



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3324 OF 2023

- 1] Yuvraj S/o. Shidram Sutar
- 2] Mallikarjun S/o. Kisan Sutar
- 3] Vikram S/o. Yuvraj Sutar
- 4] Raju S/o. Mallikarjun Sutar
- 5] Vijaykumar S/o. Mallikarjun Sutar .. Applicants

Versus

- 1] The State of Maharashtra
Through Police Station,
Naldurg, Tq. Tuljapur
Dist. : Osmanabad
- 2] Dagadu S/o. Khandu Vhatkar,
Age : 58 years, Occu : Agricultural,
R/o. Arali (Kh.), Tq. Tuljapur,
Dist. Osmanabad .. Respondents

...
Advocate for applicants : Mr. Santosh N. Patne
APP for the respondent – State : Mr. G.A. Kulkarni
...

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

DATE : 05 JANUARY 2024

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers under section 482 of the Code of Criminal Procedure, the applicants are seeking quashment of crime registered against them at the instance of the respondent no. 2 bearing crime no. 338 of 2023 registered with the Police Station Naldurg, District – Dharashiv for the offences punishable under section 143,

504, 506 of the Indian Penal Code and sections 3(1)(r), 3(1)(s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard the learned advocate for the applicants and the learned APP.

3. The sum and substance of the allegations as can be made out from the FIR and the chargesheet are to the effect that on 18.07.2023, the applicants together with the Circle Officer and Talathi arrived in his land. Applicant Raju had brought a JCB machine. When the Circle Officer and Talathi asked him as to if he was agreeable for creation of road through his land, he declined stating that the matter was pending before the Court, whereupon the Officers left but the applicants assaulted him and hurled abuses on caste lines and threatened him of dire consequences.

4. The learned advocate for the applicants would submit that though it is a fact that it was a dispute regarding customary way and the applicants together with the revenue officers had gone to the spot but no incident as is being alleged, had taken place. No fault can be found with the applicants in insisting for execution of the order passed by the Mamlatdar under the Mamlatdars Courts Act, 1906. Annoyed by their such insistence, they have been falsely implicated. No offence as

is alleged, had taken place. It would be abuse of the process of law if the applicants are made to face the trial.

5. Per contra, the learned APP would oppose the application. He would submit that this Court has inherent limitations in undertaking any scrutiny of the material collected by the Investigating Officer. The ingredients of the offence can easily be made out from the FIR as also the material collected by the Investigating Officer. A copy of the chargesheet has already been filed on record. Even according to the applicants, they admittedly had gone to the spot where the incident had allegedly taken place. He would submit that even the revenue officers admit the fact. There are independent witnesses whose statements have been recorded under section 164 of the Code of Criminal Procedure and the application may be rejected.

6. We have carefully considered the rival submissions and perused the papers. We proceed by emphasizing the fact that in exercise of the powers under section 482 of the Code of Criminal Procedure, no threadbare scrutiny of the material collected by the Investigating Officer is possible and can be undertaken.

7. Again, we also bear in mind the principles laid down in the matter of ***State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335.***

8. Admittedly, there has been a dispute regarding the alleged customary way. Even the litigation is going on before the revenue authorities and had reached this Court. As far as that aspect is concerned, we need not delve deep. Suffice for the purpose to observe that may be in purported exercise of right to have encroachment removed pursuant to the orders passed by the revenue authorities, the applicants had gone to the spot. Even the revenue officers were there. The respondent no. 2 and his family members had opposed the proposed action. To this extent parties are *ad idem*.

9. The FIR refers to an incident which allegedly happened immediately after the revenue officers had gone to the spot but left without taking any steps for removal of encroachment. We are precisely pointing out this fact to demonstrate that presence of all the applicants at the spot is a fact which can easily be substantiated. Not only this but even their intention to get the alleged encroachment removed, is writ large.

10. So far as the actual incident is concerned, apart from the fact that it is a matter to be considered by the trial Court on the basis of the evidence to be led before it and the veracity of the allegations or otherwise, it is important to note, it is not that the version of the respondent no. 2 regarding incident is lopsided. One can find corroboration in the form of the statement of the witnesses recorded

under section 161 as also under section 164 of the Code of Criminal Procedure. Shashikant Mohan Upase has expressly stated about the incident including the abuses hurled at the respondent no. 2 by the applicants on caste lines. In our considered view, in view of such corroboration from an independent source, it cannot be said that the applicants are being implicated without any substance.

11. There is no merit in the application and it is liable to be rejected.

12. The application is rejected.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/