

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 CRIMINAL WRIT PETITION NO.647 OF 2020

ANIL SAHEBRAO KHUPSE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. K.M. Nagarkar, Advocate for the petitioner

Mr. A.M. Phule, APP for the respondent No.1

Mr. C.T. Jadhav, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01st JULY, 2022

ORDER :

1 Petitioner is the original accused No.2 against whom the present respondent No.2 has filed private complaint bearing Criminal Case No.624/2014 before learned Judicial Magistrate First Class, Parbhani, for the offence punishable under Section 323, 347, 341 504, 506 read with Section 34 of the Indian Penal Code, 1860. The said complaint has been filed against in all 11 persons including the present petitioner. After considering the verification and documents on record as well as hearing the learned Advocate for the complainant, the learned Magistrate has issued process against all the

accused by order dated 08.10.2014. The said order was challenged by the present petitioner in Criminal Revision No.111/2014 before learned Sessions Judge, Parbhani. The learned Additional Sessions Judge, Parbhani by Judgment and order dated 17.01.2020 dismissed the said revision. Hence, this petition.

2 Heard learned Advocate Mr. K.M. Nagarkar for the petitioner, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate Mr. C.T. Jadhav for the respondent No.2.

3 The learned Advocate representing the petitioner submitted that similar type of complaint was filed by the complainant – respondent No.2 bearing Summary Criminal Case No.572/2013 before learned Judicial Magistrate First Class, Parbhani. However, that complaint came to be dismissed on 05.03.2016. In fact, the mother of the respondent No.2 had filed Special Civil Suit No.96/2007 before learned Civil Judge Senior Division, Parbhani claiming ownership, possession and permanent injunction against the father of the petitioner and others. That suit came to be dismissed on 29.04.2009. Thereafter the mother of the petitioner had filed appeal i.e. First appeal No.788/2011 which is pending before this Court, but during the pendency the appellant i.e. the mother of the present respondent

No.2 expired and, therefore, respondent No.2 is appellant in that First appeal. This Court has refused to grant any interim relief in favour of the complainant. Further, during the lifetime of the father of the petitioner he had filed Regular Civil Suit No.185/2007 before Civil Judge Senior Division, Parbhani for permanent injunction against the mother and two brothers of the respondent No.2 i.e. complainant. That suit came to be decreed on 29.04.2009. The appeal i.e. Regular Civil Appeal No.63/2009 came to be dismissed by learned District Judge-3, Parbhani on 22.02.2010. The present respondent No.2 had then filed the Second Appeal bearing No.317/2010, however, this Court has refused interim relief by order dated 15.01.2018. Thus, all the decisions are in favour of the petitioner. Still the respondent No.2 – complainant claims that he was working in Gat No.66 situated at Borwand (Bk), Tq. & Dist. Parbhani on 13.07.2014 and the incident has taken place. When the respondent No.2 – original complainant cannot be said to be in legal possession of the property, then, how there could have been a criminal trespass and further act of assault to the complainant is a question. The learned Magistrate has not considered all these aspects and process has been wrongly issued. The said order deserves to be set aside.

4 Per contra, the learned Advocate appearing for the respondent No.2 relied on the affidavit-in-reply filed by the complainant. It has been

contended that though the real complaint came to be dismissed it was in respect of some different incident i.e. date of offence. In fact, there was absolutely no illegality or error committed by the learned Magistrate in issuing order of process. The Revisional Court had considered all the aspects and dismissed the revision. The disputed facts cannot be gone into.

5 At the outset, it is to be noted that perusal of the complaint filed in Criminal Case No.624/2014 it is stated that the incident has taken place in Gat No.66 which was belonging to complainant. Apart from his verification, statement of witness Kisan Dagdoba Lokhande i.e. the brother of the complainant was recorded. The petitioner has invoked the constitutional powers under Article 227 of the Constitution of India and inherent powers under Section 482 of the Code of Criminal Procedure to challenge the said orders. However, this Court cannot go into the disputed facts under the said constitutional as well as inherent powers to come to a conclusion. It will have to be left to the appropriate Court. The earlier complaints, which came to be dismissed or resulted in acquittal, were of a different date i.e. date of offence was different. Merely because the complainant is filing the complaint again and again, that does not mean that the subsequent complaints are false. What could be gathered from the Judgment from Special Civil Suit No.96/2007, which was filed by the mother of the complainant, that, that

suit was in respect of Gat No.66 admeasures 02 H 69 R, which was belonging to one Rakhmabai Sonba. In the partition said Rakhmabai had given 01 H 34 R land to plaintiff i.e. Sujanbai and rest 01 H 35 R land was given to her sister Kashibai. That suit was in respect of injunction, possession etc., which came to be dismissed by Civil Judge Senior Division, Parbhani on 29.04.2009. In the First Appeal ad-interim relief has not been granted. Further, as regards Regular Civil Suit No.185/2007 filed by the father of the petitioner against the mother and two brothers of the original complainant would show that it was also in respect of 01 H 34 R land from Gat No.66. The another suit was also in respect of 01 H 34 R land out of entire Gat No.66. In the complaint in hand i.e. Criminal Case No.624/2014 it is not stated as to in which area of Gat No.66 the incident had taken place. Therefore, it might have also been occurred beyond the area of 01 H 34 R. It was the case of Sujanbai that she was in need of money and the father of the present petitioner is doing illegal money lending business. According to her, the documents were got prepared from her showing that she has put Sahebrao in possession by executing those documents. The said contention is still pending before this Court. When the matters are subjudice before this Court, it cannot be concluded at this stage by saying that the original complainant is not in possession of the land in which the incident is alleged to have been taken place. Therefore, when prima facie case was made out for issuance of process, it has been issued, for

which no interference is required at the hands of this Court. Writ petition stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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