

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2336 OF 2020

**BHAGWAN SAMBHAJI BUKTARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mr. A.D. Hande, Advocate for applicants

Mr. S.D. Ghayal, APP for respondent No.1

Mr. P.P. Dawalkar, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 19th SEPTEMBER, 2022

PRONOUNCED ON : 24th NOVEMBER, 2022

ORDER :

1 Present application has been filed for quashment of the First Information Report as well as by way of amendment the entire proceedings against the applicants by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. A.D. Hande for applicants, learned

APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mr. P.P. Dawalkar for respondent No.2.

3 The applicants are the near relatives of each other. The applicant Nos.1, 5, 6 and respondent No.2 are the children of one Sambhaji Limbaji Buktare and other applicants are their near relatives. Sambhaji was the owner and possessor of land bearing Gat No.141 admeasuring 1 H 60 R situated at village Wadi (Bk), Tq. & Dist. Nanded. A Sanad was issued by Tahsildar, Nanded on 26.05.1992 in respect of 00 H 60 R land in the name of Sambhaji and the remaining 01 H 00 R land is under consideration with the Government for processing. The applicants say that respondent No.2 intends to grab entire land by dispossessing his father and family i.e. the applicants. It is also stated that Sambhaji i.e. father filed Regular Civil Suit No.205/2017 seeking perpetual injunction against respondent No.2. The temporary injunction application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 came to be allowed by learned 4th Joint Civil Judge Junior Division, Nanded on 21.12.2018. It is then contended that the respondent No.2 is continuously disturbing the possession of Sambhaji and the family and various complaints have been filed. However, the respondent No.2 has also filed the impugned First Information Report, which came to be registered vide Crime No.391/2020 with Bhagya Nagar Police Station, Nanded on

05.11.2020, for the offence punishable under Sections 143, 147, 323, 504, 506, 352, 427 of the Indian Penal Code, 1860. The said First Information Report is nothing but a concoction and just to show that he is in possession of the property. When the respondent No.2 has been restrained he could not be said to be in possession of the property. Due to the civil dispute the applicants have been falsely implicated. The panchnama executed on 19.08.2022 would also show the possession of the Sambhaji and the applicants. Perusal of the entire charge sheet would also show that there is no incriminating material against the applicants.

4 Learned Advocate appearing for the applicants has relied on the documents showing possession of Sambhaji as well as the order passed in the civil suit to support his contention. He also submitted that there was no question of forming an unlawful assembly by the applicants and commission of any crime. The said First Information Report as well as entire proceedings deserve to be quashed and set aside.

5 Per contra, the learned APP appearing for the State as well as learned Advocate for the respondent No.2 strongly opposed the application and submitted that the evidence has been collected to show that the offence has been committed. It is the say of the respondent No.2 that there is 2 Acres

gairan land, as the land in Gat No.141 wherein the respondent No.2 and his family are cultivating and taking crops. Applicants are now resisting the claim of the respondent No.2, however, the charge sheet would show that the family members of the respondent No.2 had received injuries and there are supporting statements of the independent witnesses also. This is not the fit case where the inherent powers should be exercised.

6 At the outset, it is to be noted that though the applicants are claiming ownership and possession over the piece of land from the order that was passed under Order 39 Rule 1, 2 of the Code of Civil Procedure by learned 4th Joint Civil Judge Junior Division, Nanded on 21.12.2018 that it is in respect of 60 R land from Gat No.141, whereas it was the claim of Sambhaji that he is the owner and possessor of 01 H 60 R land from Gat No.141/8. The documents on record show the said fact. Now, in the impugned First Information Report respondent No.2 claims that he possesses 2 Acres of land from Gat No.141 and it is specifically stated that adjoining the said 2 Acres of land there is land belonging to his father. That means, his father is cultivating the said land and his father resides with applicant No.1. Therefore, *prima facie* it appears that the two pieces of land, on which the parties are claiming, appear to be different. Further, as regards the formation of unlawful assembly, assault, outraging of modesty etc. there are statements

of witnesses. It is not only by the family members of respondent No.1 but that of independent witnesses also i.e. Lalitabai Shinde, Laxman Eknath Buktare, Uttam Chatru Rathod, wherein it is stated that there was use of axe. Further, there are photographs also produced by the respondent No.2. The medical certificate also shows hurt caused to the family members of respondent No.2. Therefore, there appears to be prima facie evidence and under the said circumstance this cannot be taken as a fit case to exercise inherent powers. The application, therefore, deserves to be rejected. Accordingly, it is rejected.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

agd