

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
901 CRIMINAL APPLICATION NO.531 OF 2019
ATUL ARUN KOTECHEA
VERSUS
DEORAO SOPAN RATHOD**

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Advocate for Applicant : Mr. S. V. Adwant
Advocate for Respondent : Ms. Uma S. Bhosale h/for
Mr. Suhas. B. Ghute

CORAM : ANIL L. PANSARE, J.

DATE : 27th July, 2022

ORDER:

1. The applicant, who is the a Deputy Engineer, MSRDC Ltd., has filed the present application under section 482 of the Code of Criminal Procedure (hereinafter refereed to as ‘the Code’) challenging the order passed by the Judicial Magistrate First Class, issuing process against the applicant and one more person (contractor) under Section 506 read with Section 34 of the Indian Penal Code in a complaint bearing SCC No.114 of 2018. The applicant is also seeking to quash or dismiss the complaint.

2. Having heard both sides and having gone through the order, the question that requires answer is, whether the complaint is barred by law in the sense that the respondent-original complainant has not obtained sanction under Section 197 of the Code for prosecuting the applicant- original accused No.1.

3. It has been argued by the learned Advocate for the applicant that the complaint itself discloses that the alleged offence has been committed while discharging official duties. As against, it has been argued by the learned Advocate for the respondent-complainant that complaint nowhere discloses that the offence has been committed while discharging official duties or while acting or purporting to act in discharge of the official duty.

4. I have carefully gone through the complaint. It is the grievance of the respondent that he owns agricultural land bearing Gat No.91 situated at Surupgaon Taluka Partur. The said land is adjacent to Ashti-Partur Road. Shegaon-Pandharpur-Dindi-Highway No.548C is passing through Ashti-Partur road. Widening work of the said Highway is under progress. It is then a categorical case of the respondent that his land has not been acquired. The Government of Maharashtra has not given oral or written intimation that the road is to be constructed through his land. The consent of the respondent has not been obtained. The applicant/original accused No.1 and accused No.2 have also not given prior notice to the respondent that excavation work is to be carried out in his land nor did they take consent of the respondent. The 7/12 extract indicates that entire land is intact and that possession is with the respondent. It is further the case of the respondent that the acquisition proceeding has not even commenced.

5. It is further pleaded in the complaint that on 23rd April, 2018, when both the accused were illegally excavating the land belonging to the respondent and when the trees located in the agricultural land were damaged and when the accused had made an encroachment over his land, the respondent lodged a complaint with Police Station, Ashti. A copy of which was forwarded to the Public Works Department, Partur. The Police or the Public Works Department have not paid any heed.

6. Since the Police Station, Ashti failed to take cognizance, the respondent has filed a complaint before the Learned Judicial Magistrate First Class, Partur mentioning there in that without there being consent obtained of the respondent and without giving notice to the respondent and without there being acquisition proceedings having been completed in respect of his land, no work of excavation could have been done. Both the accused have illegally excavated his land. Thereafter, in order to prevent further excavation, the respondent enquired with both the accused, to which, both the accused threatened the respondent that he (the complainant) will be killed by JCB. He was assaulted. Two persons/witnesses were present. They mediated and saved the respondent.

7. The above complaint, if looked into in its entirety, what is disclosed is that the road widening work of Shegaon-Pandharpur-Dindi

Highway No.548C was under way. Both the accused entered into the agricultural land of the respondent which is adjacent to the said road. The respondent lodged a report with Police Station about illegal excavation done at his land. Copy of which has been forwarded to the Public Works Department. The land acquisition proceedings have not been commenced. The 7/12 extracts shows that the entire land is shown in the name of the respondent and that he is in possession of the said land.

8. Thus, on record, according to the respondent, there is absolutely nothing to show that the acquisition proceedings have either commenced or completed. Both the accused, without giving notice to the respondent, have entered into his land and carried out the excavation work. The respondent, in order to present the illegality, has inquired with both the accused, to which, they have threatened the respondent of killing by the JCB and was assaulted as well.

9. Prima facie, this act, to my mind cannot be said to be an act done while discharging official duties or the act purporting to be an act in discharging of official duty. Therefore, the bar under Section 197 of the Code will not be attracted to prosecute the preset applicant/original accused No.1.

10. The learned Advocate for the applicant has relied upon number of rulings in support of his argument that previous sanction

under section 197 of the Code is mandatory to prosecute public servant. However, in view of the nature of the allegations made in the complaint which discloses that the alleged offence has not been committed while discharging official duties, the rulings will be of no help to the applicant. The public servant like the applicant is not entitled to indulge in any criminal activity under the garb of discharging public duties.

11. It is well settled that to quash the complaint, the Court will have to consider the pleadings in the complaint and if it is found that no offence is made out, then only the complaint can be quashed. In the present case, the quashing has been sought solely on the ground that the sanction to prosecution has not been obtained. The same having been found without any merit, there is no need to elaborate the discussion any further.

12. There is no substance in the application. Hence the application is liable to be dismissed and is dismissed accordingly.

13. Needless to say that all questions of law are kept open.

(ANIL L. PANSARE, J.)

JPChavan