

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

CRIMINAL WRIT PETITION NO.107 OF 2022

DILIP SURASING PADVI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. S. T. Kazi

APP for Respondent No. 1: Mr. S. P. Sonpawale

Advocate for Respondent No. 2 : Mr. Joslyn Menezes h/f

Mr. P. S. Paranjape

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CORAM : R.M. JOSHI, J

DATE : JULY 28, 2023

PER COURT :

1. Rule. Rule made returnable forthwith. By consent of both sides, heard finally.

2. This Petition takes exception to the order dated 30.07.2012 passed by JMFC, Taloda, Dist. Nandurbar in R.C.C. No. 87/2010 issuing process against Petitioners.

3. Facts which led to filing of present Petition can be narrated in short as follows:

Respondent/Original Complainant filed private complaint on 06.07.2010 for offences punishable under Sections 436, 380, 147 read with Section 34 of IPC. The complainant and witnesses are encroachers of present land since 1972 to 1978 and they filed suit in year

2006. It is alleged that Petitioners and other accused started threatening them to withdraw suit. It is alleged that they came to spot and stolen cash, articles, animals of complainant and others. The huts of these persons were burnt by the Petitioners and others. During investigation done by police, statement of witnesses were recorded and panchnama was drawn of spot. Investigating officer filed 'B' summary, which was rejected by JMFC. Thereafter an order came to be passed on 30.07.2012 issuing process. This order came to be challenged herein.

4. Heard submissions of learned Counsels for both sides.

5. Perusal of the record indicates that the learned JMFC has recorded statements of witnesses wherein it is specifically stated by them about the incident occurred as recorded in the report. Though the contention of learned Counsel for the Petitioners that there are no specific allegations against Petitioners, however, perusal of the complaint shows that the Petitioners are named as proposed accused and there is specific allegation that all of them came to the spot

and they set huts of the informant and others on fire and committed theft. Perusal of the impugned order indicates that the learned JMFC has relied upon the evidence in the form of report of the Forest Department wherein the existence of huts of 72 in numbers was found in the year 2009. There is very specific observation made that from documents seized it is clearly seen that the relevant place was habitated. As against this, if the report submitted by investigating officer is seen then it indicates that the observation made therein that there is nothing to show existence of any houses at the place of incident, which is contrary to the material placed before learned Magistrate.

6. From *prima facie* perusal of the material on record before the learned JMFC and considering documentary evidence led, learned Magistrate was fully justified in rejecting 'B' summary report. Similarly case is made out by complainant for issuance of process against the accused. Hence, no perversity is found in the impugned order. Hence, Petition stands dismissed. Rule is discharged.

(R.M. JOSHI, J.)