



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

CRIMINAL WRIT PETITION NO.95 OF 2017

SHANKAR S/O HASAJI SUTARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. P. M. Gaikwad, Advocate for the petitioner
Mr. S. S. Gangakhedkar, Advocate for respondent Nos. 2 and 4
Mr. S. B. Jadhav, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 4th DECEMBER, 2023

P.C. :-

1. This petition takes exception to the order dated 1st December, 2016 passed by the Addl. Sessions Judge, Basmath, Dist. Hingoli in Criminal Revision Application No. 06/2015 whereby the order passed by the learned Magistrate in Criminal M.A. No. 12 of 2015 dated 24th February, 2015 of directing registration of crime against accused Nos. 1, 4 and 5 was set aside.

2. Petitioner has filed application before the JMFC, Aundha Nagnath being Cri. M.A. No. 12/2015 contending that he belongs to the scheduled caste community and the respondents belong to the upper caste. It is his contention that he is in possession of land in question. It is alleged that an incident occurred on 11th January, 2015 when the petitioner and his

family members were working in the agricultural field and at that time the respondents therein came along with other persons and the petitioner was assaulted, was also abused and insulted over his caste. Since the concerned Police Station failed to register of the crime, application under Section 156(3) of Cr.P.C. came to be filed. Learned Magistrate by passing order dated 24th February, 2015 directed registration of crime only against accused Nos. 1, 4 and 5 excluding other accused. These accused persons being aggrieved by the said order preferred Criminal Revision Application No. 6 of 2015 under Section 397 of Cr.P.C. The learned Revisional Court allowed the said application and set aside order passed by the Magistrate.

3. Learned counsel for the petitioner drew attention of the Court to the observations made by the learned Magistrate in order of directing registration of crime against accused Nos. 1, 4 and 5. By relying upon documentary evidence it is observed therein that the accused were never in possession over the disputed land. It is his further submission that contrary to the said findings it is held by the learned Revisional Court that the learned Magistrate has concluded that the complainant is not in possession of the said land.

4. Learned counsel for the respondents opposed the petition by

contending that the orders passed by Tenancy Court on the reference made by the Civil Court clearly indicates that the petitioner is not tenant in respect of the said property and hence it is rightly held that the claim of the petitioner cannot be believed.

5. Learned Addl. Sessions Judge was exercising powers under Section 397 of Cr.P.C while entertaining challenge to the order passed by the learned Magistrate. Needless to say that the jurisdiction of the Sessions Court under Section 397 of Cr.P.C. is extremely limited. The Court has to see as to whether the Trial Court has exceeded the jurisdiction or failed to exercise the jurisdiction vested in it. Of course if the order is totally perverse and led to miscarriage of justice then the same could be interfered with. There is no dispute about the fact that it was within a jurisdiction the learned Magistrate to entertain the application under Section 156(3) of Cr.P.C. and to pass order thereon. Perusal of the order passed by the learned Magistrate indicates that he has applied mind to the facts of the case and has not mechanically issued order directing investigation against the accused. Since no offence was disclosed against accused Nos. 2 and 3 application came to be rejected to their extent.

6. In fact the learned Magistrate has held that accused were not in possession of the property but Revisional Court has observed that

learned Magistrate while passing impugned order concluded that the complainant/petitioner is not in possession of the said land. This observation is factually incorrect. Moreover, having regard to the limited jurisdiction of Revisional Court under Section 397 of Cr.P.C., it was not open for the Court to record findings on taking in to consideration other material placed before it by accused. In any case the orders passed by Tenancy Authority only shows that the complainant may not be tenant but his possession over land in question could not have been disbelieved at this stage, for purpose of denying prosecution of accused.

7. Thus, Revisional Court has exceeded his jurisdiction under Section 397 of Cr.P.C. In the result, the impugned order can not sustain.

8. Consequently, petition stands allowed in terms of prayer clause (C) and (D). Needless to say that above observations are made for the purpose of deciding this writ petition and shall not be binding on Trial Court while dealing with said issue on merit.

(R. M. JOSHI, J.)

ssp