



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

CRIMINAL APPLICATION NO. 1696 OF 2022

1. Laxman Shankar Kothimbire,
Age : 51 Years, Occu. : Agriculture,
R/o Tal. Shrigonda, Dist. Ahmednagar.
2. Ambadas Bansi Auti,
Age : 43 Years, Occu. : Agriculture,
R/o Autiwadi, Tal. Shrigonda,
Dist. Ahmednagar. .. Applicants

Versus

1. The State of Maharashtra,
Through Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar.
2. Smt. Sharda Sudhakar Supekar,
Age : 55 years, Occu. : Service,
R/o Kuldharan Tal. : Karjat
A/p residing at Yeshwant Colony,
Plot No. 18, Aurangabad Road,
Ahmednagar, Dist. Ahmednagar. .. Respondents

**WITH
CRIMINAL APPLICATION NO. 2605 OF 2022**

1. Laxman Shankar Kothimbire,
Age : 51 Years, Occu. : Agriculture,
R/o Tal. Shrigonda, Dist. Ahmednagar. .. Applicant

Versus

1. The State of Maharashtra,
Through Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar.

2. Smt. Sharda Sudhakar Supekar,
Age : 55 years, Occu. : Service,
R/o Kuldharan Tal. : Karjat
A/p residing at Yeshwant Colony,
Plot No. 18, Aurangabad Road,
Ahmednagar, Dist. Ahmednagar. .. Respondents

Ms. Rashmi S. Kulkarni, i/by Shri Dilip B. Rode and Sanket S. Kulkarni, Advocate for the Applicants in both matters.
Shri A. D. Wange, A.P.P. for the Respondent No. 1 in both matters.
Shri R. R. Karpe, Advocate for the Respondent No. 2 in both matters.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 22 MARCH 2024.**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both the sides finally at the admission stage. As relevant facts are common, both the applications are being decided by this common order.

2. Applicants in Criminal Application No. 1696 of 2022 are seeking quashment of FIR bearing CR No. 238/2021 of Shrigonda Police Station, consequential charge sheet and S.C.C. No. 1119 of 2021 pending before the Judicial Magistrate First Class, Shrigonda. Applicant in Criminal Application No. 2605 of 2022 Laxman is seeking quashment of FIR bearing CR No. 270/2021 of Shrigonda Police Station, charge sheet and consequential S.C.C. No. 1121 of 2021 pending before the Judicial Magistrate First Class, Shrigonda. Both offences are registered U/Sec. 447 r/w Sec. 34 of the Indian Penal Code.

3. Respondent No. 2 lodged report with Shrigonda Police Station on 24.04.2021 stating that she was owner of 49 Are and her father-in-law Dattatraya Bhausahab Supekar was owner of 40 Are land from gut No. 1123 situated within municipal limits of Shrigonda. They had purchased lands in the year 1992. They were required to approach Court of law for measurement of the lands because adjoining land owners and occupants of remaining portion of gut number were obstructing the measurement. On 21.04.2021, when the informant had been to site, encroachment of tin shed and illegal construction was found over her land. By way of JCB machine soil was seen to have been loaded in the tractor. On enquiry it was disclosed that encroachment and illegal construction was made by the applicants. Offence bearing CR. No. 238/2021 was registered and investigated. S.C.C. No. 1119 of 2021 in pursuance of the offence is pending in the Court.

4. Respondent No. 2 lodged complaint on 10.05.2023 alleging that at 4.00 p.m. on 10.05.2021, when she had been to site, she found that applicant Laxman made permanent construction of R.C.C. slab on the foundation of iron pillars. Offence was registered as CR No. 270/2021 and investigated. S.C.C. No. 1121 of 2021 is pending in the competent Court.

5. Learned counsel Mrs. Rashmi Kulkarni for the applicants submits that no offence U/Sec. 447 of the Indian Penal Code can be made out taking the allegations as they are from the FIRs and the papers of investigation. There is nothing incriminating

against the applicants. Neither alleged tin shed or construction, nor the vehicles found at gut No. 1123 belong to them. She further submits that the dispute is civil in nature, which is given cloak of criminal proceedings.

6. Learned counsel would submit that three successive complaints have been filed by the informant due to undue influence of her brother-in-law Jalindhar Datta Supekar, who happens to be Superintendent of Police in Pune Division. It is further submitted that there is no material on record to show that applicants have ever enroached and made construction at the relevant site. It is being submitted that already R.C.S. No. 25 of 2020 and R.C.S. No. 71 of 2020 filed by adjoining land owners and occupants of other portion of same gut number are sub judice. No endeavour has been made by the informant or her father-in-law to avail civil remedy against the encroachment and illegal occupation. Lastly, she submits that both the criminal proceedings are abuse of process of law and liable to be quashed.

7. Learned Assistant Public Prosecutor repels the submissions of the learned counsel for the applicants. He would invite our attention to panchanama prepared on 24.04.2021, statements of witnesses and copies of the sale deeds collected during the investigation. He submits that there is adequate material to proceed against the applicants for the offence U/Sec. 447 of the Indian Penal Code.

8. Learned counsel Mr. R. R. Karpe adopts the submissions of

the learned A. P. P. Additionally, it is tried to be demonstrated that gut No. 1121 belongs to applicants and others and part of gut No. 1123 belongs to respondent No. 2. Applicants are obstructing possession of portion belonging to the respondent No. 2 and her father-in-law. It is further submitted that full fledged trial is required to adjudicate the claims of the parties.

9. We have considered the submissions advanced across the bar. We have gone through the papers of investigation in both the offences. It is a matter of record that both the complaints are lodged within proximity of 17 days with identical allegations. Not only that, third complaint was also lodged bearing CR No. 181/2022 alleging encroachment and illegal construction in sequence with earlier complaints. In respect of third complaint Criminal Application No. 2606 of 2021 was filed, but it is disposed of as subsequently no charge sheet was filed against the applicant/Ambadas Bansi Auti.

10. It can be seen from the record that informant and her father-in-law purchased pieces of lands from gut No. 1123 in the year 1992. There are civil proceedings pending before the competent court in the form of R.C.S. No. 25 of 2020 and R.C.S. No. 71 of 2020 amongst the occupants of gut No. 1123. It is not that gut No. 1123 is exclusively owned by the informant and her father-in-law. There is controversy over the exact location and identification of portion of 89 Are purchased by them. Sale deeds placed on record disclose that there are frequent transfers of different portions of gut No. 1123.

11. Pertinently, submission of the applicants of exersion of undue influence by Jalindar Datta Supekar, the then Superintendent of Police, Pune Division have not been controverted by the respondents. We are pointed out representation cum complaint dated 31.03.2022 submitted by the applicants to Home Minister, Superintendent of Police and others alleging that the informant with the help of her brother-in-law are using pressuring tactics. The proceedings appear to have been initiated with oblique motive.

12. We have carefully considered the FIRs and the statements of witnesses in both the matters. No investigation has been conducted for collecting any evidence to show that applicants are responsible for encroaching upon the land of the informant or her father-in-law and for making construction over the same. There is no material to indicate that the applicants have actually encroached and caused illegal construction. No statements of independent witnesses have been recorded. We, therefore, find substance in the submissions of the learned counsel Mrs. Rashmi Kulkarni that no case can be made out for offence of criminal trespass.

13. We find that there is no material to show that the portion of gut No. 1123 claimed by the informant and her father-in-law actually belong to them and are identifiable. We have not been pointed out any proceedings initiated by them in respect of alleged encroachment and illegal construction before the

competent Civil Court. The remedy of suit has not been availed of. This strengthens our view that no offence has been committed as alleged by the informant.

14. We have already recorded that there are rival claims in respect of gut No. 1123 and civil proceedings are pending. The informant and her brother-in-law have indulged in pressurizing tactics. It is very surprising that successive complaints have been entertained by the concerned police station. We find merit in the submissions that at the most the dispute can be of civil nature, which is drapped in the form of criminal proceedings. We have no iota of doubt that it would be abuse of process of law to continue the proceedings against the applicants.

15. Both criminal applications are allowed. FIR bearing CR No. 238/2021 of Shrigonda Police station, consequential charge sheet and S.C.C. No. 1119 of 2021 and FIR bearing CR No. 270/2021 Shrigonda Police station, charge sheet and consequential S.C.C. No. 1121 of 2021 both pending before the Judicial Magistrate First Class, Shrigonda for offence registered U/Sec. 447 r/w Sec. 34 of the Indian Penal Code are quashed and set aside.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]