

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1 CRIMINAL APPLICATION NO.3658 OF 2022

1. Syed Aslam S/o Syed Mustafa.
2. Syed Asef Syed Mustafa.
3. Syed Aref Syed Mustafa.
4. Rizwana Begum W/o Mohammad Aref Birajdar. ... **Applicants**

Versus

1. The State of Maharashtra.
2. Kishan Rama Dhotare. ... **Respondents**

...

Mrs. Asfia Nuzhat Ansari, Advocate for Applicants.

Mr. A. R. Kale, APP for Respondent No.1 /State.

Mr. Avinash D. Hande, Advocate for Respondent No.2.

...

CORAM : **R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.**

DATE : 31st July, 2023.

Per Court:

1 Heard.

2 This application has been filed for quashment of FIR and consequential charge-sheet in R.C.C. No.914 of 2022, for the offence punishable under Section 379 read with 34 of the Indian Penal Code.

3 The crime has been registered pursuant to an order passed under Section 156(3) of the Code of Criminal Procedure on 4th

April, 2022. In short, the allegations against the applicants herein are that they have committed theft of 42 sheets and 2 shutters belonging to respondent No.2 / informant.

4 The learned counsel for applicants would submit that the incident is said to have taken place on 28th October, 2021, while the application for orders under Section 156(3) of Cr.P.C. was filed on 28th January, 2022 i.e. three months after the alleged incident. One of the applicants, namely Rizwana was in Hyderabad for about 1 and ½ months during the relevant time. She was in hospital there with her baby about five months old. It is also informed that civil suits are pending between the parties. The dispute pertains to possession over land bearing Gat Nos.123 and 124. According to the learned counsel for applicants, a false FIR has been lodged when no incident did take place.

5 The learned APP would, on the other hand, submit that based on the directions given by the Court of Judicial Magistrate First Class, the crime came to be registered. Charge-sheet has been filed. There are six eye-witnesses. Four of them are independent. They are none other than the neighbours. These witnesses specifically state the applicants to have been seen taking away the sheets and shutters. According to him, when there is *prima-facie* material to proceed

against the applicants, the application for quashment of FIR and consequential charge-sheet, is liable to be rejected.

6 The learned counsel representing respondent No.2 took us through the order passed by the Civil Court. First he referred to the order rejecting applicant No.1's interim injunction application pertaining to land Gat No.124. The respondent/informant claims possession over this land. According to him, there are six eye-witnesses to the incident. He would reiterate the submissions made by the learned APP. According to him, no mini trial can be conducted at this stage, when there is material to proceed against the applicants herein.

7 Considered the submissions advanced. Perused the papers of investigation relied on. Originally it was survey No.46. It was converted into three Gat numbers, namely Gat Nos.122, 123 and 124. Applicant No.1 claims possession over the land Gat No.124. True, her application for temporary injunction for protecting her possession over the said land has been rejected by the Civil Court. The record indicates respondent No.2 has filed a suit in relation to land Gat No.124. His application for temporary injunction has also been turned down by the learned Civil Judge, specifically observing that although respondent No.2/plaintiff claims title and possession over the land Gat No.124, his sale-deeds are in relation to Gat No.123. His

application has also been turned down. It appears that the parties have purchased the lands under *Gunthewari* scheme and therefore, there is dispute over possession of lands. This Court is not observing anyone of the parties to have possession over particular portion of the land.

8 The question is whether the incident in fact did take place as has been alleged in the FIR. It is reiterated that the incident of theft is said to have taken place on 28th October, 2021. There is nothing on record or even in the averments of the application for orders under Section 156(3) Cr.P.C. to suggest respondent No.2 had immediately approached the concerned police station on the same day of the incident or within one or two thereafter, to lodge report of theft of sheets and shutters. When we called upon the learned counsel for respondent No.2 to point out the same, he was helpless. As such, the fact remains that the application for orders under Section 156(3) of Cr.P.C. was filed exactly three months after the alleged incident. This fact casts serious doubt about the veracity of the allegations in the said application. It is true that there are statements claiming to be eye-witnesses, suggesting the incident to have taken place. We do not propose to observe anything as to the veracity of their statements. Suffice it to say that when the report of the theft has been lodged after three months of the alleged incident and no explanation to have been

offered for such delay, moreover, there being civil dispute over possession of land Gat Nos.123 and 124, we have every reason to observe that the application for orders under Section 156(3) of Cr.P.C. to have been filed afterthought.

9 There is one more aspect of the matter. Applicant No.4 is a 29 years old lady. She has about five months old baby at the relevant time. She had been to Hyderabad for treatment of child. The applicants have placed on record Discharge Summary issued by a hospital BirthRight. We are very much conscious of a fact that no document placed on record by accused/applicants could be looked into in an application under Section 482 of Cr.P.C., unless the same is of sterling quality. While this document has been relied on, there is no counter affidavit filed by the informant disputing the said document. We have, therefore, every reason to observe that applicant No.4 was far away from the scene of offence when the alleged crime did take place. That shows falsity of averments in FIR.

10 For all the aforesaid reasons, we are of the view that the interest of justice demands grant of application. Hence, the application is allowed in terms of prayer clause (B).

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]