

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 837 OF 2018**

Rajendra Vitthal Pagdhare ... Applicant

Versus

The State of Maharashtra and another ... Respondents

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Mr. G.T. Kanchanpurkar for the Applicant.

Mrs. A.S. Pai, PP for the State.

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

DATED : 24 JUNE 2022

P.C. :-

By this Application, the Applicant has sought to quash the FIR No.I-93/2018 filed on 8 June 2018 registered with Kasa Police Station.

2. We have been informed subsequently that charge-sheet has been filed. The FIR was lodged by the Respondent-Complainant on the ground that the Respondent-Complainant had a civil dispute in respect of the land with the Applicant and had filed a Regular Civil Suit No. 120 of 2015 in the Civil Court at Dahanu. The Civil Court, Dahanu on 18 April 2018 decreed the suit and declared that the land belongs to the Respondent-Complainant and enjoined the Applicant from interfering with the possession of the Respondent-Complainant.

3. It is further alleged by the Respondent-Complainant that the Respondent-Complainant had put up a board declaring his ownership which board was removed and when he was putting up a compound, the Applicant threatened him, on which the Respondent-Complainant made complaints in the police station. On payment, the Respondent-Complainant also took police protection and put up a compound on 7 June 2018. It is stated that on 8 June 2018, the Applicant had parked five heavy vehicles in his land while encroaching when it was objected to, the Applicant persisted. Hence, the FIR was filed under Section 447 read with Section 34 of Indian Penal Code.

4. The learned Counsel for the Applicant submitted that the FIR is a counter blast to the civil suit filed and since there is a civil suit filed, if there was any breach of injunction order passed, the appropriate action for the Applicant was to approach the Civil Court. The learned Counsel for the Applicant submitted that it is the case of the Applicant that the Applicant is the owner of the land. The learned Counsel for the Applicant has informed us that the Applicant has filed an Appeal against the injunction order in which notice has been issued and the Appeal is pending.

5. No order of stay of injunction is placed before us neither any statement is made. Apart from this position, in the FIR it is stated not only this incident but there are incidents prior because of which Complainant

required police protection. It cannot be said that the ingredients of criminal trespass are not present in the complaint. Pendency of civil suit cannot be a bar for filing the complaint. In fact, it is the case of the Respondent-Complainant out that it is because of the dispute, the Applicant committed these acts. It is also not the contention of the Applicant that he has not parked the vehicles at all at his place. The case of the Applicant that he is the owner of the land will be decided in the civil suit and the arguments regarding the correctness of the FIR as argued before us could be his defence. The Criminal Application is accordingly rejected.

6. The learned Counsel for the Applicant states that the interim order of staying the proceedings before the trial court should be continued for some time. Having considered that the cognizable offence is made out and that the arguments advanced before us are more appropriate to be advanced at the trial, we see no reason to extend the interim order any further. Request is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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