

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

CRIMINAL APPLICATION NO. 1449 OF 2020

- 1) Bhagwan S/o Nagnathrao Bodke,
Age; 54 years, Occ; Service,
R/o; As Tax Recovery Officer and having
Additional charge of Office Superintendent,
Municipal Council, Gangakhed,
Taluka Gangakhed.
R/o; Near Post Office,
Main Road, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

**...APPLICANT
(Orig. Accused
No. 1)**

V E R S U S

- 1) The State of Maharashtra
Through I.O. Sub Divisional Police Officer,
Office of the Sub Divisional Police Officer,
Gangakhed, Tq. Gangakhed.
- 2) The Police Station officer,
Police Station Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
- 3) Arti D/o Netajirao Brahmanathkar,
Age; 28 years, Occ; Legal Practitioner,
R/o; Thakur Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

**..RESPONDENTS
(Resp. No. 3 is
Original
Complainant)**

.....
Shri. Mahesh P. Kale, Advocate for the Applicant
Shri B.V. Virdhe, learned A.P.P. for the Respondent Nos.1 & 2
Shri. S.S. Jadhavar, Advocate for Respondent No.3
.....

**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 16/12/2020

ORDER : [PER : M.G. SEWLIKAR, J.]

1. Applicant has preferred this application under Section 482 of the Code of Criminal Procedure, (Cr.P.C.) for quashing of the First Information Report, (F.I.R.) No. 374 of 2020, registered with Gangakhed Police Station, District Parbhani for the offences punishable under Sections 452, 354, 504, 506 read with Section 34 of the Indian Penal Code.

2. Facts giving rise to this application are that the informant is an Advocate by profession. On 31.7.2020 she was at home. The applicant is working as a Tax Recovery Officer having additional charge of Superintendent of Municipal Council, Gangakhed, Dist. Parbhani. On 31.7.2020 at 1.30 p.m., the informant and her sister were at her home in Thakur Colony, plot No. 15/3/2. At that time, the applicant along with one T.R. Kamble, the clerk of the Municipal Council, Gangakhed trespassed into her house and said to the informant as to why she had lodged the complaint against him and pick up a chair and threw it away. He pushed respondent No. 3 and violated her modesty. Respondent No. 3- the informant said to the said clerk T.R. Kamble that none of them should enter her house till the arrival of the police. She made a call to Police Inspector Shri Shaikh, but she did not get any help from him. Thereafter, Shaikh Raja, Rahul Salve, Bala Salve, Afjal Pathan trespassed into her house and they were saying that they would get her house measured and they would hoist a blue flag on her plot and would construct 'Buddha Vihar' there. She made a call to the

Superintendent of Police, Gangakhed and explained the situation to him. She further stated that applicant did not give her any prior intimation about the measurement to be carried out. The applicant and others were saying that 'you few Bramhins have become insolent'. On these allegations, F.I.R. came to be lodged on 04.08.2020 and on the basis of which Crime No. 374 of 2020 for the offences punishable under Sections 452, 354, 504, 506 read with Section 34 of the IPC has been registered against the applicant.

3. Heard Shri. Mahesh P. Kale, the learned counsel for the applicant, Shri B.V. Virdhe the learned A.P.P. for respondent Nos.1 and 2-State and Shri.S.S.Jadhavar, the learned counsel for Respondent No.3.

4. Shri Kale, the learned counsel for the applicant submitted that the applicant had gone to discharge his duty of taking measurement of the house of respondent No. 3. He was asked orally by his superior officer to take measurement of the house of respondent No. 3-informant. Therefore, he had lawfully entered the house of the respondent No. 3. He submitted that the incident took place on 31.7.2020 but the FIR came to be lodged on 4.8.2020. No explanation is forthcoming about the inordinate delay in lodging the FIR. The applicant had gone to the house of respondent No. 3 because a complaint was received. He further submitted that there is dispute in respect of ownership over the Municipal property No. 15/3/2. It is the

contention of respondent No. 3 that it is the property of her brother, who is Ex Serviceman. The record of Municipal Council reveals that the said plot is owned by the Municipal Council. When the applicant had been to the disputed property in his official capacity, he noticed that the informant has no concern with the property and apprehending that respondent No. 3 would lose the possession over disputed property she has filed this false complaint.

5. Shri B.V. Virdhe the learned A.P.P. for respondent Nos.1 and 2 and Shri.S.S.Jadhavar, the learned counsel for Respondent No.3 submitted that the applicant was not authorised to enter the property. Despite that he entered the property and thus offences under aforesaid sections have been committed. They, therefore, prayed for the dismissal of the application.

6. Perused the papers annexed with the petition and the police papers. The communication dated 6.7.2020 addressed to the Chief Officer, Municipal Council, Gangakhed by P.S.I., Gangakhed, indicates that respondent No. 3 had made a complaint that Rohidas Landge, Salubai Deshya, Shaikh Raju, Suresh Landge had caused obstruction to the construction she was making on plot No. 16/3/2 possessed by Ex-Serviceman, Dilip Uttamrao Kulkarni (Bramnathkar). By this letter, PSI, Ghogare sought copies of relevant documents. The Chief Officer, in reply to this communication dated 6.7.2020, addressed a communication to the PSI, Police Station Gangakhed, stating therein

that as per the Municipal record, the said plot is recorded in the name of Municipal Council, Gangakhed as owner and in possession column the name of Saraswati Uttam Kulkarni (Bramnathkar) is recorded.

7. The informant had made a complaint against the applicant alleging therein that the said plot No. 16/3/2 was allotted to the Ex Serviceman, Dilip Uttamrao Kulkarni (Bramnathkar), who laid his life in the war against the Pakistan and his mother Saraswati, is his heir and since then she is in possession over that property. She has further alleged in the complaint that there is dispute between her and Rohidas Landge and others over this property. The applicant has joined hands with said Rohidas Landge and has intentionally misplaced the file in respect of plot No. 16/3/2.

8. The communication made by the Chief Officer, Gangakhed dated 7.7.2020, clearly indicates that Saraswati Uttamrao Kulkarni (Bramnathkar), informant's mother is in possession over the disputed plot. The Chief Officer addressed a communication to the Police Station Gangakhed stating therein that the applicant was not authorised to take measurement of the house of the informant. This clearly shows that the applicant had entered the house of the informant without any authority in writing. Learned Counsel Shri Mahesh Kale, for the applicant submitted that on this communication, there is a handwritten note that the applicant was authorised orally to take the measurements of the house of the informant. The communication

dated 4.8.2020 shows that the applicant was directed orally to take measurement of the house of the informant. However, the fact remains that there were no written directions to the applicant to take measurements of the house of the informant. Even if, it is assumed for the sake of argument that the applicant was authorised in writing by the Chief Officer to take measurements of the house of the respondent No. 3, even then, it was the bounden duty of the applicant to issue notice to the informant about the proposed measurements to be carried out. The applicant did not do anything and directly barged in the house of the informant and started taking measurements. Thus, there is prima-facie evidence to show that the applicant had committed house trespass. Therefore, it cannot be said that there is no material against the applicant and consequently, FIR cannot be quashed.

9. Shri Kale, learned counsel for the applicant placed reliance on the case of “**State of Haryana and Ors. V/s. Ch. Bhajan Lal and Ors; AIR 1992 SUPREME COURT 604**” for the proposition that no case is made out against the applicant and therefore, it will be an abuse of process of law if, the applicant is asked to face the trial.

10. So far as, delay is concerned, on perusal of police papers it is seen that the informant had made complaint on 31.7.2020 itself and there is endorsement on the said complaint that it was received on 31.7.2020 and the Police Inspector, Gangakhed was directed to investigate the matter by the order dated 31.7.2020. This clearly shows

that the informant had immediately approached the police station to lodge the complaint. The report of the police dated 16.9.2020 also indicates that the police station Gangakhed had received the complaint on 31.7.2020, but offence was not registered immediately and it was registered on 4.8.2020. In this view of the matter, it cannot be said that there was delay on the part of the informant. She had immediately lodged report of the incident with police station, Gangakhed and it was the Gangakhed Police who registered the offence late. Therefore, there is no delay on the part of the respondent in lodging the F.I.R.

11. As indicated above, there is prima-facie case against the applicant. There is prima-facie evidence to show that the respondent No. 3 is in possession of the plot. The Chief Officer, Gangakhed himself admitted in the communication made to the Police Inspector, Gangakhed that the informant is in possession over the said plot and that the applicant entered the house of the informant without any authority, abused her and pushed her in such a manner that it would violate her modesty. In this view of the matter, FIR cannot be quashed. Hence the application is dismissed.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE