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

CRIMINAL WRIT PETITION NO.465/2019

- 1) Chhote Khan s/o Gaffar Khan
Aged : 82 Years, Occu.: Agriculturist,
 - 2) Razzaque Khan s/o Jabbar Khan,
Aged : 66 Years, Occu: Retired,
Both R/o. Indla, Tah. Amravati,
Frezarpura, District Amravati.
- PETITIONERS**

// VERSUS //

1. State of Maharashtra through
Police Station Officer,
Frezarpura, Tah and District Amravati.
 2. Sajid Ahmad s/o Anis Ahmad,
Aged: 35 Years, Occu: Business (Engg. Shop),
R/o Chaprasipura, Amravati,
Tah. & District Amravati.
- RESPONDENTS**

Shri M. M. Akhtar, Advocate h/f Dr. A. H. Jamal, Advocate for
petitioners.

Shri N. R. Patil, A.P P, for respondent no.1.

Shri P. R. Agrawal, Advocate for respondent no.2.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 23/02/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

1] Heard.

(2)

2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing for the parties.

4] On 30.08.2018, respondent no.2 filed a complaint against the petitioners alleging that the petitioners, on 14.08.2018, between 12.00 p.m. and 2.00 p.m. unauthorizedly and illegally entered the subject property which bears survey no.37/2-A and took forcible possession of the various plots which were laid out in the said surveyed land. It was also alleged that some of the plot owners including the complainant protested against such illegal action on the part of petitioners, but, the petitioners threatened them with dire consequences and not only that the petitioners also destroyed some of the structures under construction there. The respondent no.2 further alleged that the petitioners even demanded some money in an illegal manner from the plot owners.

5] On the basis of such complaint, and after verifying *prima facie* genuineness of the claim of respondent no.2, Police Station, Frezarpura, Amravati, registered offences punishable under Sections 447, 341, 385, 506, 427 of the Indian Penal Code read with Section 34 vide Crime No.1083 of 2018 against two persons, Chhote Khan Gaffar Khan and Jabbar Khan Gaffar Khan. It was later on found that Jabbar

(3)

Khan Gaffar Khan had already expired on 11.09.2014. It appears that name of the petitioner no.2 was added as an accused subsequently.

6] Learned counsel for the petitioners submits that basically the dispute between the petitioners and the complainant is civil in nature and presently civil suit bearing Regular Civil Suit No.435 of 2018 is pending between the petitioner no.1 and two others and respondent no.2 and five others. He submits that the petitioners are the owners of the land bearing survey No.37/2-A and that the complainant has nothing to do with the said property and therefore, police ought not to have registered any offences against the petitioners. This has been disagreed too by the learned APP who points out that the civil suit, Regular Civil Suit No.435 of 2018 was filed by one of the petitioners after the complaint dated 30.08.2018 was registered against the petitioners.

7] Shri P. R. Agrawal, learned counsel for the respondent no.2 submits that the respondent no.2 is the lawful owner of plot no.5. which is part of survey No.37/2-A situated at Mouza Rajura, Manjarkhed, Tq. and District Amravati. He further submits that respondent no.2 has purchased this plot by registered sale deed executed on 22.01.2013. He also submits that the Regular Civil Suit No.435 of 2018 was filed by one of the petitioners Chhote Khan along with two others about four months after the offences were registered against the petitioners or to be precise on 21.12.2018, only as an after thought to show that the petitioners are

(4)

innocent in the present case. He points out that this civil suit has been filed by petitioner no.1 along with two others not only against the respondent no.2 but also against Tahsildar, Amravati, Commissioner of Police, Amravati and Police Station Officers, Frezarpura because the offences came to be registered against the petitioners and in this suit the plaintiffs have sought declaration that the plaintiffs are the owners of the property and the plaintiffs have also sought damages against the respondent nos.2 to 6 on the basis that these respondent officers, defendants therein, helped respondent no.6 who is the complainant (respondent no.2) in the present case to obtain illegal possession of the property bearing survey No.37/2-A. He further submits that the damages have been claimed by the plaintiffs @ Rs. 10,000/- per day and they are claimed from the date of the filing of the suit till actual delivery of the possession. He submits that the fact that declaration regarding ownership of survey No.37/2-A has been sought and that damages have been sought for the period from the date of the suit till actual delivery of the possession, indicate that the petitioners have admitted that they are neither the declared owners of survey No.37/2-A nor are in possession of this property. He therefore submits that if this is the factual position, the petitioners have no right to enter into the property bearing survey No.37/2-A and indulge in violence and acts of damaging the structures already existing thereon.

(5)

8] On going through the various documents filed on record, we find no substance in the argument of the learned counsel for the petitioner and great substance in the argument of learned APP and also Shri. Agrawal, learned counsel for respondent no.2, the complainant.

9] From the averments made in Regular Civil Suit No.435 of 2018 and also prayers made therein, it becomes abundantly clear that the petitioners are presently not the owners of survey No.37/2-A and that they are also not in possession of this property and in fact, this is the reason why the petitioners have claimed declaration to the effect that the petitioner no.1 and two others are owners of the property and that the damages are required to be paid from the date of the suit till actual delivery of the possession. Once it is seen that till date of the filing of the suit, the petitioners are not the recorded owners of the subject property nor are in possession of the property, cognizance of a complaint made against the petitioners which *prima facie* discloses commission of cognizable offences of illegal trespass and those relating to causing of damage to the structures already existing on the subject property is required to be taken by the police officer, which in fact the police officer i.e. respondent no.1 has indeed taken by registering a crime for various offences against the petitioners. Now, if the petitioners contend that they are the owners and in possession of the property, it would be something in the nature of defence of the petitioners and that would be required to

(6)

be proved on its own merits at the time of the trial. Besides, the petitioners themselves are admitting that till the date of the filing of the suit they were not recorded owners and also did not have any possession of the subject property. Then, damages are also sought against the police officers and Revenue Officers in the said suit. These admitted facts show that there is substance in the allegations made in the complaint, wherein was filed much earlier than the civil suit.

10] In these circumstances, FIR cannot be quashed and if any order is to be issued it would amount to interference with the investigation to be made and being made by police. This is not the purpose of law. The purpose of law is to facilitate the process of administration of justice.

11] In the result, we are not inclined to make any interference in the matter. The petition is dismissed.

Rule is discharged.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)