

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2810 OF 2021

Ramesh s/o Murlidhar Karale
Age – 63 Years, Occu – Legal Practitioner,
R/o. “Audumbar”, Advocate Colony,
Tawale Nagar, Aurangabad Road,
Ahmednagar, Tal. District – Ahmednagar.

... Applicant
(Accused No.4)

Versus

1. The State of Maharashtra
through Incharge Officer,
Police Station, Loni, Tal. Rahata,
Dist. Ahmednagar;
(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay
Bench at Aurangabad.)

2. Laxman s/o Revannath Bhavar
Age : 40 years, Occ.: Agri. & Busniess,
R/o. Dadh (Bk), Tal. Rahata,
Dist. Ahmednagar.
(Original Complainant)

... Respondents

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Mr. Sandip Ramnath Andhale, Advocate for the Applicant.
Mr. B. V. Virdhe, APP for Respondent No.1-State.
Mr. B. G. Sagade, Advocate for Respondent No.2.

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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

**Reserved on : 11.10.2022
Pronounced on : 20.10.2022**

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :-

1. By way of instant proceedings, the applicant is praying for quashing Crime No. 0401/2021 dated 13.10.2021 registered at Police Station Loni, Taluka Rahata, District Ahmednagar, and the consequential case bearing R.C.C. No. 100 of 2022 pending on the file of learned Judicial Magistrate First Class, Rahata, District Ahmednagar. The above crime was registered for the offence punishable under Sections 385, 341, 323, 504, 506, 507 r/w 34 of I.P.C.

2. Brief facts of the case are as under :

a. A complaint came to be lodged at the instance of present respondent no. 2 Laxman. Its sum and substance is that name of father of the complainant is Renukanath and he has a step brother Ashok. He has a step sister Yashoda who is married to Suresh Bajirao Karale, who is cousin of present applicant Ramesh.

b. It is stated in the complainant that there is ancestral land ad-measuring 1 H 90 Are at Wanjoli and complainant also has self acquired property at Suregaon Road. It is alleged that father, step brother and his relatives i.e. Suresh Karale and present applicant Ramesh repeatedly telephoned the complainant asking him to sell his

land and to give Rupees 60 lakh to them. About 7 to 8 days back, they had called him and issued threats.

c. Allegations are made that on 12.10.2021, while he was returning from Newasa on his motorcycle, at around 9.45 p.m., his motorcycle was intercepted by his father and step brother Ashok. Father caught hold of him by his collar and gave him fist blows whereas Ashok, step brother gave him fist and kick blows and both of them demanded Rupees 60 lakh. It is alleged that his father and step brother threatened him that if demand was not met with, false cases would be lodged apart from issuing life threats. In such background, the complainant has implicated his father Renukanath, step brother Ashok, both residents of Wanjoli, Suresh Bajirao Karale and the present applicant Ramesh. On the strength of the above complaint, present crime was registered.

SUBMISSIONS

3. Learned counsel for the applicant would strenuously submit that the above complaint is false, concocted and afterthought. That there was no incidence as alleged by the complainant on the night of 12.10.2021. Learned counsel invites attention of the Court to the contents of the complaint and would vehemently submit that no role

whatsoever is attributed to the present applicant. In fact he is arraigned as accused no.4. According to learned counsel, papers of civil dispute are also annexed with the instant proceedings. It is pointed out that in fact, present proceeding is a counter blast to the complaints lodged by him at Kotwali Police Station against present complainant and papers to that extent are also annexed herewith. Apart from attributing delay in lodging complaint, it is submitted that even going by the FIR, no overt act is attributed to the present applicant in the alleged episode dated 12.10.2021.

Thus, while concluding, he submits that impleadment of the present applicant is with malicious intentions and just to harass the applicant. That continuation of such proceedings is apparently abuse of the process of law and hence he prays for quashment.

4. The learned APP strongly opposes the above submissions by pointing out that present applicant is named in the FIR. There being sufficient material, he along with others are chargesheeted. That no case is made out for quashment. That it would be too early to give clean chit to the applicant. That prosecution should not be deprived of undertaking trial of the applicant. On above grounds, he prays to dismiss the proceedings.

5. We have heard both sides to their satisfaction.

6. We have minutely scrutinized the papers before us including FIR. On carefully going through the FIR, it is emerging that according to complainant-respondent no.2, main accused no.1 is his father Renukanath. Accused no.2 is his step brother, accused no.3 is husband of his step sister. Present applicant - accused no.4 is said to be cousin of husband of step sister. It is also emerging that there is some ancestral land and dispute regarding the same which is pending in the civil court. Thus, there is dispute between father and step son on the one hand and the complainant on the other hand.

7. On examining contents of the complaint, it is revealed that according to complainant-respondent no.2, at 9.45 p.m. of 12.10.2021, while he was returning from Newasa on his motorcycle, accused no.1 Renukanath (father) and accused no.2 Ashok (step brother) both intercepted him. It is alleged in the complaint that father accused no.1 caught hold of him and gave him fist blows, whereas accused no.2 Ashok beaten him with kicks and blows also. Thus, it is apparently seen that no overt act whatsoever is at all attributed to present applicant Ramesh. But surprisingly, he too is named along with others.

8. The main thrust of learned counsel for the applicant is that the above complaint is a counter blast to the complaint at the instance of the present applicant and that no role is attributed to him in the alleged episode of 12.10.2021. That complaint is in the backdrop of civil dispute *inter se* between the parties.

9. Papers of R.C.S. No. 1269 of 2019 are placed on record. Therefore, undisputedly, there is blend of civil dispute between the parties. Annexed herewith are also papers of complaint at the instance of present applicant bearing N.C.R. Nos. 1112 of 2020 and 763 of 2021 registered with Kotwali Police Station.

10. Therefore, the applicant has demonstrated that there is civil dispute pending in the court of law. That apart, there is also a case from applicant's side against the present complainant. It is revealed that complaints at the instance of present applicant are prior in time to the complaint at the instance of respondent no.2. Therefore, there is no hesitation to hold that present complaint is a counter blast.

11. By various judgments, the Hon'ble Apex Court has time and again held that, when there is use of criminal law in the backdrop of civil disputes and when it is clear that proceedings are initiated with

ulterior motive, it amounts to abuse of process. Few landmark cases on this point which are referable are as under :

1. **M. Suresh and others v. State of Andhra Pradesh and another; (2018) 15 SCC 273,**
2. **Chandran Ratnaswami v. K. C. Palanisamy and others; (2013) 6 SCC 740,**
3. **Inder Mohan Goswami and another v. State of Uttaranchal and others; (2007) 12 SCC 1,**

12. In the case of **M. Suresh and others** (supra), in para 10, the Supreme Court has observed as under :

10. We find from the documents on record, particularly the counter-affidavit of the respondent himself and the cancellation deed dated 9-10-2006 filed along with the counter-affidavit that the dispute between the parties is purely of civil nature. Even the stand of the complainant is that the matter has already been resolved and the complainant has already received the amount of Rs.95 Lakhs against the payment of Rs 85 Lakhs. However, according to him, the appellants were liable to pay further sum of Rs 30 Lakhs as the cheques for the said amount have been dishonoured. Mere fact that the cheques have been dishonoured and the appellants may be liable to pay further amount to the complainant will not by itself make out a case of cheating. It is a dispute for which the respondent complainant can take his remedies under the law. We are conscious that merely because a case involves a civil dispute does not by itself bar remedy under criminal law if a case is made out. At the same time, process of criminal law cannot be pressed into service merely for settling a civil dispute when no offence is committed. Law on the point is well settled in series of judgments of this Court including Hridaya Ranjan Prasad Verma v. State of Bihar ; (2000) 4 SCC 168, Anil Mahajan v. Bhor Industries Ltd. ; (2005) 10

SCC 228, Indian Oil Corpn. v. NEPC India Ltd. ; (2006) 6 SCC 736, Inder Mohan Goswami v. State of Uttaranchal ; (2007) 12 SCC 1 and Chandran Ratnaswami v. K.C. Palanisamy ; (2013) 6 SCC 740.”

13. In the case of **Chandran Ratnaswami** (supra), the Supreme Court has observed that there is a growing tendency in business circles to convert purely civil disputes into criminal cases. There is an impression that civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors. It is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

14. In the case of **Inder Mohan Goswami** (supra), the Supreme Court referred various judgments including **State of Haryana and others v. Ch. Bhajan Lal and others ; AIR 1992 SC 604** and in the facts and circumstances of the case, has observed that the dispute in question was purely of civil nature and that initiating criminal proceedings by the respondents against the appellants was clearly an abuse of the process of the court.

15. Bearing in mind the above settled legal proposition, it is clear that there is history of civil dispute between the complainant and

accused nos. 1 and 2. It is to be borne in mind that present applicant is not in close relation with either complainant or other accused. Rather, he happens to be cousin brother of accused no.3 Suresh who is husband of applicant's step sister.

16. As regards involvement of the present applicant in the alleged episode, from the FIR itself it is evident that no role whatsoever is attributable to the present applicant-accused no.4, however, still his name is inserted in the FIR without attributing any overt act to him. Taking into account above facts, when there is no material against the present applicant, in our opinion, continuation of criminal proceedings against such applicant would amount to sheer abuse of process of law.

17. It would also be profitable to refer and rely upon another landmark judgment of the Supreme Court in the case of **State of Haryana and others v. Ch. Bhajan Lal and others ; AIR 1992 SC 604.** Returning to the contentions of the complaint and comparing it with the guidelines laid down in the above ruling by the Hon'ble Apex Court, more particularly clause (7), in our opinion, the present proceeding is sheer abuse of process of law.

18. In the light of the above, it would not be desirable to allow prosecution to be continued as against the present applicant-accused no.4. Having made out a case on merits for entitlement of relief, we proceed to pass the following order:

ORDER

I. The application is allowed.

II. The FIR bearing Crime No. 0401 of 2021 dated 13.10.2021 registered at Police Station Loni, Taluka Rahata, District Ahmednagar and the R.C.C. No. 100 of 2022 pending on the file of learned Judicial Magistrate First Class, Rahata, District Ahmednagar, **to the extent of the present applicant**, are quashed and set aside.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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