

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 916 OF 2022**

1. Ashit S/o Ashok Bankar,
Age : 34 years, Occu. Service,
R/o. Airport Colony, Aurangabad,
Presently R/o At Shirdi,
Dist. Ahmednagar.

2. Amol S/o Ashok Bankar,
Age : 33 years, Occ. Service,
R/o. Airport Colony, Aurangabad.

Petitioners...**Versus**

Kamalabai W/o Bhausahab Bankar
Age : 45 years, Occ. Agriculture,
R/o. At Post Kinhall Tq. Gangapur,
Dist. Aurangabad.

Respondent...

...

Advocate for Petitioner : Mr. Suryawanshi Kamalakar J.

Advocate for Respondent : Mr. Shaikh Rameez M.

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CORAM : KISHORE C. SANT, J.**DATE : 6th JANUARY 2023.****ORAL JUDGMENT :**

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, both the petitions are taken up for final disposal. Hence Rule. Rule made returnable forthwith.

2. The petitioners/original accused against whom a process is issued, have come to this Court praying for quashing the order of issuance of process and consequently, challenging the order in Criminal Revision No.5/2022, which also came to be rejected by the learned Sessions Judge, Vaijapur, Dist. Aurangabad by judgment and order dated 17.06.2022.

3. The respondent had filed a complaint under Section 200 of the Code of Criminal Procedure bearing R.C.C. No.649/2020 against the petitioners and three others for the offences punishable under Sections 323, 504, 506(2) and 427 read with 34 of the Indian Penal Code in the Court of learned Judicial Magistrate First Class, at Gangapur. The learned Magistrate passed the order issuing process on 29.11.2021 after perusing the complaint, verification and documents. The learned Magistrate was also pleased to hear the Advocate for complainant and the process was issued under the said sections.

4. In the Revisional Court, the petitioners submitted that the complaint is false. There is a civil dispute pending between the parties bearing R.C.C. No.28/2019 filed by the present petitioners, which is pending in the Court of learned Civil Judge Junior Division, Gangapur praying for injunction and possession in which the present respondent is a party/Defendant No.3. Thus, the criminal complaint is filed only to counter the civil dispute. If at all there was any grievance, it was in respect of the boundary of the land and cultural land. Even the allegation in the complaint is that the present petitioners along with other accused persons have uprooted the poles showing boundary marks. Thus looking to the allegations, it is clear that the allegation was in respect of encroachment on the land. Thus in this case, the remedy was to file a suit. However without resorting the civil remedies and just to harass the parties, she has filed criminal case. The learned Sessions Court however rejected the revision on two counts, firstly on the ground of limitation and secondly that the order passed by the learned JMFC is held to be legal, proper and correct.

5. In the present petition, the learned Advocate for the petitioners

have relied upon the judgment reported in 2004(2) Mh.L.J. 465 in the case of **Kamal Kishor Gupta and others Vs. D. S. Dhawde and another**. Wherein, this Court has held that when civil dispute was pending, the Court should have been slow in taking cognizance of the criminal complaint. In that case, it was a complaint for the offences punishable under Sections 406, 420 i.e. necessarily in respect of the property or the amount. It is in that view of the matter, the Court had taken that view. Here in the case, the civil dispute pending is in respect of land. Looking to the allegations, it is seen that the allegation is not only about uprooting of the boundary marks, it is also that the present petitioners and other accused have abused the respondent and her husband. They were also threatened. Thus there is a distinction between near encroachment on the land and giving threats on that count. Giving threats certainly cannot be said to be a civil dispute. At the most it can be said that the assault or the threatening is because of the civil dispute.

6. So far as the ground of limitation is concerned, the learned Advocate rightly placed reliance upon the judgment of the Hon'ble

Supreme Court. The Hon'ble Apex Court has suo motu held that for the period from 15.03.2020 till 28.02.2022, the limitation shall not run or the said period shall stand excluded in computing the period prescribed under various acts. Thus on these counts, this Court has no difficulty to accept the contention of the petitioners that the revision petition was within limitation. He has also placed on record two certificates showing that the petitioners were on duty on the date of alleged incident. The petitioner no.1 was at Shirdi who happens to be an employee working at Shirdi Airport under the employment of Maharashtra Airport Development Company. The petitioner no.2 who happens to be an employee of Punjab National Bank at Nashik. Thus they were not present at the time of offence. However, this is a plea of alibi which needs to be proved by the accused in the trial only and it cannot be considered at this stage.

7. The learned advocate for the respondent vehemently opposes the petition. He submits that the civil suit was filed on 04.05.2019, whereas the complaint is filed on 15.12.2020 in respect of incident that took place on 10.12.2020. Thus, there is no relation between two

things and the cause of action is totally different. He further submits that the learned JMFC has followed the procedure and has issued the process only after satisfying himself as to existence of a cause to issue process. He submits that the learned Sessions Judge has also rightly passed the order so far as point no.3 is concerned. On the point of limitation, he accepted the position.

8. In rebuttal, the learned Advocate for the petitioners again submitted that the allegations are made only because of the pendency of the civil suit. The other allegations about uprooting the poles etc., can be only ventilated by resorting to the civil dispute and this basic fact is not considered by the Court below.

9. Considering the above position and the discussion, this Court finds that the learned JMFC has passed the order after satisfying himself about the existence of a prima facie case and no fault can be found in the order. Though it is vehemently argued that the complainant has suppressed the fact of pendency of the civil suit, this Court finds that it hardly has any bearing upon facts of the case as the

complaint is in respect of the incident that has taken place in the month of December, 2020. Giving threats certainly cannot be said to be giving rise to be civil dispute and is necessarily a criminal act.

10. Though this Court on the point of limitation is with the petitioners, however on the remaining point, this Court is not inclined to interfere in the impugned order passed by the learned JMFC, Gangapur and by the learned Sessions Judge, Vaijapur. The Writ Petition is therefore dismissed and disposed off accordingly. Rule is discharged.

[KISHORE C. SANT, J.]