

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 370 OF 2018

Dayalsingh Ramsingh Balode,
Aged about 70 years, Occ.: Agriculturist
& Brick Kiln, R/o. Telhara, Tq.Telhara,
Dist. Akola.

.... **APPLICANT.**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Telhara,
Tq. Telhara, Dist. Akola.
2. Omprakash Namdeo Verulkar,
Talathi, Kheldeshpande,
Tq. Telhara, Dist. Akola.

.... **NON-APPLICANTS.**

Shri A.B.Mirza, Advocate for Applicant.
Shri S.D.Sirpurkar, A.PP for Non-applicant No.1/State.
Shri A.K.Dobade, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 21, 2021.

ORAL JUDGMENT : (Per : Z.A.Haq, J.)

1. Heard.
2. **RULE.** Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant-accused has prayed that the First Information Report registered against him with the non-applicant No.1-Police Station for the offence punishable under Section 379 and Section 34 of the Indian Penal Code be quashed.

4. The First Information Report is registered pursuant to the report lodged by the non-applicant No.2. From the record it is clear that there is civil dispute about title and possession of the agricultural land in question between the applicant and Sau. Nayana Avinash Manatkar and Regular Civil Suit No.56 of 2017 is pending before the trial Court. In the civil suit, the trial Court has passed an order on 16th October 2017 restraining the defendant-Sau.Nayana Avinash Manatkar from causing obstruction in the peaceful possession of the plaintiff (present applicant) over the suit property. According to the applicant, after the order of temporary injunction came to be passed, at the behest of Sau. Nayana Avinash Manatkar the non-applicant No.2 swung into action and started taking illegal action against the applicant. The accusations against the applicant, as per the report lodged against him, are that bricks worth Rs.28,000/- were seized, however, the bricks were stolen and therefore, the offence punishable under Section 379 of the Indian Penal Code is committed by the applicant and the co-accused.

5. With the assistance of the learned Advocates for the applicant, non-applicant No.2 and the learned A.P.P, we have gone through the report lodged by the non-applicant No.2 and the other documents placed on record, as also the reply filed on behalf of the non-applicant No.1.

6. In the reply it is stated that show cause notice was issued to the applicant to deposit fine amount of Rs.1,22,680/-. However, copy of such notice is not placed on record. At the time of hearing also the learned A.P.P. has not produced any such demand notice. On the contrary, the learned Advocate for the applicant pointed out that notice of demand of Rs.1,22,680/- was issued to Sachin Dayalsingh Balode (son of the applicant) on 2nd September 2017.

In the reply, it is further stated that the applicant had excavated the land of Manatkar for making bricks and on the complaint of District Mining Officer, the Tahsildar was asked to verify the issue of actual possession. This statement in the written submissions filed on behalf of the non-applicant No.1/Investigating Agency supports the claim of the applicant that the action against the applicant is being taken at the behest of Manatkar after the Civil Court passed order granting temporary injunction in favour of the applicant.

7. Be that as it may, we find that the accusations made against the applicant and the other material placed on record do not show the ingredients necessary to constitute offence punishable under Section 379 of the Indian Penal Code. We are of the view that continuation of the criminal proceedings against the applicant, who is aged about 72 years, will be nothing but abuse of process of the Court.

8. Hence, we pass the following order:

First Information Report bearing No.278 of 2017, dated 22nd November 2017, registered with non-applicant No.1-Police Station for the offence punishable under Sections 379 and 34 of the Indian Penal Code is quashed.

Rule is made absolute accordingly.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)