

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO.433 OF 2014

1. Chunnilal Madho Sakhare,
Aged about 50 years, Occ. Agriculturist,
2. Smt. Ratnabai Chunnilal Sakhare,
Aged about 45 years, Occu. Agriculturist
3. Roshan Chunnilal Sakhare,
Aged: Major, Occu. Agriculturist,
4. Sonya Chunnilal Sakhare,
Aged about 22 years, Occu. Nil,

5. Madho Sukal Sakhare – (Deleted)
Aged about 80 years, Occu. Nil.
(Matter is dismissed against
applicant No.5 as per Court's
order dtd.5.7.19.)

All R/o Davva, Tah. Sadak Arjuni,
District : Gondia.

... **APPLICANTS**

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Duggipar
District : Gondia.
2. Dr. Bhimrao s/o Karuji Meshram,
Aged about 58 years, Occu. Doctor
R/o Ratan Nagar, Plot No.145,
Gadgebaba Layout, Nagpur.

... **NON-APPLICANTS**

Shri R.D. Karode, Advocate for the applicants.

Ms. Mayuri Deshmukh, A.P.P. for the non-applicant No.1.

Shri N. Khubalkar, Advocate for the non-applicant No.2.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 16.12.2020

ORAL JUDGMENT (PER: AMIT B. BORKAR, J.) :-

1. The applicants have invoked power of this Court under Section 482 of the Code of Criminal Procedure challenging the First Information Report bearing No.29/2014 dated 22.03.2014 registered with the non-applicant No.1-Police Station.

2. The non-applicant No.2 had filed the First Information Report with the non-applicant No.1-Police Station on 22.03.2014 alleging that the applicants on 06.02.2014 and 07.02.2014 have committed theft of Sugarcane from the land bearing Gat No.598 admeasuring 1.89 H.R. owned by his wife. The First Information Report therefore, came to be registered against the applicants for offence punishable under Section 379 read with Section 34 of the Indian Penal Code.

3. The applicants have challenged the registration of the First Information Report by filing present application and this Court

on 25.11.2014 issued Rule and granted interim relief in terms of prayer clause (c) which had effect of restraining the non-applicant No.1 from filing of the charge-sheet without leave of this Court.

4. The non-applicant No.1 filed reply and stated that the First Information Report is a consequential effect of the order dated 20.03.2014 passed by the learned Judicial Magistrate First Class, Sadak Arjuni. It is further stated that during investigation, the Investigating Officer has recorded the statement of witnesses who saw the applicants actually cutting standing sugarcane and therefore, there is *prima facie* material against the applicants to prove the offences alleged against the applicants. The non-applicant No.1 therefore, prayed for rejection of application.

5. The non-applicant No.2 filed his reply and stated that the wife of the non-applicant no.2 has purchased the land in dispute by sale-deed dated 29.01.2011. It is in view of the order passed under Section 156(3) of the Code of Criminal Procedure by the Judicial Magistrate First Class, the First Information Report came to be registered. There was civil dispute between the applicants and wife of the non-applicant No.2. He therefore, prayed for rejection of the application.

6. We have heard Mr. R.D. Karode, learned Advocate for the applicants, Ms. Mayuri Deshmukh, learned A.P.P. for the non-applicant No.1/State and Mr. N. Khubalkar, learned Advocate for the non-applicant No.2.

7. Having considered the contents of the First Information Report and having gone through the material produced on record by the applicants, we are satisfied that this is a case where the extraordinary power under Section 482 of the Code of Criminal Procedure needs to be exercised.

8. The material which is placed on record by the applicants is in the form of judgment in Regular Civil Suit No.23/2011 which has been confirmed by the Principal District Judge, Gondia in Regular Civil Appeal No.163/2012 where there is finding recorded by the Civil Court that the predecessor in title of wife of the non-applicant No.2 had no title over the land in dispute. The judgment in Regular Civil Appeal No.163/2012 is confirmed by this Court in Second Appeal No.287/2014. In the said suit specific issue as regard possession was framed and the Civil Court had recorded the finding that wife of the non-applicant No.2 was not in possession of the property in dispute.

9. Apart from the judgments of Civil Court, it has been brought on record that at the relevant time, there was order passed by the Competent Authority in Niyamit Vasuli Application No.1/2014 granting police protection in favour of the applicants to cut the sugarcane in dispute. In spite of the order of police protection granted by the Competent Authority, the non-applicant No.1 has filed the present complaint alleging theft of sugarcane, which was in the land, which was the subject matter of dispute in Regular Civil Suit No.23/2011.

10. Once it is proved in Civil Court that the wife of the non-applicant No.2 had no title over the land in dispute, the registration of the First Information Report and continuance thereof against the applicants would amount to abuse of process of law. The situation of the present case, is squarely covered by paragraph No.102 of the judgment of the Hon'ble Apex Court in the case of *State of Haryana and ors. Vs. Bhajanlal and ors.* reported in **1992 Supp (1) SCC 335**.

11. Having regard to the law settled by the Hon'ble Apex Court and considering the judgment of Civil Court holding that wife of the non-applicant No.2 had no title and possession over the property in dispute, we are satisfied that this is a fit case where this

Court should exercise the power under Section 482 of the Code of Criminal Procedure.

12. We therefore, pass the following order.

The First Information Report No.29/2014 dated 22.03.2014 registered with the non-applicant No.1-Police Station is quashed and set aside.

13. Criminal Application is allowed in above terms.

JUDGE

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