

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1604 OF 2021

Dr. Mohiuddin s/o Shafiuddin Malik Applicant

Versus

The State of Maharashtra & another Respondents

Mrs. A. N. Ansari, Advocate for the applicant.

Mr. P. G. Borade, APP for the State.

Mr. Shaikh Wajeed Ahmed, Advocate for respondent No. 2.

WITH

CRIMINAL WRIT PETITION NO. 452 OF 2020

Syed Mukhtar s/o Syed Khaja & others Petitioners

Versus

The State of Maharashtra & another Respondents

Mr. Taher Ali Quadri, Advocate for the petitioners.

Mr. P. G. Borade, APP for the State.

Mr. Shaikh Wajeed Ahmed, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

RESERVED ON : 18th JANUARY, 2023.

PRONOUNCED ON : 24th FEBRUARY, 2023.

PER COURT : (Per R. M. Joshi, J.)

1. The applicant in Criminal Application No. 1604/2021
and petitioners in Criminal Writ Petition No. 452/2020 are seeking

quashment of First Information Report No. 168/2020 registered with Vimantal Police Station, Nanded and charge-sheet in S.C.C. No. 913/2021 pending before the learned Judicial Magistrate First Class, Nanded for offences punishable under Sections 143, 147, 149, 427, 447, 323, 504, 506 of the Indian Penal Code.

2. The applicant/petitioners have sought to quash the First Information Report lodged by respondent No. 2 mainly on a ground that the allegations therein are false and infact are off shoot of a civil dispute. According to them, the plots from Gat No. 283 situated at Sawangi were purchased by some of them or their family members from Padminibai Shivaji Pawar. In respect of the said plot, civil suit was filed by wife of applicant and another in Criminal Application No. 1604/2021. In the said civil dispute, a compromise took place between the parties by virtue of which, the sale of the plots to the plaintiff is confirmed by the defendants i.e. Padminibai Shivaji Pawar and Shivaji Babarao Pawar. It is submitted that they have been falsely implicated because of the civil dispute.

3. Learned counsels for applicant/petitioners drew attention of this Court to the civil proceedings particularly Special

Civil Suit No. 78/2013 which was filed by Mahajabeen w/o Mohiyoddin Malik and Nikhat Fatema w/o Tanveer Hashmi against the vendors. It is also pointed out that on 13th August, 2019, compromise took place between plaintiffs and defendants therein and by virtue of which the vendors have accepted title and possession of the plaintiffs over the suit plot. It is submitted that the said compromise indicates that all disputes between the parties were settled and hence, the present First Information Report and consequential proceedings need to be quashed. It is argued that in the statement of defendant No. 1, reference of presence of witness Sk. Bhiku at the time of occurrence of incident is not found. This according to him, is sufficient circumstance to discard the statement of the said witness. It is further submitted that the material on record which is so inconsistent does not disclose commission of cognizable offence by the applicant and petitioners herein.

4. Learned APP and learned counsel for respondent No. 2 opposed the said contention with submission that the First Information Report in question has no connection with the civil dispute as the civil suit was filed in the year 2013 whereas the incident in question had occurred on 25th July, 2019. It is submitted

that several allegations are made in the First Information Report attributing specific role to all the accused of entering in the agricultural field and causing damage to the standing crop, shed, meter and borewell of respondent No. 2. It is submitted that the dispute is purely criminal in nature and hence, the First Information Report cannot be quashed at this stage. Learned counsel for respondent No. 2 placed reliance on the case of Mohd. Allauddin Khan vs. State of Bihar and others, **(2019) 6 SCC 107**, to support his argument.

5. There is no dispute that Special Civil Suit No. 78/2013 was filed by Mahajabeen Malik i.e. wife of applicant in Criminal Application No. 1604/2021 against the vendors and that the said suit was compromised on 13th August, 2019 wherein the vendors have accepted the title and possession of plaintiffs therein in respect of the suit plots. The question for consideration of this Court is as to whether the said compromise has any bearing on the maintainability of the criminal complaint made by respondent No. 2. Secondly, as to whether prima facie the material collected during investigation and the allegations in the First Information Report constitute any cognizable offence against the applicant/petitioners.

6. The law on the point of powers by this Court under Section 482 of the Code of Criminal Procedure is well settled. These powers though wide and plenitude have to be exercised with care and circumspection. These powers can be exercised to quash First Information Report in criminal proceedings where prima facie no case is made out to attract any cognizable offence against the accused even if the entire material on record is accepted to be true. In this regard, reference can be made to the judgment of State of Haryana and others vs.Ch. Bhajan Lal and others, **AIR 1992 Supreme Court Cases 335** wherein illustrations are given under which circumstances the powers under Section 482 of the Code of Criminal Procedure can be exercised by the Court. Keeping in mind the law laid down by the Hon'ble Apex Court, the facts of the present case are assessed.

7. A perusal of the First Information Report prima facie shows that on 25th July, 2019, the accused with other persons entered an agricultural field of respondent No. 2 and caused damage to the standing crop. It is also alleged that some of the accused assaulted respondent No. 2 and damaged the shed, meter and bore wire starter. The charge-sheet indicates that apart from the statement of respondent No. 2, there is statement of Sk. Bhiku who

has also supported the contention of respondent no. 2 about occurrence of incident on 25th July, 2019. Suffice it to say, while exercising power under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India, Court cannot sift and weigh the evidence on record. The material appearing therein must be accepted as it is to be true. Thus, the submissions about alleged discrepancy in statement of both witnesses cannot be considered at this stage.

8. There is further support to the statements of these witnesses from spot panchanama which indicates causing of damage to the shed, meter and borewell. No doubt, there was a civil suit filed by Mahajabeen Malik against parents of respondent No. 2 and the same was compromised, however, that does not lead to a conclusion that there was no occurrence of any incident on 25th July, 2019 as alleged in the report. Incidentally, some of applicant/petitioners have purchased some portion of Gat No. 283 and not the entire agricultural land. The allegation of the respondent No. 2 is that the accused forcibly entered the land owned by him and committed offence.

9. It is pertinent to note that in the instant case, apart from the statements of the informant as well as witness, there is other material to indicate that some incident occurred on 25th July, 2019 and it would be a matter of trial to ascertain as to whether the incident as alleged in the First Information Report has occurred as alleged and the role played by the accused therein. This is not a case where acceptance of the entire material on record along with allegations in the First Information Report do not show any cognizable offence against the applicant/petitioners.

10. We would like to refer to the decision of the Hon'ble Supreme Court in the case of Inder Mohan Goswami and another vs. State of Uttaranchal and others, (2007) 12 Supreme Court Cases 1, wherein the Hon'ble Supreme Court has reiterated that the powers possessed by the High Court under Section 482 of the Code of Criminal Procedure are very wide and the same need to be exercised with care and caution. The inherent powers should not be exercised to stifle the legitimate prosecution. Similarly in another decision in the case of Munshiram vs. State of Rajasthan and another, (2018) 5 Supreme Court Cases 678, the Hon'ble Apex Court has observed that it is no more res integra that Section 482 of the Code of Criminal

Procedure has to be utilised cautiously while quashing First Information Report. The Supreme Court in catena of cases, has quashed First Information Report only after it came to a conclusion that continuing investigation in such cases would only amount to abuse of process of Court.

11. Lastly, the compromise of suit only suggests that Vendors have accepted title and possession of the part of land sold to some of applicants. There is no dispute that the respondent No.2 owns remaining portion from Gat No. 283 and the allegation is with regard to applicants entering his land and causing damages thereto. Thus in our view the compromise of Spl. C. S. No. 78/2013, has no bearing on the criminal complaint and proceeding. Thus, on that ground proceedings cannot be quashed.

12. In view of above discussion and position of law emanating from judgments of the Hon'ble Apex Court, in our considered view, this is not a fit case wherein powers under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure can be exercised justifiably. Hence, Criminal

Application No. 1604/2021 and Criminal Writ Petition No. 452/2020
stand dismissed.

(R. M. JOSHI)
Judge

dyb

(SMT. ANUJA PRABHUDESSAI)
Judge