

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3677 OF 2019**

Shankar Laxman Khade

.....Petitioner.

Versus

The State of Maharashtra and Anr.

.....Respondents

Mr. Sanjeev P. Kadam i/b B.S. Shinde, for the Petitioner.

Ms. Sangita Shinde, APP for State.

Mr.M.G. Phanase, Police Head Constable, IO, B.No.938 present.

**CORAM : RANJIT MORE &
N. J. JAMADAR, JJ.**

DATE : 23rd September, 2019.

P. C. :

Heard learned counsel appearing for the respective parties.

2. The petitioner has invoked the Jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, to seek quashment of proceeding of RCC No. 316 of 2016 pending on the file of learned Judicial Magistrate, First Class at Indapur. The said case arises from FIR bearing CR No. 189 of 2015 registered with Walchand Nagar Police Station at the instance of

respondent No.2, for the offences punishable under Section 430 of the Indian Penal Code, 1860 and Sections 93, 94, 96, 97 of Maharashtra Irrigation Act.

3. The subject FIR is registered against 54 agriculturists from villages Shelgaon, Gotondi, Hagarwadi, Kacharwadi, Nimgaon, Taluka-Indapur, District-Pune. The petitioner is arraigned as accused no. 33 and petitioner's brother Dyaneshwar Laxman Khade is arraigned as accused no.32. The FIR is registered at the instance of respondent no.2, who at the relevant time was working as Divisional Authority of Irrigation Department at Nimgaon Irrigation Division.

4. The FIR alleges that in the year 2015-2016, respondent no.2 had given notices to farmers to remove unauthorized syphon from canal. Accordingly, the Sub-Divisional Officer of the Irrigation Department had constituted the squad. The members of the inspection squad were Shri. Appasaheb Bhosale, Sub Divisional Officer of Irrigation Department, Shri. Shankar Choulange, Shri. Mahesh Shelke, Shri. Sunil Suryawanshi, Shri. Ramhari Mulik, Shri. Ravindra More and Shri. Nana More. It is further alleged that on 23rd

November, 2015 at 6-00 am the said squad was patrolling near Nira Dava Canal in area between 134/400 to 152/453. It is alleged in the FIR that despite notice given by complainant to farmers to remove unauthorized syphon from canal, they have not abided by the said notice; 54 accused/farmers have put syphon in canal and diverted the water from canal to their land. It is further alleged that the squad removed the entire syphon from canal and destroyed all syphon and also made panchanama to that effect. Lastly, it is alleged in the FIR that after discussion with higher authority, subject FIR is filed with Walchandnagar Police Station, for the offences referred to herein-above.

5. Smt. Kesharbai Laxman Khade, the mother of the petitioner and his elder brother Dyaneshwar were the owners of the land gat No.38/2 at village Gotondi, Indapur. This land was transferred by said Kesharbai in favour of Dyaneshwar, the petitioner's elder brother. The name of the petitioner was also shown, however, the petitioner then being minor, his mother was shown as his guardian.

6. It is not in dispute that the petitioner has completed

his law course in the year 2009 from Baramati and, thereafter, he joined Devendra Study Centre at Pune for study of competitive examination of the M.P.S.C. It is the specific case of the petitioner that in the month of July, 2015 he took admission in Devendra Study Centre for preparation for the competitive examinations of the M.P.S.C. It is also specific case of the petitioner that from September, 2015 to March, 2016 he was regularly attending the said study centre. The petitioner ultimately appeared for PSI examination and he was declared successful and has been selected for training.

7. It is the specific case of the petitioner that his brother Dyaneshwar Khade is looking after the ancestral farm and petitioner was taking education and, thereafter, preparing for the competitive examination in Pune District.

8. The petitioner in support of his contention has annexed the copy of the attendance certificate of Devendra Study Centre dated 01/07/2019. The certificate is not disputed by the prosecution. The certificate does support the petitioner's case that during the period from September, 2015 to March, 2016 he was regularly attending the Devendra Study

Centre for the purpose of preparation for competitive examination. Even assuming for the sake of the arguments that the water was diverted from the Nira Dava Canal in order to irrigate the petitioner's land, we do not find any material on record to show even *prima-facie* that the petitioner had diverted the said water. It is clear from the record that the petitioner is merely arraigned as an accused because his name is shown in the 7/12 extract of the land bearing Gat No. 38/2, at Gotondi, Indapur. Apart from this fact, there is no material with the prosecution which could indicate to show that the petitioner had intended and actually diverted the water from Nira Left Canal to the land in question.

9. In the above circumstances, coupled with the fact that the petitioner has passed main examination of PSI and is selected for the same post, we are inclined to quash the subject criminal case *qua* the petitioner only. Accordingly, the proceedings of RCC No. 316 of 2016 pending on the file of learned Judicial Magistrate, First Class at Indapur are quashed *qua* the petitioner.

10. It is made clear that we have passed this order in

peculiar facts and circumstances of the present petition and it should not be treated as a precedent.

11. Writ petition stands disposed of.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]