

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3795 OF 2017

1. Adv. Annasaheb s/o Kashinathrao Lomte
(deleted as per Court's order
dated 22.10.2020)
2. Adv. Madhav s/o Limbajirao Jadhav
3. Adv. Balasaheb s/o Dattatraya Ambad
4. Adv. Rajendraprasad s/o Manikrao Dhaygude
5. Adv. Kalyan s/o Shivajirao Lomte
6. Adv. Anil s/o Sambhajirao Lomte
7. Adv. Prashant s/o Gopinathrao Shinde ...Applicants

versus

1. The State of Maharashtra
2. Balasaheb s/o Keshavrao Dhaygude ...Respondents

.....

Mr. V. D. Salunke with Mr. M. V. Salunke, advocates for applicants
Mr. M. M. Nerlikar, A.P.P. for respondent No.1
Mr. Hanumant P. Jadhav, advocate for respondent No.2.

.....

**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 22nd AUGUST, 2023.**

O R D E R (PER SANJAY A. DESHMUKH, J.) :-

1. Heard the learned advocates for the respective parties.
2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashment of FIR No. 0218 of 2017 registered with City Police Station, Ambajogai, district Beed, for the offences punishable under Sections 143, 323, 427, 504, 506 of the

Indian Penal Code, 1860, charge sheet No. 78 of 2017 as well as the consequential proceeding in S.C.C. No. 795 of 2017 pending before the Judicial Magistrate, First Class, Ambejogai.

3. The respondent No.2/informant has averred in the F.I.R., dated 3.4.2017, that he is having agricultural land bearing survey No. 371, situated at Ambejogai, admeasuring 4 Acres. There was civil litigation of agricultural land admeasuring 2 Acres and 30 gunthas which resulted against him. Out of the said land, the land admeasuring 1 Acre 30 gunthas has been sold by his uncle Tulshiram Dhaygude to the applicants by registered sale deed dated 2.4.2017 illegally. They are trying to dispossess the informant and also threatened to kill him. The informant further averred in the report that on 3.4.2017 at about 9.30 a.m. all these applicants purchasers, came there in the said land and started to erect tin shed. The informant opposed them while doing so, all the applicants started to beat him by fists blows. That time, his son and wife came there and rescued him. Applicant No.7 Advocate Shinde tied a stone in a Gamja and assaulted the informant by it on his back. Applicant No.4 Advocate Dhaygude throttled him and also torn down his shirt. The applicants also threatened to kill him. It is further averred that no one come forward to pacify the quarrel though the mob was gathered there. The informant lodged the impugned report.

4. The learned advocate for the applicants submitted that civil

litigation has been resulted in favour of the applicants and earlier owners of the disputed property, who is admittedly the uncle of the informant. The partition took place between them regarding that property. The applicants are falsely implicated in the crime. No such incident took place. There is no injury certificate produced on record indicating that the informant had sustained any injury to his back. The learned advocate for applicants further pointed out the judgment of the civil courts as well as the compromise decree executed between the informant and his uncle, by which the disputed property was allotted and handed over to his uncle by the informant, in Regular Darkhast No. 77 of 1993, dated 01.10.1997. The learned advocate lastly prayed to quash the F.I.R. and S.C.C. No. 795 of 2017 arising out of the said F.I.R.

5. The learned A.P.P. for respondent No.1 and the learned advocate for respondent No.2/informant have strongly opposed the application contending that the informant is in actual possession of the disputed property. The applicants, who are advocates by profession, have no right, title or interest in the said property. They have illegally purchased the said property. The said sale deed is also challenged. The compromise decree is also challenged. The applicants have committed cognizable offence by assaulting the informant. The learned advocates for the respondents lastly prayed for rejection of application.

6. Perused the charge sheet, particularly the report. The documentary evidence of civil litigation shows that the uncle of the informant, who sold the disputed property, succeeded in all civil litigation. The compromise decree in Regular Darkhast No. 77 of 1993 clarifies that a particular share of the uncle of the informant was carved out and its possession was handed over to him. It is not the case of the informant that he was cheated while executing the compromise decree. Thus, the separate civil right of the uncle of the informant over the disputed property was confirmed by the compromise decree of the competent court of law. He has absolute legal right over his separate share in the said survey No. 371 situated at Ambejogai. Thus, he has legal title and possession over the suit property and he legally sold that property to the applicants. The informant has no right to challenge the sale deed though he has averred that he is having factual possession over the disputed property. His alleged possession is not referable to the valid title. It is well settled that the title follows the possession. Thus, he is not in lawful possession of the disputed property owned and possessed by the applicants.

7. Considering the above, the essential ingredients of Sections 143, 323, 427, 504, 506 of the Indian Penal Code, 1860 are not prima facie made out against the applicants. There is no prima-facie case to proceed against the applicants. It would be an abuse of process of the court if the applicants are compelled to face trial.

Hence, the arguments advanced by the learned A.P.P. for the respondent/State and learned advocate for respondent No.2/ informant cannot be accepted. Thus, the application deserves to be allowed.

8. In view of the above, the criminal application is allowed in terms of prayer clauses "B" and "B-1". No costs.

9. It is made clear that the observations made in this order are prima facie in nature and the Court concerned seized of the civil matter shall not be influenced by these observations.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

rlj/