegal excavation of mines and minerals (*Murum*) to the extent of 1530 brass.

3. We have heard the arguments of Mr. S.N. Jankawade, the learned counsel for the applicants, Mrs. D.S. Jape, the learned APP for the respondent/State and Mr. Patil, the learned counsel for the respondent No. 2. We have also gone through the papers of investigation, from the same it appears that the investigating officer has prepared the spot panchanama and recorded the statement of witnesses, namely Madhav Puyyed and Gajanan

Tidke. From their statements, it seems that the applicants were excavating the mines and minerals (*Murum*) from the aforesaid land by JCB, since the year 2001 and that material was sold. Due to the said excavation, there are number of ditches. From the contents of the spot panchanama and the photographs, it seems that such ditches are of 40 x 50 feet. From statement of Mr. Nagarwad, Circle Revenue Inspector of that Circle, it appears that as per the direction of Tahsildar, Nanded, he visited the spot, inspected, examined as to how much excavation was made by the applicants and he found that there was excavation of mines and minerals (*Murum*) to the extent of 16,738 brass. Accordingly, in that regard such report was forwarded by this witness to the Tahsildar, Nanded. Looking to the allegations made in the complaint, it is not necessary to comment upon the civil rights of the respondent No.2 and the applicants in that aforesaid land. However, one thing is very much clear that the applicant Nos. 1 and 2 have excavated a huge quantity of mines and minerals (*Murum*), since the year 2001 and *prima facie* it appears that a huge loss is caused to the Government. Therefore, Tahsildar,

Nanded had issued a show-cause notice to the applicant No. 1, as to why a penalty of Rs. 8,47,28,000/- shall not be recovered from him. So from the record, it appears that there is sufficient material against the applicants to constitute the offences levelled against them. In such circumstances, the application of the applicants is liable to be dismissed. Accordingly, it is dismissed. The interim relief is vacated. Rule is discharged.

4. The Criminal Application is disposed of.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

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