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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 35 OF 2022

ULHAS V. PAI BHATIKAR ... PETITIONER

VS

MAMLATDAR OF CANACONA/
EXECUTIVE MAGISTRATE AT
CANACONA TALUKA AND 3
OTHERS ... RESPONDENTS

Mr. Pranay A. Kamat, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for Respondent No. 1.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for Respondent Nos. 2, 3 and 4.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 9th JULY 2024

ORAL ORDER:

1. Heard Mr. Kamat for the Petitioner, Mr. S.G. Bhobe, learned Public Prosecutor for Respondent No. 1 and Mr. Ashwin D. Bhobe for Respondent Nos. 2, 3 and 4.

2. The challenge in the present Petition is to the order passed by the learned Executive Magistrate, Canacona on 14.10.2020 in a proceeding filed under Section 133 of Cr.P.C.

3. Mr. Kamat would submit that the impugned order suffers from perversity and illegality as the Magistrate is supposed to decide such proceedings when it is pointed out that there is an obstructions on the right of way. He submits that keeping the matter in abeyance till the matter is decided between the parties, pending before this Court, was improper.

4. Mr. Kamat would submit that the proceedings filed by Respondent Nos. 2, 3 and 4 before the District Court vide Civil Suit No. 30/2012 was decided vide judgment dated 30.01.2014. By the said suit, Respondent Nos. 2, 3 and 4 were declared as exclusive owners of the suit property and the Defendants were restrained from interfering in any manner with the suit property. He would submit that while deciding the said suit, there are specific findings that the pathway was used even by the public, which is admitted by the said Plaintiffs.

5. Mr. Kamat would submit that Respondent No. 1, being aggrieved by the said judgment, preferred First Appeal before this Court which is pending adjudication. However, somewhere in the year 2017, the Petitioner filed a complaint with the Executive Magistrate regarding public nuisance and health hazards on the said pathway and contending that Respondent Nos. 2, 3 and 4 are

discharging waste water from the residential house, which is getting accumulated in the surrounding area causing health hazards. The learned Executive Magistrate called for a report from the Health Officer, however, thereafter, passed the impugned order stating that since the matter is *sub judice* before the High Court, the inquiry be kept in abeyance till the decision of the said proceedings.

6. Mr. Bhobe appearing for Respondent Nos. 2, 3 and 4 submits that the Petitioner though tried to intervene in the said suit, they were unsuccessful. It is submitted that even, they did not challenge the order of the Trial Court or rejection of their Application for intervention. He submits that the observations of the learned Executive Magistrate to keep the proceedings in abeyance cannot be faulted with. It is submitted that the issue as to whether the property in question belongs to Respondent Nos. 2, 3, 4 or to the Government is clearly *sub judice* before this Court.

7. Mr. Bhobe, learned Public Prosecutor appearing for Respondent No. 1 submits that the inquiry as contemplated under Section 133 of Cr.P.C., is only an interim measure, however, since a dispute is pending before this Court, the Magistrate was right in keeping the matter in abeyance.

8. Civil Suit No. 30/2012 was decided in favour of Respondent Nos. 2, 3 and 4 vide judgment and order dated 30.01.2024. In that suit, the Government is the Defendant and a declaration has been granted that the Plaintiffs are in exclusive possession of the suit property. Similarly, Defendant/Respondent No. 1 herein has been restrained from interfering in any manner with the suit property.

9. The Petitioner tried to intervene in the said suit, however, in the judgment itself, the learned Trial Court observed that there was no need for intervention as the present Petitioner is not claiming any right over the suit property.

10. The issues in the said suit are found mentioned in paragraph 5 of the judgment passed by the Trial Court. Issue no. 1 pertains to the ownership of the suit property whereas issue no. 2 relates to the limitation. Issue no. 3 is with regard to the jurisdiction of the Trial Court to entertain the suit. The additional issue relates to the non-joinder of necessary parties. It is thus clear that there is no issue with regard to any pathway, existing or having right through the said suit property. The learned Trial Court observed that Respondent Nos. 2, 3 and 4 are the exclusive owners in possession of the suit property. Thus, when an Appeal

is filed regarding the ownership of the suit property, which is pending before this Court, the impugned order passed by the Magistrate keeping the proceedings before it in abeyance till the disposal of the Appeal, cannot be faulted with. The only recourse adopted by the Magistrate is to wait till the Appeal is decided by this Court. The complaint filed by the Petitioner is also kept pending for adjudication. The Petitioner did not challenge the observations of the Trial Court wherein their Application for intervention was rejected.

11. Thus, no case is made out to interfere with the impugned order under the supervisory jurisdiction of this Court. Accordingly, the Petition stands dismissed.

BHARAT P. DESHPANDE, J.