



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1573 OF 2019

1. Banduseth s/o Prabhakar Manikjade
Age: 42 years, Occu.: Agri. & Business,
2. Neha w/o Banduseth Manikjade
Age: 38 years, Occu.: Agri. & Business.

Both R/o. Kukana, Tq. Newasa,
District Ahmednagar.

.. Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-400032.
2. The Superintendent of Police,
Superintendent of Police Office,
(Rural) Aurangabad, Dist. Aurangabad.
3. The Police Inspector,
Police Station Chikalthana,
Aurangabad. Dist. Aurangabad.
4. Anand Prakash Sinha
Age: 45 years, Occu.: Construction
Manager L and T.
R/o. Visioncity, Kanchanwadi,
Aurangabad.
5. Rajendra Narayan Desai,
Age: 41 years, Occu.: Quarry and
Crusher Incharge, L and T,
R/o. Flat No.202, Disha Sanskruti,
Beed Bypass, Aurangabad.
6. Ateeq Ahmed Rafeeq Ahmednagar
Age: 39 years, Occu.: Employee L & T,
R/o.38B, Jalannagar,
Aurangabad.

.. Respondents

...
Mr. P. V. Ambade, Advocate for the petitioner.
Mr. A. R. Kale, APP for respondent Nos.1 to 3/State.
Mr. P. D. Jarare, Advocate for respondent Nos.4 to 6.
...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 11 NOVEMBER 2024

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Not on board. Upon mentioning, matter is taken on board.

2. Present writ petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India upon the alleged inaction on the part of the Police Inspector, Chikalthana Police Station, Aurangabad for not taking cognizance on the written complaint filed by the petitioners on 09.09.2019. The petitioners have prayed for following relief :-

“B) Issue appropriate writ, order or directions to the respondent No.3, to take cognizance of the petitioners’ complaint dated 09.09.2019 and register an offence punishable under Sections 379, 447, 427, 120-B, 34 of the Indian Penal Code against the accused persons named in complaint and to follow the order dated 09.09.2019 passed by respondent No.2 authority.”

3. Heard learned Advocate Mr. P. V. Ambade for the petitioner, learned APP Mr. A. R. Kale for respondent Nos.1 to 3/State and learned Advocate Mr. P. D. Jarare for respondent Nos.4 to 6.

4. We have perused the earlier orders passed by this Court. Affidavit-in-reply has been filed by respondent No.3 and thereby documents have been placed on record that the Government has given permission to Larsen and Turbo Company for excavation of Murum. Such permission is given in respect of government land and not on the private land. The petitioners have contended that the minor minerals from their land are stolen. As a part of evidence, they have produced photographs on record. However, we could not have come to the conclusion on the basis of photographs that it is in respect of the land of the petitioners. This Court in order dated 07.11.2019 (Coram: T. V. Nalawade and S. M. Gavhane, JJ.) had observed that if such complaint is received, then it was a duty of the police officer to ascertain with the help of Revenue Officer in presence of petitioner that his land was not involved in the excavation work. It was then stated that as the work of Samruddhi National Highway is going on, works have been assigned for construction of road to various companies. It was then observed that many farmers have made complaints that without taking their permission, minor minerals have been excavated. Directions were given to the respondents to see that the marking of lands which are of the Government is

done and then it was stated that upon the measurement, if it is found that the excavation is done from the land of the petitioners, then a crime be registered. Thereafter, it appears that a report was produced which was not acceptable to the petitioners. They had then applied for private measurement to show that there is substance in the allegation of the petitioners. Then again by order dated 19.07.2023 (Coram : R. G. Avachat and Sanjay A. Deshmukh, JJ.) it was observed that it is desirable to have a land measurement in presence of petitioners. It appears that the said measurement is also done. The report from Deputy Superintendent of Land Records has been perused by the parties. Important point to be noted is that being the Criminal Court cannot go into the disputed facts as to from whose land the excavation has been done. Further, as per the complaint dated 09.09.2019, the excavation is stated to be from August, 2019. The said position could not have been on the day now the measurement have been done. In the complaint, it is also stated that the damage to the extent of Rs.1 crore has been caused to the petitioners for which certainly civil remedy will lie. Even if we go by the written complaint, the petitioners are not the eye witnesses to the alleged theft. It is stated to be noticed by the

person they have engaged in cultivating the land i.e. Dilawar Syed. On the basis of information that was given by Dilawar Syed, the said complaint has been given. As regards registration of the offence is concerned, we are guided by the decisions in ***Sakiri Vasu Vs. State of U.P. and Ors., [(2008) 2 SCC 409]***, ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Ors., [(2016) 6 SCC 277]*** and ***T.C. Thangaraj Vs. V. Engammal and Ors., [(2011) 12 SCC 328]***, which have been then referred in ***M. Subramaniam and Ors. Vs. S. Janaki and Ors., [(2020) 16 SCC 728]***, wherein the Hon'ble Supreme Court has held that the petitioner/complainant will have to approach Magistrate under Section 156(3) of the Code of Criminal Procedure and the High Courts should not entertain such petitions under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India.

5. In view of the said legal position, the writ petition stands disposed of with liberty to the petitioner to approach the Magistrate as provided under the law.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm