

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

137 CRIMINAL WRIT PETITION NO.311 OF 2023

GAURAV SAHEBRAO DHUMAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr.N. L. Jadhav and Mr.R.C.Bramhankar
APP for Respondents-State : Mr.M.M.Nerlikar

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 17 April 2023

PER COURT :-

1. Heard both the sides finally.

2. The petitioner claims that he is co-owner in possession of a portion of the land wherein he had erected a shed and laid a pipeline. He alleges that the co-owners have sold their share to certain individuals who criminally trespassed into the land and demolished the shed erected by him. It is his case that he reported the matter to Police on 06-09-2022 (Exh.Z-4) and on 08-09-2022 (Exh.Z-5). He was also requesting for conducting a *panchanama* but since the Police turned up a blind eye, he is before us seeking a direction for registration of a crime.

3. The learned Advocate for the petitioner vehemently

submits that there is ample material to demonstrate that though the property was the joint property even he has a share in it and a shed exclusively erected by him in that land together with the pipeline has been demolished. He has named couple of individuals who actually caused the trespass and demolished his shed and pipeline. He would submit that a bare look at the complaint discloses commission of a cognizable offence and in view of the decision in the matter of ***Lalita Kumari v. Govt. of U.P. and Others; (2014) 2 SCC 1***, it is imperative for the Officer-in-charge of the Police Station to register a crime.

4. Learned APP, on instructions from the Investigating Officer, takes us through the enquiry conducted by the Investigating Officer including recording the statements not only of the petitioner but even certain other persons. He submits that after going through the papers of the enquiry and by taking the stock of the facts and circumstances, the Investigating Officer has reached a plausible conclusion that the dispute is purely of civil nature and parties are already before the Civil Court.

5. He also reports that none of the articles were actually taken away but were simply kept aside in the adjoining property. He would further submit that since there is an order of the Civil Court directing not only the petitioner but the other co-sharers

to maintain *status-quo*, the appropriate remedy for the petitioner would be to approach the civil Court and complain about breach of injunction.

6. We have carefully considered the rival submissions and perused the papers.

7. In view of the emphatic directions of the Supreme Court in the matter of **Lalita Kumari** (supra), no sooner a matter reported to the Police which discloses commission of a cognizable offence, it is imperative to register a crime and to reach to a logical conclusion.

8. The complaints (Exhibits Z-4 and Z-5) *ex facie* demonstrate that the petitioner had complained about illegal and unauthorized demolition of tin shed erected by him and removal of the pipeline. The report of the Investigating Officer addressed to the learned APP and placed before us *inter alia* refers to a statement of one of the co-owners - Priya Dhumal who allegedly sold different portions of the land which are stated to be the joint properties of the petitioner, co-owners and these ladies. It is pertinent to note her stand that since the shed erected by the petitioner was coming in the way and obstructing laying of the plots, the shed was removed and the articles were kept aside. This fact itself discloses commission of a cognizable offence.

Moreover, even the Investigating Officer is aware that the civil Court had directed the parties i.e. not only the petitioner but even to the co-owners including these vendors to maintain *status quo*.

9. If in spite of the fact that the civil Court had granted *status quo* when one of the co-owners in her statement recorded by the Investigating Officer admitted to have removed the tin shed belonging to the petitioner, as is being alleged by him, we are unable to comprehend as to how the Investigating Officer could have taken such a bold stand about absence of criminality. In fact directions of the civil Court would corroborate the petitioner's allegation about being in exclusive possession of at least the portion occupied by the tin shed.

10. The petitioner infact had filed two successive complaints dated 06-09-2022 and 08-09-2022 (Exhibits-Z-4 and Z-5). The latter was annexed with the photographs which are also placed before us which apparently demonstrates demolition of a tin shed and debris lying therein even on a motorcycle.

11. Be that as it may, additionally the petitioner was apparently objecting to any sale by the co-owners claiming that there was no partition. He had written to the *Tahsildar* who in

turn had directed Sub-Registrar to not to register any sale-deed in view of pendency of such dispute. Still, the sale-deeds have been executed and registered. We are not going into the validity or otherwise of the same, we are just pointing out this to demonstrate how influential the co-owners could be.

12. In our considered view, the complaints filed by the petitioner 06-09-2022 and 08-09-2022 (Exhibits-Z-4 and Z-5) disclose *prima facie* commission of a crime which deserves to be investigated.

13. We allow the writ petition and direct respondent no.3, Officer-in-charge of Ashti Police Station, Tq. Ashti, Dist. Beed, to treat the complaints of the petitioner dated 06-09-2022 and 08-09-2022 (Exhibits-Z-4 and Z-5) as FIRs, register a crime and investigate it.

(**ABHAY S. WAGHWASE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE