

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

101 CRIMINAL APPLICATION NO.1251 OF 2018

**RANAPRATAP KISANRAO PALVE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Applicant : Mr. S. S. Thombre
APP for Respondents/State: Mr. B. V. Virdhe
Advocate for Respondent No.2: Mr. N.B. Khandare

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

DATE : 04.02.2021

PER COURT :

. Heard both the sides.

2. The present proceeding is filed for relief of quashing of proceeding of R.C.C No.64 of 2018. It is pending in the Court of J.M.F.C Pathardi, District Ahmednagar. This case is filed in Crime No.105 of 2018 which was registered in Pathardi Police Station, Taluka Pathardi, District Ahmednagar for offence punishable under Sections 354, 323, 504 and 506 of the Indian Penal Code.

3. The crime is registered on the basis of report given by respondent No.2-Smt. Surekha Adinath Karad. She has made allegations that on 27.02.2018, at about 1.30 pm, the incident took place in her field and at the time of incident, present applicant entered her field, misbehaved with her, virtually caused tears to her clothes and due to that she felt molested. According to her, when she shouted, her husband, her father and others rushed there and even after their arrival, the applicant remained there and kept abusing her. After completion of the investigation of this crime, charge-sheet is already filed for these offences.

4. Learned counsel Shri Thombre for the applicant drew the attention of this Court that applicant had purchased portion of Gut No.640 from sister of the informant, namely, Kalpana by registered sale deed dated 10.11.2017. He drew the attention of this Court to copy of plaint of the suit which was filed by present informant against Kalpana and others bearing Regular Civil Suit No.66 of 2015. This document shows that subsequently, the plaintiff, informant made amendment and added present applicant in the suit in the year 2018 in place of Kalpana. Learned counsel Shri Thombre then drew the attention of this Court to the record which shows that applicant had applied to survey office to measure the portion purchased by the applicant. He showed to this Court that copy of notice issued by the surveyor to informant. Informant was asked to remain present for survey of the land on 27.02.2018 at 9.00 am.

Learned counsel Shri Thombre then produced today the communication made by the surveyor-Palve with the Deputy Superintendent of Land Record dated 18.09.2018. In this communication, the surveyor has informed to the Superior Officer that he had visited the field of the applicant on 27.02.2018 at 11.30 am and from that time, he was taking measurements upto 2 to 3 pm of that day and in his presence, no untoward incident took place. He has specifically mentioned that at about 01.30 pm of that day, there was no quarrel between anybody.

5. Learned counsel Shri Thombre submitted that the surveyor is an independent person and if his version is accepted, it can be said that the informant of the present matter gave false report and the report was given only due to the litigation and due to circumstances that the informant wanted to see that nobody enters the land of her sister.

6. Learned counsel for the informant submitted that the communication of surveyor produced by the applicant in the Court is not part of charge-sheet and it can be treated as a defence of the accused.

7. The prosecution is required to prove the case by adducing evidence. There is always an opportunity to the side of the accused to test the witnesses by cross-examination. After the evidence of prosecution is over, there is always an opportunity to the accused to

examine the witnesses in defence and the prosecution has also the right to test the witnesses examined by defence by way of cross-examination. Thus, only on the basis of the aforesaid communication made by the surveyor, in a proceeding like present one, this Court cannot hold that it is a case of false implication. The trial Court needs to appreciate aforesaid circumstances and then it is upto the trial Court to draw proper inferences on the basis of evidence, which may be adduced before the trial Court. Due to all these circumstances, this Court holds that it cannot be said that there is no material at all for proceeding ahead with the matter before trial Court. There is an opportunity to the defence of aforesaid nature and so the following order:

ORDER

- I) The application stands dismissed.
- II) The observations made in this matter are for the purpose of present proceeding only.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)

Sameer