



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1297 OF 2019

1. Balasaheb s/o. Popat Mali
2. Balasaheb s/o. Babanrao Hilal ... APPLICANTS

VERSUS

1. The State of Maharashtra
through the Police Sub Inspector,
Parner Police Station,
Tq. Parner, Dist. Aurangabad
2. Rohidas s/o Bhaskar Deshmukh ... RESPONDENTS

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Advocate for applicants : Mr. Ujwal S. Patil
Addl.PP for respondent/State : Mr. M.M. Nerlikar
Advocate for respondent No.2 : Mr. G.B. Kadlag

...

WITH
CRIMINAL WRIT PETITION NO.1280 OF 2021

Pushpa w/o Balasaheb Mali ... PETITIONER

VERSUS

1. The State of Maharashtra
through Secretary,
Home Minister, Mantralay,
Mumbai (M.S.)
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar
3. Rohidas s/o Bhaskar Deshmukh ... RESPONDENTS

...

Advocate for applicants/petitioner : Mr. Ujwal S. Patil
Addl.PP for respondent/State : Mr. M.M. Nerlikar
Advocate for respondent No.3 : Mr. G.B. Kadlag

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

DATED : 07.03.2024

ORDER (PER : MANGESH S. PATIL, J.) :

These are an application and the writ petition under Section 482 of the Code of Criminal Procedure and under Article 226 of the Constitution of India, respectively, by different accused, seeking quashment of crime bearing FIR No.101/2019 registered with Parner Police Station Dist. Ahmednagar for the offences punishable under Section 383, 384, 386, 447, 448, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code and under Section 25 read with Section 3 of the Arms Act, 1959, consequent charge-sheet and RCC No.255/2022 pending before the learned JMFC, Parner Dist. Ahmednagar.

2. The sum and substance of the allegations in the FIR lodged by the respondent No.2 are to the effect that he is the owner of the land Gut No.85 admeasuring 7 Hectare 60 Are. He is in possession and has a pomegranate orchard in that land. He had also engaged agricultural labours who stay therein.

3. An attempt was made by one Dagdu Duryodhan Kedar, his son and applicant No.1 - Balasaheb Popat Mali to take forcible possession of the land on 01.01.2018. When he questioned them as to why they had erected a tin shed in his land, applicant Balasaheb Popat Mali told him that he had got executed a power of attorney from Dagdu and others. The decision of the Sub-Divisional Officer had gone against him (respondent No.2) and he had no right to remain in possession and to cultivate the land. He then retorted by saying that he had preferred an

appeal before the Collector against the order of the Sub-Divisional Officer and had obtained a stay.

4. The FIR then alleges that applicant Balasaheb Popat Mali, Dagdu and one Balu demanded ransom of Rs.5 Lakh per acre from him on 22.11.2018 and threatened of assaulting him if it was not paid. They were accompanied by 30 to 40 goons who pushed and pulled his labours, threatened them of dire consequences and attempted to evict them from the land.

5. The FIR then alleges that when the respondent No.2 had gone to the land on 01.12.2018 there where about 7 to 8 unknown women and 20 to 21 goons who had arrived there in two vehicles. They evicted the labours from their sheds and threatened to destroy the orchard. On the next day again 50 to 60 persons arrived, threatened him of killing, a pistol was pointed at him and then they harvested pomegranate from the orchard worth Rs.15 to 20 Lakh and loaded in tempos, three of which were named in the FIR and the 4th one had no number plate. When he reached Parner Police Station for lodging complaint, these goons even threatened him in the police station and being afraid he did not lodge the report immediately and lodged it on 01.02.2019. The offence was registered against applicant Balasaheb Popat Mali, applicant No.2 - Balasaheb Baburao Hilal said Dagdu Kedar, his son and 30 to 40 unknown persons.

6. After carrying out investigation, a charge-sheet was filed.

However, excluding applicant Balashabe Baburao Hilal stating that there was not sufficient material against him. However, the wife of the applicant Balasaheb Popat Mali was impleaded in the crime and the charge-sheet included her name. She has preferred the writ petition seeking quashment.

7. The learned advocate for the applicants and the petitioner would take us through the charge-sheet as also various documents annexed to the application and the petition. He would submit that it is purely a civil dispute which has been tried to be converted as a crime for the ulterior motive. He would advert our attention to the Regular Civil Suit No.09/2010 filed by accused Dagdu Duryodhan Kedar and his family members against one Bhim Dagdu Kedar, one Laxman Dagdu Kedar, wherein, even the respondent No.2 was made defendant No.8. He would submit that it was a suit for injunction in respect of the same land Gut No.85. It was being averred therein that Dagdu Tulshiram Kedar was the common ancestor who was survived by five sons Duryodhan, Bhim, Rama, Damu and Laxman claiming that it was an ancestral and joint family property and further alleging that Laxman having sold the land to the present respondent No.2 and his family members. Injunction was sought against the respondent No.2 and his family members who were impleaded therein as defendant Nos.8 to 12. He would submit that ad-interim injunction was granted *ex parte* against the respondent No.2 and his family members. It was confirmed till disposal of the suit. However

the suit was subsequently withdrawn.

8. The learned advocate for the applicants and the petitioner would also point out that one Shalubai Kisan Gaikwad who was the sister of Laxman, the predecessor of the respondent No.2 had filed Regular Civil Suit No.36/2009 seeking a declaration that the land Gut No.85 was an ancestral and Joint Family Property. She and Laxman and Laxman's wife had a joint 1/3 share therein. It was never partitioned, however, Laxman had sold the land to the present respondent No.2 and his family members who were arrayed therein as defendant Nos.3 to 7 unauthorizedly and illegally. She sought declaration that the sale deed was null and void and not binding on 1/3 share of the branch of Laxman. The learned advocate would submit that the suit was decreed, the sale deed in favour of the respondent No.2 and his family members was declared to be not binding on plaintiff - Shalubai and directing partition under Section 54 of the Code of Civil Procedure.

9. The learned advocate for the applicants and petitioner would therefore submit that apart from the two suits (supra) even the dispute before the Revenue Authorities in respect of the mutation effected in the name of the respondent No.2, was decided against the respondent No.2 and his family members *albeit* it was challenged before the Collector.

10. The learned advocate then submitted that under a registered Agreement of Sale dated 28.01.2015 the applicants Balasaheb Popat Mali and Balasaheb Baburao Hilal had agreed to purchase the very same land

Gut No.85 from Bhimaji Dagdu Kedari, Dagdu Duryodhan Kedari, Malan Kondiba Jadhav and Dadabhau Rama Kedari for valuable consideration of Rs.15,36,500/- (Exhibit-D). Though possession was not delivered under the agreement, by a contemporaneous power of attorney executed by these vendors in favour of the applicants, a right to cultivate the land to the extent of 4 Hectare 51 Are was conferred to these applicants and they were in actual possession of the land and had grown pomegranate orchard which they legally harvested and sold in the market against payment received by cheques in the name of wife of Balasaheb Popat Mali who is the writ petitioner. If at all the applicants had any other oblique intention they would not have received the money through cheques. When they are in possession and have been cultivating the land and harvesting pomegranate, filing of the FIR is prompted by the oblique design of the respondent no.2 to assert his possession without resorting to the process of law. He would place reliance on following decisions :

- i. **Govind Prasad Kejriwal Vs. State of Bihar and Anr.;**
AIR 2020 Supreme Court 1079
- ii. **Deepak Gaba and Ors. Vs. State of Uttar Pradesh and Anr.;**
AIR 2023 Supreme Court 228
- iii. **Usha Chakraborty and Anr. Vs. State of West Bengal and Anr.;**
AIR 2023 Supreme Court 688

9. Per contra, the learned APP and the learned advocate for the respondent No.2 would strongly oppose the application and the writ

petition. They would take us through the charge-sheet particularly the statements of the agricultural labours and the drivers to demonstrate that indeed the labours engaged by the respondent No.2 were residing in the land and he had cultivated and maintained the pomegranate orchard. They would submit that the fact that the applicants with several co-accused had arrived at the scene, harvested the pomegranates and transported and sold it in the market is being admitted by them even in their pleadings. They would, therefore, submit that at this juncture there is nothing to disbelieve the version of the respondent No.2. Hence they prayed to reject both the matters.

11. We have carefully considered the rival submissions and perused the papers. Certainly, it is trite as has been laid down in catena of decisions including the ones cited by the learned advocate for the applicants/petitioner herein above that a pure civil dispute cannot be allowed to be given a colour of a crime. However, it is equally trite that even a civil dispute at times would provide a motive for crimes. It is, therefore, imperative that the matter is considered from different angles.

12. As is abundantly clear that so far as the fact of harvesting of the fruits, transporting and selling them have been specifically admitted by the applicants and the petitioner in their pleadings. It, therefore, becomes necessary to ascertain as to whether the allegations in the complaint and the material collected and forming part of the charge-sheet is sufficient enough to demonstrate, irrespective of the rival claims

that the pomegranate orchard was cultivated and maintained and possessed by the respondent No.2.

13. True it is that in Regular Civil Suit No.9/2010 the respondent No.2 and his family members were respondent Nos.8 to 11, as also one Dagdu Duryodhan Kedar and his family members, who were all legal heirs of one Duryodhan Dagdu Kedar. The suit was for perpetual injunction. The ad-interim injunction was granted against the respondent No.2 and his family members which was confirmed till final disposal of the suit by the order dated 13.10.2010. It is to be remembered that those plaintiffs were the legal heirs of one of the five sons of the common ancestor Dagdu Tulsiram Kedar. However as is submitted by the learned advocate for the applicants the suit was subsequently withdrawn.

14. Admittedly, the respondent No.2 and his family members had purchased the land from one Laxman who was one of the five sons of Dagdu Tulshiram Kedar.

15. In Regular Civil Suit No.36/2009 Laxman's sister Shalubai Kisan Gaikwad was successful in obtaining a decree for partition and possession claiming 1/3 share in the entire land Gut No.85. She had also succeeded in obtaining a declaration that the sale deed executed in favour of the respondent No.2 and his family members by Laxman Dagdu Kedar was not binding on her share. The suit was decreed on 20.11.2014.

16. Simultaneously, by registered agreement to sale dated

28.01.2015 the applicants Balasaheb Popat Mali and Balasaheb Baburao Hilal agreed to purchase the same land and the agreement was executed by another son of Dagdu Tulshiram Kedar by name Bhimaji Dagdu Kedar, one Dadabhau Rama Kedar and one Malan Kondiba Jadhav. It was expressly mentioned therein that it was an agreement to sell without actual delivery of possession.

17. By a contemporaneous power of attorney which was also a registered one these vendors apparently handed over possession of only 2/3 of that land stated to be owned by these vendors from and out of the entire land Gut No.85.

18. We are pointing out the aforementioned facts and the checkered history only to demonstrate that there has been apparently a long standing dispute in the family in respect of the land in question.

19. Considering the aforementioned facts and circumstances, we put a query to the learned advocate for the applicants/petitioner as to if, at any time, the partition was effected amongst the five sons of the common ancestor Dagdu. We also asked him as to if pursuant to the aforementioned order of injunction and a decree for partition, further steps were taken either to execute or enforce these orders. The learned advocate was unable to demonstrate either the order of injunction was sought to be enforced particularly when, even according to the applicants/petitioner the respondent No.2 and his family members were asserting contrary title and possession.

20. In view of such peculiar state of affairs, if one examines the statements of the witnesses, it is well nigh clear that the respondent No.2 has apparently cultivated the pomegranate orchard and instead the applicants were able to harvest it by use of force. There are statements of the labours namely Laxman Somnath Shinde, Dnyaneshwar Ashok Bhondve and Yogesh Amruta Vaijal who all have stated that they were engaged by the respondent No.2 for maintaining the orchard and some of them were staying in the land. At this stage, one cannot discard their statements recorded under Section 161 of the Code of Criminal Procedure.

21. True it is that all these persons including the respondent No.2 have modified their original version while recording their supplementary statements and have expressly retracted their earlier stand of even applicant Balasaheb Baburao Hilal being involved in the episode and even the other applicant Balasaheb Popat Mali having pointed pistol at the respondent No.2. However, again this is not the stage to draw inference on the basis of such change in version of these persons. Rather it would rule out the possibility of they having falsely implicated the applicant Balasaheb Popat Mali. They could have very well continued with the original version if really it was a matter of false implication.

22. In view of such changed stand obviously, it would be abuse of the process of law to allow the prosecution of the applicant Balasaheb Baburao Hilal. No final report has been submitted against him. Only a

specific note has been put up in the charge-sheet stating that there was not enough material to implicate him.

23. Similarly, though the offence was originally registered even under the Arms Act for the offence punishable under Section 25 read with Section 3, while filing the charge-sheet even that has been deleted.

24. So far as involvement of petitioner - Pushpa Balasaheb Mali who happens to be the wife of the applicant Balasaheb Popat Mali, respondent No.2 had not alleged anything against her while lodging the FIR. It is only in the supplementary statement recorded after more than two years of lodging of the FIR he has come out with the allegations against her. Except this improvised version that too after enormous delay, she seems to have been implicated in the crime. It seems that the pomegranate harvested by the accused persons were apparently sold in her name. To our mind, simply on the basis of this fact one cannot allow her to face the prosecution, only because the fruits harvested by her husband and his associates were sold in her name. There is no eye witness showing her actual involvement in harvesting the fruits.

25. Considering all the aforementioned facts and circumstances, in our considered view, it is not a fit case to quash the crime and the criminal case to the extent of applicant - Balasaheb Popat Mali.

26. Criminal Application No.1297/2019 is partly allowed. The crime bearing FIR No.101/2019 registered with Parner Police Station Dist. Ahmednagar for the offences punishable under Section

383,384,386,447,448,143,147,148,149,323,504,506 of the Indian Penal Code and under Section 25 read with Section 3 of the Arms Act, 1959 is quashed and set aside to the extent of applicant Balasaheb Babanrao Hilal.

27. The Application to the extent of applicant No.1 – Balasaheb Popat Mali is dismissed.

28. Criminal Writ Petition No.1280/2021 is allowed. The crime bearing No.101/2019 registered with Parner Police Station Dist. Ahmednagar for the offences punishable under Section 383,384,386,447,448,143,147,148,149,323,504,506 of the Indian Penal Code, consequent charge-sheet and the RCC No.255/2022 pending before the learned JMFC, Parner Dist. Ahmednagar are quashed and set aside to the extent of petitioner – Pushpa Balasaheb Mali.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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