

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

Criminal Writ Petition No.1493 of 2018

* Suresh s/o Sahebrao Deshmukh,
Age 58 years,
Occupation : Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) Superintendent of Police,
Office of Superintendent of
Police (Gramin) Aurangabad.
- 3) Police Inspector (Jivisha)
Office of Superintendent of
Police (Gramin) Aurangabad.
- 4) Police Inspector,
Police Station, Ajintha,
Taluka Sillod, Dist Aurangabad.
- 5) Bhaskar s/o Sahebrao Deshmukh,
Age 53 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 6) Mahendra s/o Bhaskar Deshmukh,
Age 23 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.

- 7) Latabai w/o Bhaskar Deshmukh,
Age 43 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 8) Rajendra s/o Gajanan Jadhav,
Age 27 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 9) Shakil Sandu Tadvi,
Age 42 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 10) Raghunath s/o Baburao Chavhan,
Age 61 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 11) Prabhakar s/o Baburao Chavhan,
Age 62 years,
Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 12) Dhanlal s/o Brirjilal Zalwar,
Age 58 years, Occupation: Agriculture,
R/o Ajantha, Taluka Sillod,
District Aurangabad.
- 13) Ganesh s/o Sonaji Biradar,
SDPO Sillod, Taluka Sillod,
District Aurangabad.
- 14) Kiran D. Aher,
Assistant Police Inspector,
Police station, Ajintha,
Taluka Sillod, Dist Aurangabad.

- 15) Gajanan S/o Pralhadsingh Chavhan,
Police Head Constable,
Police Station, Ajintha,
Taluka Sillod, Dist Aurangabad. .. **Respondents.**

Shri. M.R. Sonawane, Advocate, for petitioner.

Shri. D.R. Kale, Additional Public Prosecutor, for
respondent Nos.1 to 4 and 13 to 15.

Shri. J.V. Deshpande & Shri. S.N. Dudhate, Advocates, for
respondent Nos.5 to 12.

**Coram: T.V. NALAWADE &
K.K. SONAWANE, JJ.**

Judgment reserved on : 15th July 2019

Judgment pronounced on : 31st July 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule, rule made returnable forthwith. By
consent, heard both the sides, for final disposal.

2) The petition is filed for following reliefs:-

(i) For registration of crime against respondent Nos.5 to
15 on the basis of complaint dated 10-10-2018 given to
police by the petitioner;

(ii) Appointment of independent police officer for investigation of the crime;

(iii) Relief of direction to respondent No.2, District Superintendent of Police, to take steps for starting departmental action against respondent Nos.13 to 15, police officers for disobedience of the order of civil court.

3) There was civil dispute between the petitioner on one side and respondent Nos.5 and 7 on the other. The petitioner claims to be the owner of two portions of Gat No.181 situated at Ajantha, Tahsil Sillod, District Aurangabad. The land of respondent Nos.5 and 7 is adjacent to the land of the petitioner and it is the case of the petitioner that his land is situated between two pieces of the lands belonging to respondent Nos.5 and 7. One civil suit was filed by the petitioner against respondent Nos.5 and 7 for relief of permanent injunction and it was decreed in his favour. The appeal filed against the said decision by these respondents was also dismissed much prior to the date of the incident.

4) Respondent No.5 is real brother of the petitioner and respondent No.7 is the wife of respondent No.5. Respondent No.6 is a son of respondent Nos.5 and 7. It is the case of the petitioner that these respondents were obstructing his peaceful possession over the aforesaid land and they were not allowing him to cultivate the land. It is his contention that after getting decree of permanent injunction he had applied for police protection to the executing court and the order of police protection was made in his favour first time on 19-7-2017. It is his case that only due to such order, he could cultivate his land. According to him, he had prepared barbed wire fencing around the aforesaid suit portion of the land. It is his contention that on 25-9-2018 he had applied to civil court in the execution proceeding for giving him protection of police as he wanted to do agricultural operations like supplying fertilizer and harvesting Soyabin crop. It is contended that such order was made in his favour by civil court.

5) It is the contention of the petitioner that even when the order was communicated to Ajantha police

station, they avoided to give him protection. It is contended that record was created to delay the protection like making inquiry about the necessity of giving protection. It is contended that as police protection was not given even after expressing apprehension by him that the aforesaid respondents were likely to cause damage to his crop and harvest the crop, the protection was not given and ultimately on 10-10-2018 these respondents committed theft of his Soyabin crop. It is contended that on 10-10-2018 itself he went to police station to give report. But the report which was tendered against respondent Nos.5 to 12 was not accepted and no action was taken against these respondents.

6) Regular Civil Suit No.100/2018 was filed in the Court of Civil Judge, Junior Division, Sillod by the petitioner and the decree of injunction was given in his favour. In the said suit the aforesaid respondents had filed written statement. They had taken a defence that the aforesaid portion was initially belonging to Ramesh, real brother of petitioner and respondent No.5 and the portion was exchanged in the past by respondent No.5 with

Ramesh and then the portion was purchased from successor of Ramesh. Ramesh is dead. Though such defence was taken, the civil court did not accept the defence and gave decree of injunction. In view of these circumstances, it can be said that it is not open to respondent Nos.5 and 7 to raise that dispute again. No stay is granted to the decree of injunction. It appears that civil court has held that the portion purchased by respondent No.7 is on one side of the portion of petitioner and the portion which was allotted to respondent No.5 in partition is situated on the other side of the portion of the petitioner.

7) Regular Darkhast No.4/2017 is filed by the petitioner and copy of the order made to give protection first time in July 2017 is produced on record. The order was of following nature.

"1. The application is hereby allowed.

2. The Assistant Police Inspector, Ajintha police station is hereby directed to render necessary police aid to the plaintiff upon payment of necessary charges by him for enforcement of the order of this court in a lawful manner as prayed."

The police protection was claimed by the petitioner for following purpose.

"5. The J.D. has caused obstruction, time for preparation of land. Therefore several complaints are filed to police. The police is not taking cognizance. They asked DH to bring the order of police protection from court order. The police is not ready to provide protection of judgment and decree. The JD is Shiv Sena leader. He has influence over police. If the police protection is not granted then decree will be fruitless. Therefore application for police protection for cultivation of decreetal property may kindly be allowed in the interest of justice."

8) It is not disputed that as per the order made by civil court in July 2017 charges were paid by the petitioner and protection was given by police. It is the contention of police in the reply affidavit filed that in July 2017 when protection was given it was misused by the petitioner and when he was expected to use the protection for cultivation purpose, he used it for creating barbed wire fencing around the disputed portion. The contention is as follows :

"10. I say and submit that on last occasion when police protection was granted on 10/11/2017 to 13/11/2017 for cultivation of land at that time, present petitioner has misused the said police protection and instead of cultivating the said land

he has made fencing of wire at boundaries of land. Therefore, at that time, also dispute was arose, hence petition may kindly be rejected."

9) The submissions made and the record show that in the month of June 2018 application was moved by the petitioner to the District Superintendent of Police that police protection was not being given and due to that his rival party had cut and removed the aforesaid barbed wire fencing and had taken away angles and wire used by him and the offence was committed under sections 379, 427, 34 of Indian Penal Code by them. On that occasion crime at CR No.447/2017 was registered against respondent Nos.5 and 7. According to the petitioner articles worth Rs.1.71 lakh were stolen by the respondents and further damage of Rs.55,000/- was caused to him in respect of the charges paid by him for erection of the wire fencing. During investigation the angles and wire were seized. Custody of these articles was given under orders of the Magistrate to the petitioner and that decision was challenged by respondent Nos.5 and 7. This revision came to be dismissed on 14-6-2018. Petitioner had made allegation against police also that when as many as 396

angels were stolen, custody of only 328 angles was given to him by police and custody of 68 angles was not given and for that action needs to be taken against police. The submissions made show that no action was taken against police in respect of that grievance.

10) In Regular Darkhast No.4/2017 the petitioner again made an application for police protection. He contended that police protection was necessary for supply of fertilizer to the crop and for harvesting the crop of Soyabin which was standing in the suit field. The order was made by civil court on 25-9-2018 and direction was given to police to give such protection. The order was sent by the court to the aforesaid police station on 26-9-2018. There is record to show that on 26-9-2018 the petitioner also supplied copy of the order to the aforesaid police station. On 27-9-2018 the petitioner gave complaint to the District Superintendent of Police and raised grievance that he was sitting outside of the police station to tender copy of the aforesaid order of civil court, on entire day of 26-9-2018 but the copy was not accepted. He had tendered the copy of the order to Station House Officer

Shri Joshi and API Shri Kiran Aher, who had refused to accept the order made by the civil court. He has contended that he had sent copy of the order on WhatsApp of the police station bearing No.7768932222. It is his contention that on WhatsApp of API Kiran Aher also he had supplied the copy of the order of the civil court on 26-9-2018 and that was done at 8.23 p.m. It is his contention that WhatsApp message was sent by using mobile No.9960788636.

11) A copy of communication of the office of the District Superintendent of Police dated 27-9-2018 shows that report was called from the Police Station Officer and the Sub Divisional Police Officer getting opinion. Then, there is copy of communication dated 3-10-2018 addressed to the District Superintendent of Police by the petitioner complaining that the concerned police were intentionally not complying with the aforesaid order of the office of the Superintendent of Police. He gave another complaint dated 10-10-2018 that police protection was not given. On 10-10-2018, according to the petitioner, his crop of Soyabin was harvested by respondent No.5 and 7 with

the help of one Shakil Tadvī and labour force brought by them. It is contended that when he tried to intervene, threats of life were given to him. It is contended that when he went to API to report the incident but his complaint was not accepted by police. It is his contention that crop worth Rs.3 lakh was stolen but crime was not registered by police and police of the police station are helping respondent Nos.5 and 7. He sent written complaint to the Superintendent of Police on 12-10-2018 and he informed about the aforesaid incident and the grievance against the aforesaid police station.

12) In reply affidavit filed on 7-3-2019 respondent police have contended that as per the order given by the office of the Superintendent of Police inquiry was made and some persons, who were engaged by the petitioner informed that they had harvested the crop of the petitioner and grains of Soyabin which were kept in 56 bags were lifted from the field to a place of relative of the petitioner situated at Sonai, District Buldana. It is contended that police went to the field and they noticed that there was no crop in the field. Rejoinder is filed by

the petitioner dated 18-4-2019 and he has denied the aforesaid contention made against him by A.P.I., Kiran Aher. A copy of the affidavit of Bashir Shah dated 3-12-2018 is produced by the petitioner. Statement of this person was recorded by police for giving the aforesaid reply and in the affidavit Bashir Shah has stated that he had helped the petitioner to harvest the crop but that crop was from Gat No.28 and it was not from Gat No.181. Thus, the petitioner has made allegation that false record was created by police of Ajantha Police Station.

13) This Court has carefully gone through the record of so called inquiry made by API Shri. Aher. The record shows that even when there was decree of injunction in favour of the petitioner and there was specific order made by the civil court to give police protection to the petitioner, positive attempt was apparently made by police to show that they were making inquiry into the dispute which was about the boundaries. When on one hand police admitted that in the past rightly or wrongly the petitioner had put up barbed wire fencing around the suit property and it was destroyed by the rival

party and for that, offence of theft was registered against the rival party, it cannot be said that police were thinking that there was boundary dispute and the disputed property was not ascertainable. On facts, and in view of this record, there was no scope for police to make inquiry about the nature of dispute as the civil court had already given decree in favour of the petitioner. On this point, learned Additional Public Prosecutor placed reliance on one Government Resolution dated 4-1-2018 issued by Home Department. This Court has carefully gone through this Government Resolution. Even if it is presumed that as per the Government Resolution it is upto police to form opinion that there was no need of giving protection, in a case like present one, it is necessary for police to approach the court which has made the order and satisfy the court that there is no need to give such police protection. Such step was not taken by police and even when the petitioner was insisting to give police protection as per the civil court's order and there were incidents of aforesaid nature which had happened in the past, no protection was given by police of Ajantha Police Station to the petitioner. It is not open to police to take decision on

their own about giving of police protection when there is the order of the civil court. Surprisingly, Shri. Aher formed opinion that there was no need of protection and he had informed the Superintendent of Police accordingly on 14-12-2018. This approach of API Aher shows that he had no intention to give police protection even when there was order of civil court. Thus, there is apparent disobedience of the order of the civil court.

14) The learned Additional Public Prosecutor has placed reliance on the observations made by Delhi High Court in the case reported as **1983 Cri.L.J. 495 (Dr. Bimal Chandra Sen v. Kamla Mathur)**. The High Court has held that when there is breach of injunction order, provision of Order 39 Rule 2A of the Civil Procedure Code need to be followed and in such cases it is not desirable to use provisions of sections 10 and 12 of the Contempt of Courts Act. There cannot be dispute over this proposition but the facts of the present matter are totally different. There is disobedience of the civil court's order by police and the petitioner has approached this Court for giving direction for taking action for such disobedience. It can be said that

for this relief he could have filed separate proceedings for taking action against police for disobedience of civil court order, for contempt of court. Such action also can be taken against police. Thus, direction needs to be given to the District Superintendent of Police to see that departmental action is taken against Ajantha police and particularly against API Aher and Head Constable Chavhan for their aforesaid conduct.

15) The second relief of registration of crime also needs to be given. There is specific allegation that on 10-10-2018 theft of Soyabin crop was committed by respondent Nos.5 and 7 with the help of other respondents, the persons engaged by these respondents, as labour force and for supply of thrashing machine.

16) In the police papers there are statements of respondent No.5 Bhaskar and respondent No.7 Latabai dated 6-10-2018. They had contended on that day that they had also taken Soyabin crop in another portion and few days back the crop of Soyabin was harvested by the petitioner. They had also contended that the petitioner

wanted to make encroachment on their land and the petitioner wanted to destroy their crop by using police protection. Even when there was such contention of Bhaskar, on 6-10-2018 police did not visit the spot to ascertain the real situation. In any case, it can be inferred that some crop of Soyabin was standing there as on 6-10-2018. It is the contention of the petitioner that this crop was situated in the suit property.

17) There are statements of Bashir Shah and Sayyed Gani dated 6-10-2018 in the police papers showing that about 10 days prior to 6-10-2018 the petitioner had approached them with request to supply machine and labour for harvesting Soyabin crop from 10 acres portion. According to those police statements they had harvested the crop about 8 to 10 days prior to 6-10-2018 for the petitioner. The police statements show that Bhaskar was present in the adjacent field and in that field also Soyabin crop was there. There is statement of one Samadhan Sonawane dated 29-11-2018 to the effect that on 29-9-2018 he had taken labour force to the field of the petitioner and Soyabin crop harvested was packed in 37

bags. This statement shows that Bhaskar had also requested him to harvest other Soyabin crop but he had refused to do so. It is already observed that there is affidavit of Bashir Shah produced by the petitioner which is to the effect that they had harvested the crop from other Gat number and not from the suit property. Thus, the person whose statement is shown to be recorded has filed affidavit to the effect that false record of his statement is prepared by police.

18) A copy of plaint of Regular Civil Suit No.80/2015 filed by Bhaskar on 17-4-2015 is on record. This record shows that Bhaskar has admitted that out of 11 Hectares 3 R portion of land Gat No.181 Sahebrao had given 2H portion to each of his four sons and remaining 3H 3 R portion was kept by their father, Sahebrao with him. After the death of Sahebrao this land was with the widow of Sahebrao and she was living with the petitioner. The suit shows that the petitioner had cultivated the portion of the widow of Sahebrao, his mother and after the death of mother, the petitioner continued to cultivate that portion. Thus on one hand in partition the petitioner

had got 2 hectares portion and on the other, he had got 3H 3R portion from his mother, at least for cultivation and he was in possession of 5H 3R portion at the relevant time. Thus, it was necessary for police to ascertain as to whether the crop which was harvested prior to 10-10-2018 was harvested from other property of the petitioner and whether in the suit property there was any crop. Police record does not show that any steps were taken like visiting the suit property with the revenue authorities to ascertain as to whether there was crop standing in the suit property. There is inconstancy about the quantity of Soyabin shown to be collected. It does not look probable that only 37 bags of Soyabin were collected from the entire area which was more than 10 acres with the petitioner. Police could have made investigation by visiting the place Buldana to ascertain as to whether and when the bags were really kept there and how many bags were taken to Buldana if they really wanted to make investigation after 10-10-2018. The aforesaid circumstances create a clear probability that at least upto 6-10-2018 there was standing crop of Soyabin which was ready for harvesting in the suit land and there was decree

of injunction in respect of that land in favour of the petitioner.

19) The present situation would not have arisen if police protection was given by police on 27th or 28th September 2018. In that case also police could have ascertained whether the petitioner was harvesting the crop from the suit property in respect of which order was made by the civil court in his favour. As no steps were taken, only on the basis of aforesaid police statements it cannot be believed that on 29-9-2018 the petitioner had harvested the crop from the suit property. Independent investigation needs to be made into that. For that, crime needs to be registered for offence of theft and also for causing loss to the petitioner. There are specific allegations against Bhaskar and his wife and there is record showing that at least copy of the complaint was received by the office of the Superintendent of Police Aurangabad (Rural) on 12-10-2018. Thus, the relief claimed needs to be given. Hence following order.

20) The petition is allowed. It is hereby directed to register crime for offence of theft and causing loss and for other offences which can be made out on the basis of report, complaint received by the District Superintendent of Police, Aurangabad (Rural) on 12-10-2018. The Superintendent of Police Aurangabad (Rural) is to take care and see that investigation of this crime is made by independent police officer and not by police officers attached to Ajintha police station. The Superintendent of Police Aurangabad (Rural) is hereby directed to start departmental enquiry against API Aher and Police Head Constable Chavhan who are made respondents in the present proceeding for disobedience of the order made by the civil court. It will be open to the petitioner to file separate proceeding like proceeding for contempt of court for disobedience of the order of the civil court. Rule is made absolute in the aforesaid terms.

Sd/-
(K.K. SONAWANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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