

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1010 OF 2014**

Suresh Mahendra Pawar & Ors.

.....Petitioners

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Anilkumar Patil with Adv. Zeel Jain and Adv. Rahul Rote for the Petitioners.

Mr. J.P. Yagnik APP for the Respondent-State.

Adv. Sumet Khaire i/by Adv. Ajay Patil for the Respondent No.2.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 13th MARCH, 2024.

P.C.:-

1) Petitioners, accused in CR No. I-20 of 2014 registered with Chhavani Police Station, Malegaon, District Nashik under Sections 420, 467, 468, 471, 504, 506, 120-b read with Section 34 of the Indian Penal Code have invoked jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing of the said crime.

2) Heard Mr. Patil, learned Advocate for the Petitioners, learned APP for the Respondent No.1-State and Mr. Khaire, learned Advocate for the Respondent No.2. Perused record produced before us.

3) Record indicates that, by an Order dated 10th July, 2014, this Court has granted ad-interim relief in terms of prayer clause (c) in favour of

the Petitioners.

4) Perusal of first information report reveals that, the Respondent No.2, informant is the landlord and owner of a plot of land situated at Malegaon, District Nashik. He had filed a Civil suit i.e. Regular Civil Suit No.46 of 2009 for eviction of the occupants/tenants of the building which he had constructed on the said plot of land. The informant is also having a petrol pump on the said plot of land. After the said suit i.e. Regular Civil Suit No.46 of 2009 was filed by the Respondent No.2 against the Petitioner No.1 (Defendant No.4) and others, the Petitioners registered a Notice of *lis pendens* as contemplated under Section 52 of the Transfer of Property Act with the office of Sub-Registrar of Assurances, Malegaon bearing Registration No.389 of 2014. The Respondent No.2 therefore filed present crime with a contention that, in the said *lis pendens* Notice, the Petitioner No.1 represented himself to be a Plaintiff in R.C.S. No.46 of 2009 filed in the Civil Court at Malegaon, District Nashik. In this brief premise, present crime is registered.

5) Perusal of the said Notice of *lis pendens* bearing Registration No.389 of 2014, annexed at Exh-G to the Petition, would make it apparently clear that, the Petitioner No.1 is termed as "*Plaintiff*" in clause No.7 thereof, as he had registered the said *lis pendens*. It does not appear from record that, at any point of time, the Petitioner No.1 represented himself to be a Plaintiff in R.C.S. No.46 of 2009. It is the misreading of the

Respondent No.2 so also the Police who have zealously registered present crime against the Petitioners on the basis of information provided by Respondent No.2. According to us, therefore no act of cheating or any other offence as alleged by Respondent No.2 against the Petitioners is made out.

6) It be noted here that, in Order dated 20th February, 2014 passed by the learned Additional Sessions Judge, Malegaon below Exh-1 in Criminal Miscellaneous Application Nos.41 of 2014, 42 of 2014 and 54 of 2014 filed under Section 438 of Cr.PC. while granting pre-arrest bail to the Petitioners, in para No.2 thereof, it has been observed that, the first information report lodged by the Respondent No.2 herein against the Petitioners is a notable example of misuse of process of criminal jurisprudence.

6.1) After perusing the entire record, we are in agreement with the observations made by the learned Additional Sessions Judge, Malegaon in its Order dated 20th February, 2014.

7) The Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335*, while considering the exercise of the extraordinary power under Article 226 of Constitution of India or the inherent powers under Section 482 of the Code, has enumerated various categories of cases by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any

court or otherwise to secure the ends of justice, in paragraph 102, sub-paragraph Nos.1 and 3 has held that:-

- “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2)*
- “(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”*

The said guidelines are squarely applicable to the case in hand.

8) The aforementioned facts clearly reveal that, the lodgment of present crime against the Petitioners is a sheer abuse of process of law and as observed by the trial Court, is a notable example of misuse of process of criminal jurisprudence.

9) In view thereof according to us, continuation of further proceedings of present crime is nothing but a sheer abuse of process of law and needs to be quashed.

10) We accordingly quashed C.R. No. I-20 of 2014 registered with Chhavani Police Station, Malegaon, District Nashik, by allowing the Petition in terms of prayer clause (b).

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)