

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2667 OF 2018

Tanaji S/o Janakrao Yadav
Age : 48 Years, Occ. Circle Officer
at Harangul (Bk) R/o. Kant Chhaya
Sadan, Nath Nagar, Ausa Tq.
Ausa Dist. Latur

..APPLICANT

Versus

1. The State of Maharashtra

2. Siminta W/o Manik Survase
Age : 65 Years, Occ. Household,
R/o. Borphal, Tq. Ausa,
Dist. Latur

..RESPONDENT

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Mr. h. v. Tungar and H.B. Pawar Advocate for the Applicant.
Smt. V. S. Chaudhary, A.PP for respondent No.1-State
Shri. S. N. Patil, Advocate for respondent No.2.

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CORAM :T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE : 14th DECEMBER, 2018

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

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The proceeding is filed for relief of quashing of FIR No. 153/2018, registered with Ausa Police Station, District Latur for offences punishable under Sections 379, 394, 447 , 504 of the Indian Penal Code.

The crime is registered on the basis of report given by respondent no.2.

3. Respondent No.2 has made allegations in the report that present applicant committed theft of black soil from her land gut No. 355 on 12.03.2018, and when she and her family members requested the applicant not to take away the soil, abuses were given by taking the name of caste and threats were also given.

4. The submissions made and record shows that in the past, the family of first informant was owner of entire area of 3 Hectar 72 R of land gut No. 355. Out of that land area of 3 H 60 R was acquired for minor irrigation project, percolation tank by the Government in the year 1982. It is contention of the first informant that her family used to pay charges to the Government for cultivation of the land when the land which was submerged by the tank was available for some period in the year and so she was in possession of the land. Submission was made by the learned Advocate of the first informant that the soil which had taken was from the land, which is not acquired by the Government.

5. There is record produced by the applicant and collected by the police showing that dispute started on 12.03.2018, prior to that entry was made in the revenue record to show that entire area i.e. area of 3 H. 80 R was acquired by the State Government for aforesaid percolation

tank. On 14.03.2018, application was moved by the family member of the first informant to raise grievance that 20 R land was remaining with them and this application was decided on 31.10.2018. Thus on one hand revenue entry was made in favour of Government in respect of entire portion at the relevant time. On the other hand, there is no record with the first informant to show that they had paid charges to the Government and they had applied for the permission to cultivate the land, which remain submerged on the rain water for some period of the year. Ordinarily silt is removed from the bed of the tank for increasing the holding capacity of tank. The State Government has the policy, allowed the person to collect the silt, without paying anything to Government as the State Government wants to see that silt is not decreasing/reducing the water capacity of the tank. In view of this circumstances, it cannot be said that there was criminal intention behind taking of the silt from the tank. The land was belonging to Government at the relevant time. It is clear that allegations by using caste are made only to pressurize the person who remove the silt. In view of this circumstances, this Court holds that it will be abuse of process of law, if the applicant is asked to face the trial for the aforesaid offences. Allegations are made by the first informant against the authority also, to force them to take action and the record of the inquiry made by the Tahsildar with the police papers. In view of that records and submissions made this Court holds that relief needs to be granted in

favour of the applicant. In the result, following order.

ORDER

1. Application is allowed.
2. Relief is granted in terms of prayer clause (B).
3. Rule made absolute in those terms.

**[SMT.VIBHA KANKANWADI]
JUDGE**

**[T.V. NALAWADE]
JUDGE**

YSK/