

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

CRIMINAL WRIT PETITION NO. 1424 OF 2018

1. Harjeetsingh s/o Puransingh Chugh,
Age 50 years, Occ- Agri & Business,
R/o Babadeep Singh Nagar,
Bhangatsingh Road Nanded.
2. Sukhmandir Kaur w/o Harjeetsingh Chugh,
Age 43 years, Occ- Household,
R/o Babadeep Singh Nagar,
Bhangatsingh Road Nanded.
3. Sunil s/o Malhari Sonkamble,
Age 31 years, Occ- Labour,
R/o Rahul Nagar, CIDCO, Nanded.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Dept. of Home Affairs,
Mantralaya, Mumbai – 400 032.
2. The Superintendent of Police, Nanded,
District- Nanded.
3. Ardhapur Police Station,
Ardhapur, Dist. Nanded,
Through Police Station Officer.
4. Devanand s/o Sattaji More,
Age- 65 years, Occ- Agri,
R/o Village – Barasgaon
Tq Ardhapur, Dist. Nanded.

... RESPONDENTS

...

Mr. Sunil V. Kurundkar, Advocate for Petitioners.

Mr. S. B. Joshi, APP for Respondent Nos.1 to 3.

Mr. Madhukar M. Parghane, Advocate for Respondent No.4

...

CORAM : **T. V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 25th April, 2019.

ORAL 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.205 of 2018, registered with Ardhapur Police Station, District Nanded, for the offences punishable under Sections 307, 447, 429, 435, 201 and 506 read with 34 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3 This Court has carefully gone through the FIR. There is dispute in respect of land bearing Gat No.358 situated at village

Barasgaon, Tahsil Ardhapur. The son of first informant was a protected tenant of this land. It is the contentions in the FIR that the first informant and his family is in possession of the land and on 4th August, 2018, crop cultivation entry was made in their favour by the Talathi. Allegations are made that on 20th September, 2018, the Petitioners entered their field to disturb their possession. They gave abuses by taking the name of their caste, which is scheduled caste, they gave threats of life, they attempted to finish the first informant by giving blow of sword then they killed one lamb and two hens belonging to the first informant and they took away two hens and lamb with them. In respect of this incident dated 20th September, 2018, FIR was given on 26th September, 2018 and crime came to be registered. This Court has seen the police papers and the papers show that the neighbours had categorically stated that no such incident took place.

4 The learned counsel for Petitioners took this Court through the observations made by this Court while allowing Criminal Writ Petition No.1529 of 2014 (*Harjeetsingh s/o Puransingh Chugh and another Vs. The State of Maharashtra and others*). The crime, which was quashed and set aside was registered on the basis of

report given by Respondent side (it was direction of Judicial Magistrate First Class in private complaint to make investigation). This Court had occasion to consider the entire record of dispute and it can be said that in the present matter intentionally said dispute is not mentioned in the FIR. The observations made are at paragraph 5 and they are as under:

“5) Devanand More has not referred the transaction like agreement of sale made by his sons with Harjeetsingh. Copy of judgment delivered by the Civil Judge, Senior Division, Nanded in Special Civil Suit No.39/2009 is produced by Harjeetsingh. It shows that in respect of aforesaid land suit was filed by Harjeetsingh for specific performance of contract, declaration and for injunction. It was also filed for setting aside compromise decree made in Regular Civil Suit No.90/2009. In that case Civil Court gave relief of specific performance and directed the sons of Devanand to execute sale deed. Relief of injunction is given by holding that Harjeetsingh is in possession and declaration is given that the compromise decree of Regular Civil Suit No.90/2009 is not binding on Harjeetsingh. Direction is also given to hand over the value of Soyabin crop which was harvested through Court Commissioner during pendency of the matter. The suit was decided on 21-1-2010. First Appeal No.766/2010 filed by the defendants, sons of Devanand and the orders made in the first appeal show that this Court has granted stay to the

execution of sale deed. Stay is refused in respect of the decree of injunction given in favour of Harjeetsingh. There is record produced like copy of agreement, copy of possession receipt showing that possession was handed over to Harjeetsingh by the sons of Devanand. This record is considered by the Civil Court. Thus, on 21-1-2010 when decision was given, the Court found that from the date of the suit i.e. March 2009 Harjeetsingh has been in possession of the suit property. In view of this circumstance, it was necessary for Devanand to show that he or his sons were in possession of the disputed land on 17-10-2014 and in spite of the decree of the Court they had made construction of hut on this land. There is no such record with Devanand. The delay of more than one month was caused in giving of the report. Submissions that Devanand and his sons are protected tenants of this land cannot be considered in the proceeding like the present one, particularly when decision of the Civil Court is in favour of Harjeetsingh. The other contention that some proceeding is pending before the Maharashtra Revenue Tribunal cannot be considered as there is decision of the Civil Court. In view of these circumstances, allowing to prosecute Harjeetsingh and Sunil Sonkamble, the applicants, will amount to abuse of process of law. It is nothing but pressure tactics of Devanand. This Court holds that writ petition deserves to be allowed."

challenge the decision given by the Trial Court in this Court and appeal is still pending. Observations in that regard are already made, which are quoted above. When the Civil Court has held that the Petitioners are in possession, the allegations of aforesaid nature made against the Petitioners can not be believed. It is clear that it is only pressure tactic of the Respondent, first informant. It can be said that in future also the Respondent, first informant may use such tactic and so some orders also need to be made in that regard. In view of the peculiar facts of the present matter, this Court holds that relief needs to be granted in favour of the Petitioners. There is one more circumstance like Petitioner No.3 belongs to scheduled caste and photocopy of that certificate is produced on record. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. In future, if Respondent No.4 or his family members make allegations in respect of aforesaid agricultural land in police station and they contend that they are in possession and offence is

committed in respect of their property, cognizance is not to be taken by the police without leave of this Court.

IV. Rule is made absolute in those terms.

[MANGESH S. PATIL, J.]

[T. V. NALAWADE, J.]

ndm