

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

CRIMINAL APPLICATION NO. 1587 OF 2019

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| 1. Kishor Vishnu Pathak | |
| 2. Manoj Vishnu Pathak | ..APPLICANTS |
| VERSUS | |
| 1. State of Maharashtra | |
| 2. The Sub-Divisional Officer, Parola | |
| 3. The Senior Police Inspector,
Parola Station Officer, Parola | |
| 4. Keshav Laxmansa Kshtriya | ..RESPONDENTS |

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Mr. Hemant Surve and Mr. K.H. Surve, Advocates for applicants
Mr. N.T. Bhagat, A.P.P. for respondent nos.1 to 3
Mr. P.B. Patil, Advocate for respondent no.4

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 14th JULY, 2023**

PER COURT :

1. This application, under Section 482 of Code of Criminal Procedure, has been filed for quashment of First Information Report ('F.I.R.'), being Crime No 146 of 2018 registered with Parola Police Station, Dist. Jalgaon for the offences punishable under Sections 447, 448, 323, 504 and 506 of the Indian Penal Code.

2. Heard.

3. The applicants are the brothers interse. Respondent No.4 – informant and his brother – Dharmendra claimed to have purchased the house properties, bearing C.T.S. Nos. 4406, 4407, 4405, 4411, 4413, 4412, 4409, 4434 and 4435 situated at Parola, Dist. Jalgaon. Gist of the averments in the F.I.R. is that on 30th June, 2018 by 11:00 in the morning, the informant had been to those properties. He noticed both the applicants to have had committed trespass on the property, being C.T.S. No. 4407. The applicants pulled down the eastern side wall of the said property. Southern side gate was removed and an iron gate was placed at that side with lock thereon. While the informant and his brother resisted, the applicants abused and assaulted them. Some hardboard cartons (boxes) of the informant were in the house. Those were removed and thrown away beyond the sight. The crime was investigated and charge-sheet has been filed against the applicants.

4. Learned counsel for the applicants would submit that the informant and his brother are strangers to the family of the applicants and their blood relations. There is a long standing dispute between the applicants and their brothers over ancestral house property. The informant and his brother claimed to have purchased the said house property, of which no partition amongst the informant and his relations has yet taken place. Civil suits have been pending. The informant alone could not be said to have a right to possess the house property. The same is said to have been purchased

by him and others. The applicants have every right to enter upon their own property. It would, therefore, be not an offence of criminal trespass. A false and concocted F.I.R. has been lodged. No incident, as has been alleged in the F.I.R., in fact did take place. A crime relating to the said incident came to be registered about fifteen days after the alleged incident. Except interested words of the informant and his associates, there is nothing to suggest the incident to have taken place. Had they really been assaulted, there would have been injury certificates. According to learned counsel, allowing the prosecution to proceed against the applicants would be an abuse of process of Court. He, therefore, urged for allowing the application.

5. Learned A.P.P. and learned counsel representing Respondent No.2 – informant would, on the other hand, submit that a civil dispute is a double edged weapon. It is a cause for commission of crime. One has to go by the averments in the F.I.R. and statements of witnesses. All these documents prima facie make out involvement of the applicants in the offence in question. No mini trial can be conducted in a proceeding under Section 482 of Cr.P.C. Since there is prima facie material to proceed against the applicants, learned counsel urged for rejection of the application.

6. Considered the submissions advanced. Perused the police papers. The incident is said to have taken place on 30th June, 2018, while the charge-

sheet indicates the report thereof to have been lodged on 11/12th July, 2018 i.e. 11 days thereafter. The dispute pertains to a house property bearing C.T.S. No. 4407. The applicants are alleged to have unauthorisedly entered on the said property and fixed an iron gate towards southern side thereof after removing an old wooden gate. While the applicants were questioned over the said act, they allegedly assaulted Respondent No.4 – informant.

7. The record indicates the present applicants and their brethren have filed a civil suit against Respondent No.4 and some others. Property bearing C.T.S. No. 4407 is one of the subject matters of the said suit. Respondent No.4 has also filed a suit claiming title and possession over the very property. Needless to mention, we are not observing any of the parties to this proceeding to have possession over the said property. It is for the civil Court to decide claim of the respective parties. It shall not be influenced by the order passed herein. Suffice it to say, the parties have a dispute over a house property. Civil suits are pending between them. The incident is alleged to have taken place by 11:00 in the morning of 30th June, 2018. The report thereof has been lodged 11/12 days thereafter, without there being any explanation. We have, therefore, every reason to suspect veracity of the averments in the F.I.R. Directing the applications to stand trial, based on such material, would be an abuse of process of Court. Interest of justice also demands grant of the application.

8. In view of above, criminal application is allowed in terms of prayer clause (B).

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)