

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 689/2020.

1. Abhishekh @Rinku s/o Rajendra
Shukla, Age 34 years,
Occupation – Business,

2. Rishikesh @ Chintu s/o Rajendra
Shukla, Age 30 years,
Occupation – Business,

3. Radheshyam s/o Jagannath
Shukla, Age 79 years,
Occupation – Retired teacher.

4. Rajendra s/o Ghanshyam Shukla,
Age 34 years, Occupation – Nil,

5. Akshaya d/o Devesh Shukla,
Age 3 years, Occupation – Nil,

6. Devesh s/o Radheshyam
Shukla, Age 55 years,
Occupation – Business,

7. Sau. Hema w/o Devesh Shukla,
Age 50 years, Occupation – Housewife,

All residence of Gawalipura, Paratwada,
Tq. Achalpur, District Amravati.

8. Ajay s/o Ghanshyam Shukla,

Rgd.

Age 48 years, Occupation – Business,

9.Sau. Gayatri w/o Ajay Shukla,
Age 46 years, Occupation Housewife.

Residence of Gadipura, Nanded,
Tq. and District Nanded.

... **APPLICANTS.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Paratwada Police Station, Paratwada,
Tq. Achalpur, District Amravati.

2.Shri Bharat s/o Pralhadrao Thorat
Age 55 years, Occupation Not known,
resident of Shanti Vatika, Akola Road,
Paratwada, Tq. Achalpur,
District Amravati.

... **NON-APPLICANTS.**

Mr. D.S. Khushalani, Advocate for Applicants.
Ms. M. Deshmukh, A.P.Ps. for Non-applicant No.1.
Mr. N.A. Gawande, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : FEBRUARY 24, 2023.

ORAL JUDGMENT (PER , VINAY JOSHI, J.) :

Considering the nature of controversy involved in the matter, and by consent of the learned Counsel appearing for the parties, Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash the first information report bearing Crime No.234/2020 registered with Paratwada Police Station, District Amravati for the offence punishable under Sections 143, 147, 148, 323, 327, 294, 506 of the Indian Penal Code and Sections 3[1][r], 3[1][s], 3[2][va] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. The aforesaid crime has been registered at the instance of a report lodged by the informant Bharat Thorat on 16.05.2020. It is his case that he was in possession of certain piece of land bearing Gut No.59, situated at Taluq Achalpur, District Amravati. On

Rgd.

16.05.2020, while the informant was cultivating his land, accused no.1 Abhishekh along with his associates entered into the field, manhandled him, forcible took possession of the land. Moreover, it is alleged that the accused have abused them in the name of caste, as well as snatched valuables worth Rs.4000/-, therefore, the report. The police has carried investigation, however, by virtue of an interim order of this Court, charge sheet has not been filed by seeking leave of this Court.

4. It is the case of applicants that the allegations leveled in the complaint are totally false and imaginary. There was a trite land dispute in between the parties. Throughout applicants were in possession of the subject land. Their possession was confirmed by the Civil Court. The informant is the subsequent purchaser who filed false report with a view to take possession by deceitful means.

5. The learned Counsel appearing for applicants has produced copy of the judgment of Civil Court dated 20.03.2010 passed in Regular Civil Suit No.26/2005. The said suit was filed by some of the applicants against one Anil Ingole, who was the original

Rgd.

owner of the subject land. It was the case of applicants in said suit that on 24.01.1992, mother of Anil namely Jaywantabai had executed an agreement for sale and delivered possession thereof in favour of applicants. Applicants pleaded that though they were in peaceful possession of the subject property, the original owner Anil Ingole has obstructed their possession and therefore, the suit for perpetual injunction. Copy of the judgment discloses that the original owner Anil Ingole has appeared and contested the suit. After recording of evidence, the learned Civil Judge has recorded a finding that applicants [plaintiffs therein], were in lawful possession of the subject land, as well as there is obstruction. On the basis of such finding the learned Civil Judge has passed a decree of perpetual injunction against the original owner Anil Ingole vide its judgment and order dated 20.03.2010. Obviously the decree of injunction was based on the finding of Civil Court that applicants were in peaceful possession of subject land.

6. Admittedly the said decree of civil court has not been challenged, meaning thereby it has attained finality. Since there is a finding of Civil Court about possession of applicants over the subject

Rgd.

property, the said very fact totally destroys the allegations leveled against them in the existing first information report. It is not the case of the informant that the decree was set aside or their possession has been recognized by any Court of law. It reveals that after said injunction decree, the original owner has executed a sale deed in favour of the informant on 24.07.2013. Pertinent to note that thereafter, Regular Civil Suit No.171/2013 was filed by the original owner Anil Ingole against applicants seeking a declaratory decree that the judgment and order passed in Regular Civil Suit No.26/2005 has been obtained by fraud, and compensation has been sought.

7. Pertinent to note that as per copy of sale deed, Anil Ingole has already sold the subject property on 24.07.2013 to applicants, but, despite that thereafter on 31.10.2013 he filed a suit posing himself to be the owner. Notably the said suit came to be filed by the informant in the capacity of power of attorney, meaning thereby the informant was interested to get the decree of injunction set aside, as it would come in his way, since he has purchased the subject property despite possession. Therefore, it is apparent that filing of

Rgd.

7

the first information report appears to be a shortcut method to obtain possession which was not with the informant and it was declared by the competent Civil Court that possession was with applicants.

8. Though there are several statements recorded by the police stating about truthfulness of the occurrence, the very foundation of the informant itself is seriously under doubt and improbable. The Hon'ble Supreme Court in case of **State of Harayana and others .vrs. Ch. Bhajan Lal and others – AIR 1992 SC 604**, has laid down parameters in paragraph no.108 about invocation of inherent powers of this Court. The present case squarely falls under Clause [7] of paragraph no.108 of the above referred judgment.

9. Apparently it was a civil dispute in between the parties. The competent Civil Court has held that applicants were in possession of the subject property, and the decree has attained finality. Despite that the property was purchased by the informant and lateron by filing another suit he has tried to get the decree set

Rgd.

aside, but, admittedly the said suit was abated. In short, the contents of the first information report are totally improbable and appears to be actuated with ulterior motive of getting possession. Therefore continuation of such prosecution would be an abuse of the process of Court. Hence, we are of the considered view that this is a fit case to invoke our inherent powers. In view of this, following order is passed.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No..234/2020 registered with Paratwada Police Station, District Amravati for the offence punishable under Sections 143, 147, 148, 323, 327, 294, 506 of the Indian Penal Code and Sections 3[1][r], 3[1][s], 3[2][va] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside.

JUDGE

JUDGE