

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 1212 OF 2018

1. (Shri Keshavrao s/o. Tulshiram Bangadkar,
Aged 82 years,
Occupation – Retired,
R/o. Plot No.1460, Nandanwan Lay-out - Dead.
Nagpur.)
- 1-A1 Sushila wd/o Keshavrao Bangadkar,
Aged 75 years, Occ.-Household,
R/o. 1460, Nandanvan Layout, Nagpur.
2. Smt. Vijaya Ramesh Pise,
Aged 58 years, Occ.- Retired,
R/o. Ashirwad Nagar, Nagpur.
3. Smt. Rekha Vasant Shendware,
Aged 56 years, Occ.- Retired,
R/o. Nandanvan Layout, Nagpur.
4. Adv. Anil Keshavrao Bangadkar,
Aged 53 years, Occ.- Advocate,
R/o.305, Rahul Complex-2, Ganeshpeth,
Nagpur-18.
5. Smt. Sunita Kailash Daf,
Aged 51 years, Occ.-Teacher,
R/o. Dhangawali Nagar, Hudkeshwar,
Nagpur.
6. Piyush Keshavrao Bangadkar,
Aged 48 years, Occ.- Private,
R/o.1460, Nandanvan Layout, Nagpur.PETITIONERS

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1. Commissioner of Police,
Nagpur, Civil Lines, Nagpur.
2. Deputy Commissioner of Police,
Zone-4, Ajni Nagpur.

3. Police Station Nandanvan through its Police Inspector, Nandanwan, Nagpur.
4. Vikas s/o. Manohar Jaiswal,
Aged 28 years, Occ.- Private,
R/o. House No.1983, Chandrikapure,
Lay-out, Godhani Railway,
Nagpur – 440034.
5. Mahesh s/o. Mansaram Chandrawel,
Aged 42 years, Occ.- Private,
R/o. Plot No.31, Behind W.C.L. Office,
Snehadeep Colony, Jaripatka,
Nagpur – 440014.
6. Smt. Pushpabai Wd/o. Mahadeo Vairagade,
Aged 69 years, Occ. - Household.
7. Prashant S/o. Mahadeo Vairagade,
Aged 45 years, Occ.- Private.
8. Yogesh s/o. Mahadeo Vairagade,
Aged 42 years, Occ. - Private,
Respondent No.6 to 8 R/o. Ward No.1,
Upase Layout, New Bhanegaon,
Khaparkheda, Tah. - Saoner,
District – Nagpur – 441102.
9. Sou. Vaishali w/o. Raghunath Ragit,
Aged 44 years. Occ. - Household,
R/o. House No.42, Near Ram Mandir,
Sitanagar, Somalwada, Khamla,
Wardha Road, Nagpur – 440025.

... RESPONDENTS

Mr. S. P Bhandarkar, Advocate for the Petitioners.

Mr. S. S. Doifode, A.P.P. for the Respondents/State.

Mr. A. S. Mardikar, Sr. Advocate a/w. Mr. A. A. Mardikar. Advocate for the Respondent Nos.6 to 9.

CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE : 04.05.2022.

ORAL JUDGMENT : [PER: AMIT BORKAR, J.]

1. Heard.

2. **Rule.**

3. By this Writ Petition under article 226 and 227 of the Constitution of India, the petitioners are seeking relief against the respondent Nos.1 to 3 to register a First Information Report against the respondent Nos.4 to 9 on the basis of complaint dated 18.12.2018.

4. It is the case of the petitioners that the petitioner who was 82 years old had lodged a complaint with the respondent Nos.1 to 3 on 18.12.2018 alleging that the respondent Nos.4 and 5 along with another person tried to enter into his premises and assaulted the petitioner. It is alleged that they assaulted son and daughter-in-law of the petitioner injuring them. It is alleged that he had earlier lodged the complaint dated 03.12.2018 with police, which was replied stating that the petitioner should approach the Court for redressal of his grievance. Since there is a failure on the part of respondent Nos.1 to 3 to perform legal duty cast on them under the provisions of the Code of Criminal Procedure, the petitioner is seeking writ of mandamus for enforcement of his legal rights.

5. This Court on 22.12.2018 issued notice for final disposal and also granted liberty to the petitioner to seek police protection.

6. The respondent No.1 in pursuance of the said notice has filed reply stating that the dispute between the petitioner and the respondent Nos.4 to 9 is essentially a civil dispute; enquiry under Section 145 of the Code of Criminal Procedure is initiated; request of the petitioner for grant of police protection has been rejected; and issue involved in the petition is pending before the competent Authority under Section 145 of the Code of Criminal Procedure. Hence petition has no merit.

7. The respondent Nos.4 and 5 have also filed their reply stating that the dispute which is subject matter of petition is civil dispute and therefore, the Investigating Agency was justified in not registering the offence against them.

8. The respondent Nos.6 to 9 have also filed their reply and stated that since they are co-owners, there can not be any action against them.

9. This Court had issued notice for final disposal. Today, the learned Advocate for the respondent Nos.4 and 5 is absent.

Since This Court has issued notice for final disposal, we are deciding present petition finally.

10. We have carefully considered the averment in the petition and complaint which was lodged by the petitioner with respondent Nos.1 to 3 and the replies filed by the respondent Nos.6 to 9. On perusal of the complaint we are satisfied that the allegation in the complaint *prima facie* discloses cognizable offences under the provisions of the Indian Penal Code. It *prima facie* appears at this stage that respondent Nos.4 and 5 have no title or interest in the property which is subject matter of petition, except power of attorney executed by respondent Nos.6 to 9. *Prima facie* respondent Nos.4 and 5 have no authority entered into premises owned by the petitioner without following due process of law.

11. Mr. Bhandarkar, learned Advocate appearing for the petitioner states that he has instructions to delete the names of the respondent Nos.6 to 9. As allegations in the First Information Report discloses *prima facie* cognizable offence under the provisions of the Indian Penal Code against the respondent Nos.4 and 5, we are satisfied that the respondent Nos.1 to 3 needs to be directed to register offence against the respondent Nos.4 and 5.

12. We therefore pass following order :

- i] The respondent Nos.1 to 3 are directed to register the offences under the provisions of Indian Penal Code on the basis of complaint filed by the petitioner dated 18.12.2018.
- ii] Insofar as the respondent Nos.6 to 9 are concerned, the petitioners shall carry out the amendment to delete the respondent Nos.6 to 9.

13. Rule is made absolute in above terms. Pending application(s), if any, stand(s) disposed of.

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