

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

956 CRIMINAL APPLICATION NO.1616 OF 2020

SUNEEL BALKISAN GOVE (BHAVSAR) and ORS.
VERSUS
THE STATE OF MAHARASHTRA and ANR.

...
Advocate for Applicant : Mr. V.B. Patil
APP for Respondent/State : Mr. R.B. Bagul
Advocate for Respondent 2 : Mr. N.R. Thorat & A.K. Tiwari

...
**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**
DATED : 24/02/2021.

ORDER : [PER T.V. NALAWADE, J.]

1. Present proceeding is filed for relief of quashing and setting aside C.R. No.4/2020 registered with Faizpur Police Station, Faizpur, Tahsil Yawal, District Jalgaon. The crime is registered for the offences punishable under sections 341, 441, 442, 444, 384, 387, 323, 504, 506 and 34 of Indian Penal Code on the basis of report given by respondent No. 2 Nitin Bhavsar. Nitin has given his occupation as advocate. Both the sides are heard.

2. The crime is registered on the basis of order made by the learned Judicial Magistrate, First Class under section 156 (3) of Criminal Procedure Code in Criminal Application No. 276/2019. It is contention of the informant, original complainant that he has purchased the disputed property bearing City Survey

No. 44 for consideration of Rs.2.25 lakh from the previous owners Milind Gove and Rupesh Gove under registered sale deed dated 23.7.2019. It is contended that on the day of sale deed possession of the property was given to him by the vendor and his name is entered in the record of city survey and also assessment record of Nagar Parishad Faizpur. It is his contention that he has paid the house tax also in respect of this property. It is his contention that after purchasing the property, he had put his lock on the entrance door of the house and he used to visit the premises. It is his contention that he was using the electricity supply which was taken for this premises.

3. It is the contention of the informant that on 27.7.2019 he saw that his lock was removed from the door and other lock was in it's place. It is his contention that he replaced that lock and again put his own lock to the door on 27.7.2019. It is contended that the same thing happened on the night between 22.10.2019 and 23.9.2019 and he again replaced the lock by putting his own lock. It is contended that on 25.10.2019 when he visited the disputed place, he found that his third lock was again removed and somebody had put his own lock to the door and inside of the house also there were some changes made like giving new colour and keeping four wheeler in the

premises. It is contended that when he made inquiry with the neighbours they informed that accused Rushil Gove, Sunil Gove, Gajanan Gove and Pradnesh Gove were involved in the offence. It is contended that when he went to them and tried to question them, they rushed at him and they gave threat of life to him. It is contended that they said that they had agreed to purchase the property and so, they were owners and in case of interference in their possession, the informant will be finished and they will be filing false cases like setting fire to the vehicles of the accused. It is contended that when he tried to say that he was title holder, knife was shown to him. It is contended that accused Amit Bhavsar and Sunil Gove started giving colour to the house in his presence and then others said that if amount of Rs. five lakh was given to them, they will vacate his premises. It is contended that they also said that they had filed civil suit intentionally to harass him and to extract money they were taking such steps. Thus, by making allegations that by forcibly taking possession of this property and by giving threats, the accused committed offences. As there was the allegation of demanding money for vacating the premises, the crime came to be registered for aforesaid offences. The police papers show that there are statements of the neighbours who had witnessed the incident of quarrel and who had seen the informant taking possession of the house after

the sale deed. There are witnesses who are saying that accused were demanding money from the informant. Thus, some incident did take place and there is corroboration of some witnesses to the allegations made by the informant of the aforesaid nature.

4. The learned counsel for applicants took this Court through copy of plaint of Regular Civil Suit No. 70/2019 and he submitted that on the date of F.I.R., the suit was pending and this suit which is filed for relief of declaration of ownership by adverse possession by some of the accused, the informant had appeared. The learned counsel submitted that subsequently, the informant filed separate civil suit for possession and that suit is bearing Regular Civil Suit No. 30/2020 and that circumstance shows that false allegations of taking possession by using force are made. This Court has carefully gone through the pleadings in the plaint of R.C.S. No. 30/2020 and in the plaint also, there is allegation that on 25.10.2019 the aforesaid incident took place and the informant had noticed that the accused persons had put their lock on the house after removing the lock of informant. Thus, it cannot be said that there is some inconsistency in the record of informant.

5. The submissions made and the record shows that it is not disputed that sale deed is executed in respect of the

disputed house in favour of the informant and his name is entered in the property card and also in the assessment record. For the present purpose, there are statements of witnesses to show that the possession was also actually given to the informant by the seller. On the other hand, the applicants are contending that they have been in possession of the disputed house for more than 30 years and they have become owners due to adverse possession. Jurisdiction under section 482 of Cr.P.C. cannot be used in favour of the persons like applicants who are admitting that they are trespassers, though they are trying to contend that they have become owner due to adverse possession. Further, that kind of defence cannot be considered at this stage and on the contrary, the material which is available against them needs to be considered as unrebutted. This Court holds that it cannot be said that there is no material at all against the applicants. This Court holds that no relief can be granted in favour of the applicants as claimed. In the result, the application stands dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

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