

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 952 OF 2021**

Hari s/o. Arjun Kale and anr. ... Applicants
V/s.
The State of Maharashtra and ors. ... Respondents

Mr. S.P. Rajepandhare for the Applicants.
Mr. J.P. Yagnik, APP for the Respondent/State.
Mr. Rushikesh Kale i/b Mr. Viresh Purwant for Respondent No.3

**CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.**

DATE : 12 JULY 2022.

P.C.

. Heard the learned Counsel for the parties.

2. The Applicants have sought to invoke the powers of this Court under Section 482 of the Code of Criminal Procedure to quash the FIR No.64 of 2021 filed by Respondent No.3 registered at Salgar Vasti Police Station, Solapur for offence under Section 379 read with Section 34 of the Indian Penal Code.

3. The Respondent No.3 filed the complaint stating that the Respondent No.3 has purchased the land in question from one

Shri.Shantaram Wadkar by registered Sale Deed dated 21 August 2020. This land was allotted to Shri Wadkar as project affected person. Respondent No.3 alleged that the Applicants were contractors and illegally removed the minor minerals from the land owned by the Complainant and caused loss of almost to the tune of Rs.5437350/-. The quantity of minor minerals taken away was 18,124.50 brass. The Respondent - Complainant alleged that the excavation was done from March 2020 to September 2020. The FIR is at investigation stage and charge-sheet is not yet filed.

4. The learned Counsel for the Applicants firstly submitted that the Applicants are government contractors and were excavating the minor minerals for the purpose of construction of road and they had permission to do so from the government authorities. The learned Counsel further submitted that the land from which excavation was done was the government land inasmuch as that it was allotted to a project affected person, but the possession was not taken by him. He then submitted that the excavation was done in some other piece of land.

5. On the contention that the government authorities has given permission, the learned Counsel for the Applicants had taken time to take instructions and on instructions accepts the position that there was no such permission. The Applicants have also been unable to demonstrate that the land which was stated to be purchased by

the Respondent No.2- Complainant was government land. The FIR states that it was allotted to the project affected person who in turn sold it to the Complainant. As regards the excavation being done on some other land is concerned, it would be the matter of defence of the Applicants. Reading of the FIR, it cannot be said that no offence /cognizable offence is made out. The arguments advanced before us are on the defence of the Applicants. Case before us cannot be considered as exceptional case for exercise of inherent powers of this Court.

6. The Application is accordingly, rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)