



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) 239 OF 2023

1. Harishkumar s/o Hakikatrai Motwani
 2. Kanhaiyalal s/o Hakikatrai Motwani
 3. Nandlal s/o Hakikatrai Motwani
 4. Anil s/o. Kanhaiyalal Motwani
 5. Haribhau s/o. Yashwantrao Kale
 6. Mr. Ramesh s/o. Sheshrao Dhande
- ... Applicants

Versus

1. State of Maharashtra
 2. Mr. Gowardhan s/o. Krushnarao Waghade
- ... Respondents.

Mr. Sahil Dewani for the Applicants.

Mr. Ghodeswar, APP for the Respondent-State.

Smt. Seema Dhotre, appointed advocate for the Respondent No. 2

**CORAM : NITIN W. SAMBRE &
VALMIKI SA MENEZES, JJ**

DATED : 26th SEPTEMBER, 2023

P.C.:

1. Heard, learned Counsel for the Applicants.
2. The prayer is for quashing of the order dated 21/11/2022 passed by the Judicial Magistrate First Class, Akola so also consequential FIR being Crime No. 553 of 2022 registered on 23/11/2022 for the offence punishable u/s. 120-B 294, 504, 506, 452, 420, 468, 427, 471 r/w. 34 of IPC.
3. The contentions of Mr. Dewani, learned Counsel appearing of the Applicants are, the Applicants are falsely implicated in the offence.

According to him, since 1998 the Applicant No. 1 is in settled possession of the property in question as could be seen from the registered Sale Deed executed in his favour. Apart from above, his contentions are the Respondent No. 2/Complainant has failed to demonstrate his lawful possession over the property, from which he was allegedly dispossessed. As such, it is urged that the criminal complaint is preferred by the Applicants based on false claim.

4. According to Mr. Dewani learned Counsel for the Applicants the order of the Magistrate sans consideration and that being so the order itself is not sustainable as same is passed in mechanical manner.

5. While countering the aforesaid submissions, learned APP and learned Counsel for the Respondent No. 2 submits that the Respondent No. 2/Complainant has specifically come out with a case that since last 35 years he was in possession of the suit property based on an agreement of leave and license. According to them, the offence came to be registered pursuant to the order of the Magistrate delivered on 21/11/2022. The further contentions are, the order of the Magistrate is based on the law laid down by the Apex Court in the matter of **Lalita Kumari vs. Government of U.P.** reported in **(2013) ALL MR (Cri) 4444 (S.C.)**.

6. As such, it is claimed that the Application is liable to be rejected.

7. We have considered the submissions.

8. The fact remains that the Apex Court in the matter of ***Priyanka Shrivastava & Anr. vs. State of Uttar Pradesh & Ors.*** reported in ***(2015) 6 SCC 287***, ***Anil Kumar vs. M. K. Aiyappa*** reported in ***(2013) 10 SCC 705*** and ***Sayed Anwar Ahmed & Ors. vs. State of Maharashtra and Ors.*** reported in ***(2017) SCC ONLINE BOM 3972***, has already held that while excising powers under sub-section (3) of Section 156 of Cr.P.C. the application of the mind to the contents of complaint and documents must be reflected in the order, while directing the registration of offence and investigation. The Magistrate while exercising such powers can not act mechanically but he has to record the reasons in support thereof.

9. In the aforesaid background, if we appreciate the reasoning furnished by the Magistrate in the order impugned but for passing references to facts same does not reflect application of mind by the Magistrate *qua* making out case for consideration thereby recording satisfaction of the ingredients required in law for disclosure of cognizable offence.

10. As such, the order impugned dated 21/11/2022 passed by the Magistrate does not withstand the test as prescribed in the aforesaid judgments of the Apex Court *qua* the powers to be exercised under sub-section (3) of section 156 of the Cr.P.C.

11. Apart from above, we have considered the very contents of the

complaint which was preferred before the Magistrate. It is the case of the Respondent No. 2/Complainant that he was in settled possession of the suit property for last more than 30 years. When confronted, we hardly see any documentary evidence to infer that the Respondent No. 2/Complainant was in settled and lawful possession of the property in relation to which the offence is alleged. Though, learned Counsel for the Respondent/Complainant has relied on the leave and license agreement/lease agreement executed on stamp paper dated 28/09/2022 and the claimed to have been executed on 04/10/2022 the fact remains that the executor of the said document cannot be said to be the lawful owner or possessor of the property in absence of any supporting material to that effect viz. title deed. Apart from above, said documents was executed much after the alleged date of dispossession.

12. In this background, it has to be held that the order impugned passed by the Magistrate and consequential registration of the FIR cannot be said to be sustainable.

13. As such, the present Application stands allowed in terms of prayer clause (a) and (b).

(VALMIKI SA MENEZES, J)

(NITIN W. SAMBRE, J.)