

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2061 OF 2019

Shri. Amol S/o Bhausaheb Katare
Age – 30 years, Occu : Education,
R/o. Mauli Nivas, Station Road Rahuri,
Tq. Rahuri, District: Ahmednagar.

...APPLICANT

VERSUS

1. The State of Maharashtra
Through Investigation Officer,
Rahuri Police Station
Tq. Rahuri, District Ahmednagar.
2. Smt. Ujwala W/o Pravin Kalhapure
Age- 28 years, Occu : Agri.
R/o. Khandabe (Khurda), Tal. Rahuri,
District : Ahmednagar.

... RESPONDENTS

Mr. Suresh P. Salgar, Advocate for the applicant
Mr. K. S. Patil, APP for respondent No. 1
Mr. R. S. Kasar, Advocate for respondent No. 2.

**CORAM : T. V. NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 04-11-2019

ORAL JUDGMENT (PER :- S.M. GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the
consent of the parties for final disposal.

2. Applicant against whom Crime No. 63 of 2019 has been registered in Rahuri Police Station for the offences punishable under Sections 435, 504 and 506 of the Indian Penal Code on 24/01/2019 has filed this application under Section 482 of the Code of Criminal Procedure to quash and set aside the said FIR in terms of prayer clause (B) of the application.

3. Mr. Salgar, learned counsel for applicant submitted that the applicant is step brother of respondent No. 2 and is resident of Pimpalla Mala. Respondent No. 2 alleges that the applicant is addicted to liquor and use to cause damage to respondent No. 2. Further it is alleged that land gat No. 485 situated at the aforesaid village is owned by respondent No. 2 and there is well of respondent No. 2. The electric motor of 3 HP was installed on the said well by respondent No. 2. The applicant has damaged said motor on 24/10/2018. The husband of respondent No. 2 allegedly noticed the same on 23/01/2019 at about 08.30 p.m. It is submitted that there is a civil dispute pending between respondent No. 2 and the applicant. Father of the applicant was working as a daily worker with the Mahatma Phule Agri University, Rahuri. As the father of the applicant was not paying maintenance amount granted in favour of the applicant and his mother by the civil court the applicant

had given legal notice through advocate to the Agricultural University, Rahuri requesting to not to release amount in favour of the father of the applicant. Therefore, to grab the ancestral property of the applicant respondent No. 2 in collusion with father of the applicant filed the present FIR. It is further submitted that no purpose will be achieved by containing the FIR against the applicant as no such incident has taken place. Thus, the learned counsel for the applicant has prayed to allow the application.

4. Learned counsel for respondent No. 2 and the learned APP have submitted that the incident as alleged in the FIR has taken place and there is no ground to set aside the FIR as submitted by the applicant. Thus, they have prayed to dismiss the application.

5. We have carefully considered the submissions made by the learned counsel appearing for the applicant, respondent No. 2 and the learned APP and we have gone through the documents produced alongwith the application by the applicant.

6. There is no dispute that the applicant is step brother of respondent No. 2 and respondent No. 2 is having land gat No. 485 at

village Pimpala Mala. There is a well in the said land and on the said well electric motor of 3 HP was installed by respondent No. 2. So also, there is no dispute that when the applicant was minor his mother and the applicant had filed R.C.S. No. 389 of 2006 for maintenance against the father of the applicant and said suit was decreed and monthly maintenance of Rs. 800/- was granted. Said decree was modified in the appeal and maintenance was directed to be paid to the applicant's mother as applicant had attained the age of majority. Thereafter, applicant had filed Regular Darkhast in Civil Court, Rahuri. There also appears no dispute in respect of the fact that during pendency of said darkhast father of the applicant had transferred 19 *Are* land in the name of respondent No. 2 and 32 *Are* land in the name of sister of father of applicant out of gat No. 485 and mutation entry was effected. There also appears no dispute that applicant and his mother have filed suit for partition and possession of land in 2013 against respondent No. 2, applicant's father and sister of the applicant's father and said suit is pending. The father of applicant has retired from service in Agricultural University, Rahuri and an amount of Rs. 57,788/- was payable to him.

7. On perusal of the copy of FIR it is seen that respondent No. 2 alleged that applicant had caused damage to the electric motor of

respondent No. 2 on 24/10/2018. So also, on 23/01/2019 in the night at about 8 p.m. the husband of respondent No. 2 had watered the crop by the electric motor and then he had come to the house in the evening after stopping the electric motor. On 24/01/2019 when respondent No. 2 and her husband went in the field at about 8.00 a.m. to water the crop they saw applicant putting the wire in the fuse of the board of electric motor and thus he had tampered the board of the electric motor. When they asked him in this respect he abused and threatened them. Thereafter, applicant went away. Then they found that the motor was not working and thus it is alleged that applicant tampered with the electric motor of Rs. 20,000/-. Except the said allegations there is no material in the form of report of the expert showing the manner in which the respondent had tampered with the board of the electric motor so as to cause damage to the electric motor as alleged in the FIR. In fact it was possible to obtain the report of the expert. Therefore, in the absence of such report it cannot be said that there is prima-facie case against the applicant for the offence of mischief punishable under Section 435 of the IPC. Allegation about abusing and threatening respondent No. 2 and her husband is vague. Another aspect to be noted is that as referred earlier the applicant and his mother have filed suit for partition and possession against respondent No. 2 and father of the

applicant and respondent No. 2 and said suit is pending. Therefore, there is substance in the submission made by the learned counsel for the applicant that due to dispute between the applicant and respondent No. 2 the present FIR has been lodged against applicant to grab the property. Thus, nothing will be achieved by continuing the FIR registered against the applicant and said FIR would amount to abuse of process of law. Therefore, as the offences against the applicant are not prima-facie made out the FIR registered against the applicant needs to be quashed and set aside as per prayer clause (B) of application by allowing the application. Therefore, following order is passed.

ORDER

1. Application is allowed.
2. Relief is granted in terms of prayer clause (B) and thus the crime No. 63/2019 registered in Rahuri Police Station against the applicant is quashed and set aside.
3. Rule is made absolute in those terms.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]