

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 860 OF 2019

1. Kiran Vaikunth Madhavi
2. Viresh Balkrishna Patil
3. Jayesh Rohidas Patil .. Petitioners

Vs.

The State of Maharashtra .. Respondent

.....
Mr. Harshad Sathe for the petitioners

Mr. J.P. Yagnik, APP for the respondent - State

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 13th JANUARY, 2023.

ORDER :- (Per Prithviraj K. Chavan)

1. Heard.
2. Rule. Rule is made returnable forthwith. With the consent of the parties the petition is taken up for final disposal. Mr. Yagnik, learned APP waives service on behalf of respondent No. 1- State.

3. A few facts germane for disposal of the petition are as under :-

4. An FIR bearing C.R. No.315 of 2016 came to be registered on 28.06.2016 with the Mumbra Police Station at the instance of Mr. Ajit Gharat Padnam, Talathi Saja Diva, Dist. Thane.

5. It is alleged that a raid was conducted at Survey No.56 of Mouje Sabe by the *Dakshata Pathak Retighat Shakha*, comprising Shri. Perake, Clerk Retighat Shakha, Circle Officer, Dahisar, Shri Avinash Telgote, Talathi Saja Dahisar Shri. D.P. Chavan, wherein they found 9 holes of sand, out of which 2 holes were 20x20 ft. with 1 ft. deep filled with approximately 25 brass of sand. The sand was confiscated and marked. The price of the said confiscated sand was Rs.1,75,000/-.

6. A panchanama was drawn in the presence of panch witnesses. Upon further enquiry with the local residents, it was found that the petitioners were involved in the theft of the sand. It further revealed that the petitioners were excavating sand from the spot

without due permission from the concerned authorities and, therefore, an FIR came to be lodged against them by the respondent no.1, resulting into filing of a charge-sheet.

7. Heard learned Counsel for the petitioners. At the outset, the Counsel would argue that the petitioners are innocent, who have been falsely implicated in this case. He submits that the petitioners are in no way concerned with the illegal excavation of sand since they are gainfully employed in running the business in the vicinity of Diva. The complaint does not disclose details of the alleged offence committed by the petitioners.

8. Learned Counsel would argue that from the charge-sheet, no offence is made out as alleged, as there is no material on record to that effect. He, therefore, prayed for quashing the proceeding *qua* the petitioners.

9. On the other hand, learned APP invited our attention to the complaint dated 28.06.2016 wherein it has clearly been stated by the Talathi, namely Ajit V. Gharat that the spot belongs to the petitioners wherein the extracted sand came to be stored without the permission of concerned authorities, which also attracts Section

44(7) of the Land Revenue Act, 1966.

10. It revealed that the seized stolen sand was worth Rs.1,75,000/-. Even in his supplementary statement, the said witness appears to have stated about the theft of 25 brass of sand by the petitioners during the inquiry by the Circle Officer, Mr. Avinash Telgote, from the persons in the vicinity as well as the relatives of the petitioners.

11. Considering the aforesaid facts and in view of the judicial pronouncement in the case **State of Haryana & Ors. Vs. Bhajanlal & Ors.**¹, no case is made out for exercising our inherent jurisdiction. The allegations in the FIR and the other material, taken at their face value, *prima facie*, constitute offences as alleged against the petitioners. *Ex-facie*, offences as alleged are made out and, therefore, no interference is warranted.

12. Accordingly, the Petition is dismissed.

13. Rule is discharged.

1 1992 Supp (1) SCC 335

14. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]