



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 1627 of 2023

1. Shamrao Namdeo Dede
 2. Malhari Gundu Sagad
 3. Santosh Ranba Sagat
 4. Gundu Rudrapppa Sagat
 5. Maroti Ranba Sagat
 6. Baban Gundu Sagat
 7. Sandip Rajabhau Whatkar
 8. Rajabhau Ramchandra Whatkar
 9. Sanjay Rajabhau Whatkar
- ...Applicants**

Versus

1. The State Of Maharashtra
Through Police Station Officer
Tuljapur Police Station, Dist. Osmanabad.
 2. Uma Rajendra Mane
- ...Respondents**

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Advocate for Applicants : Mr. Abhijit S. More
APP for Respondent No. 1 : Mr. V. K. Kotecha
Advocate for Respondent No.2 : Mr. Neeraj Chudiwal

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME JJ..**

DATE : 2 FEBRUARY 2024

FINAL ORDER {Per : Shailesh P. Brahme, J.} :

- . Heard both the sides finally at the admission stage.
2. The applicants are invoking jurisdiction of this Court under

Section 482 of Code of Criminal Procedure for quashment of F.I.R bearing Crime No. 481 of 2022 of Tuljapur Police Station and Charge-sheet No. 53 of 2023 for offence under Sections 143,149 and 427 of IPC.

3. The Respondent No. 2 filed complaint on 30.12.2022 against the applicant and nine others that she was owner of Gut No. 615/04 of village Barul. Tq. Tuljapur. On 31.07.2022, the accused persons by forming unlawful assembly removed the boundary marks fixed by the officers of land records and also removed the marking polls. Thereafter, on 15.11.2022 the accused gathered in land belonging to respondent No. 2 when the measurement was being conducted and destroyed boundary and demarcation marks with the help of JCB machine.

4. The investigation was conducted and it was found that applicant Nos. 1 to 6 had no role to play. They were not responsible for destruction of boundary marks and the boundaries. Accordingly, C summary report was submitted by the investigating officer to the Court. A report under Section 173 of Cr.P.C has been submitted against applicant Nos. 7 to 9 for offence under Section 427 read with 34 of IPC. Thus, applicant Nos. 7 to 9 are alleged to have committed offence under Section 427 read with 34 of IPC.

5. Learned counsel for the petitioner tenders across the bar order passed by us on 02.01.2024 in Criminal Application No. 1629 of

2023. The Respondent No.2's husband Rajendra Digambar Mane had lodged Crime No. 257 of 2022 with Tuljapur Police Station under Sections 379,427 read with 34 of IPC. It was arising out of a similar instance which is under consideration in the present application. By order dated 02.01.2024, application was allowed by quashing F.I.R and consequently R.C.C No. 336 of 2022.

6. Learned counsel for the applicant submits that in the wake of order dated 02.01.2024 in Criminal Application No. 1629 of 2023, present application deserves to be allowed. He would submit that applicant No. 4/Gondu Rudrappa Sagat had filed RCS No. 522 of 2022 before Civil Judge Junior Division, Tuljapur for mandatory and perpetual injunction against informant and her husband. Due to the civil disputes, false allegations have been made against the applicants. On 21.11.2022, the applicants and others had filed written complaint to Superintendent of Police against informant's husband for encroachment, causing damage to the standing crop and the pipe-line. There are disputes over boundary of land Gut No. 615,617. To settle the scores, a false complaint has been filed.

7. Learned counsel for the applicant submits that the allegations are vague and no evidence could be collected during the course of investigation. The statements of two witnesses namely Bandu Ramhari Dhanwade and Sagar Kondiba Lakade have been recorded. It is submitted that offence under Section 427 cannot be made out.

8. Learned APP and learned counsel Mr. Neeraj Chudiwal of the respondent No. 2 oppose the submissions of the petitioner. They would submit that there is material against the applicant. The prosecution may not be thwarted at this stage. This is not a fit case to quash the proceedings.

9. We have considered rival submissions advanced by litigating sides. We have gone through the papers of the investigation. Present application does not survive to the extent of applicant Nos. 1 to 6 since investigating officer has filed C summary against them. What remains is offence under Section 427 of the IPC against applicant Nos. 7 to 9.

10. We have perused the order dated 02.01.2024 passed in Criminal Application No. 1629 of 2023 quashing the plaint and the proceedings. Similar set facts have been dealt with that case. A distinct offence bearing Crime No. 257 of 2022 was registered for offence under Sections 379,427 read with Section 34 of IPC against the applicant Nos. 7 to 9 at the instance of husband of the informant. We have recorded that there is a dispute of boundary. No *mens rea* was found from the material collected against the accused in that case. The dispute was regarded to be civil in nature. We have quashed the offence and consequently proceedings in that case.

11. A copy of plaint in RCS No. 522 of 2022 is placed on record

which we have perused. We have gone through written complaints made by the parties to various revenue authorities and police officers. It transpires that applicants and the informant are adjoining land owners. They have dispute over the boundary, measurement and encroachment. There is a merit in the submission of the applicants that to settle the scores the applicants have been roped in.

12. The investigation papers show that only two statements of witnesses are recorded. There is no prima facie material to show *mens rea* for respondent No. 7 to 9. We are inclined to adopt the similar reasons which we have assigned in our order dated 02.01.2024 in Crime No. 1629 of 2023.

13. We find that no offence can be made out against the applicants. It would be abuse of process of law to prosecute them any further. We therefore allow the application by passing following order.

ORDER

(i) F.I.R bearing Crime No. 481 of 2022 registered with Tuljapur Police Station and Charge-sheet No. 53 of 2023 to the extent of applicant Nos 7 to 9 are quashed and set-aside.

(ii) Learned Counsel Mr. Neeraj Chudiwal who has been appointed a respondent No. 2 is quantified with fees of Rs.5000/-

(Five Thousand Rupees only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL, J.)