

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1625 OF 2016

Sayyad Yunus Pachulal Patel,
Age: Major, Occu: Agri & Business,
R/o Patel Nagar, Latur. ... **Petitioner**

Vs.

1. Chandrakant Kishan Dhudhale,
Age: 45 years, Occu: Pensioner,
2. Kishan Prabhu Dhudhale,
Age: 60 years, Occu: Nil,
Both R/o- Patel Nagar, Latur. ... **Respondents**

Ms. Kavita S. Bhale, Advocate for the Petitioner.
Mr. Ashish P. Deshmukh h/f. Sachin S. Deshmukh, Advocate for the Respondents.

CORAM : MANGESH S. PATIL, J.
DATE : 29.04.2019

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith.
Learned advocate for the respondents waives service of Rule. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The original complainant is impugning the order passed by the learned Sessions Judge, Latur allowing the revision preferred by the respondent-accused impugning the order passed by the learned

Magistrate in S.T.C.C. No. 1415 of 2014 taking cognizance under Section 204 of the Cr.P.C. and directing a process to be issued against the respondents for the offence punishable under Section 426 of the I.P.C.

3. The learned advocate for the petitioner vehemently submits that the right of the petitioner to air and light to his property has been materially affected by the construction carried out by the respondents over the adjoining plot and their such act of carrying out the constructions constitutes mischief within the meaning of Section 425 of the I.P.C. since it materially affects and diminishes petitioners valuable right to use his property.

4. The learned advocate Mr. Ashish P. Deshmukh h/f. S.S. Deshmukh for the respondents submits that the learned Magistrate had failed to take into consideration the definition of mischief contained in Section 425 of the I.P.C. and without application of mind had directed the process to be issued which has been rightly interfered with by the learned Sessions Judge. Accepting the allegations at their face value and admitting the facts as it is, the alleged act of the respondents in carrying out construction over their own property would not fall within the definition of mischief and the writ petition may be dismissed.

5. I have carefully gone through the order passed by the learned Magistrate as well as the impugned order passed by the learned Sessions Judge. Since it is a matter of alleged mischief defined under

Section 425 of the I.P.C. it is necessary to reproduce it, which reads thus:

425. Mischief- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

6. As can be seen from the definition the act alleged or complained of must be directed in respect of the property of which the value diminishes. In the matter in hand, accepting the allegations as it is the respondents have carried out construction over their own property albeit it is being alleged that it is illegal. There is no question of any encroachment as well. The only grievance being made by the petitioner is that by virtue of such construction his right to have fresh air and light from that side of his property has been obstructed. Still, as has been rightly observed by the learned Sessions Judge one cannot comprehend as to how this act would constitute mischief within the meaning of Section 425 of the I.P.C. The respondents have not caused any destruction or change in the property of the petitioner so as to destroy or diminish its value or utility.

7. Besides, since the petitioner is making an allegation about obstruction of his easementary right of air and light, a query was put to the learned advocate for the petitioner as to whether he has got his such

right duly perfected in the light of of the provisions of Section 25 of the Limitation Act, 1963, the learned advocate fairly concedes that the petitioner has not filed any such proceeding. In view of such state of affairs, the so called right of the petitioner which has not yet crystalized cannot be said to have been mischievously destroyed or obstructed by the respondents by carrying out construction over their own plot.

8. Taking into consideration all these aspects, I find no fault or apparent illegality committed by the learned Sessions Judge in causing interference in the order passed by the learned Magistrate by invoking the powers under Section 397 of the Cr.P.C. and quashing and setting it aside.

9. The writ petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)