



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 388 OF 2019

SHOBHA NAMDEO KHAIRNAR
VERSUS
BALAPRASAD VISHNUPRASAD KAKED AND OTHERS

...
Advocate for Petitioner : Mr. Amol S. Sawant
Advocate for Respondents No.2, 3, 5 and 6 : Mr. Mukul S. Kulkarni
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 16-10-2025

PER COURT:-

1. The petitioner has raised an exception to the judgment and order dated 22.10.2018 rendered by the learned Additional Sessions Judge, Dhule, allowing Criminal Revision Application No.1 of 2013, quashing and setting aside the order dated 05.11.2012 below Exhibit-46 rejecting the discharge application of respondents/accused No.9 to 14, rendered by the learned Chief Judicial Magistrate, Dhule, in complaint bearing Regular Criminal Case No.670 of 2010, dated 23.06.2011.

2. The petitioner/complainant had presented a private complaint bearing Regular Criminal Case No.670 of 2010, before the learned Chief Judicial Magistrate, against the respondents, for the offence under Sections 120B, 339, 340, 449, 452, 403, 408, 409 and 427 of the Indian Penal Code ("IPC").

3. It is the case of the petitioner that the respondents/accused are the landlords of House No.4, CTS No.1692, Dhule, whereas the petitioner's father was a tenant. It is allegedly, the respondents had submitted a false application to the Municipal Corporation, Dhule, stating that the house-in-question was in dilapidated condition and required demolition.

4. In connection to the same, a civil suit bearing Regular Civil Suit No.282 of 2009 was instituted, wherein an application for temporary injunction was preferred by the complainant. However, the same was rejected and the complainant preferred Civil Appeal No.31 of 2009 against it. The learned Principal District Judge, Dhule allowed the same and granted temporary injunction vide order dated 17.07.2010.

5. It is alleged by the complainant that despite being aware of the aforesaid order of injunction, the accused threatened the complainant and her family and forcibly dispossessed them from the rental premises. Further, during the process of eviction, damaged certain house articles and money was stolen. As such, the complaint was filed before the learned Chief Judicial Magistrate, Dhule.

6. The respondents, thereafter, preferred a discharge application before the learned Magistrate, who rejected the said application by recording that specific statements were made by

the petitioner against the respondents and noted that the truthfulness of the allegations could not be ascertained at the preliminary stage.

7. Being aggrieved by the same, the respondents presented Criminal Revision Application No.1 of 2013 before the Sessions Court. The learned Additional Sessions Judge, considering that the dangerous part of the house-in-question was demolished prior to the grant of order of injunction, held that no offence was made out. Accordingly, allowed the revision application and discharged the present respondents in the proceedings. Hence, the petitioner/ original complainant is before this Court to challenge the said order.

8. The learned counsel for the petitioner submits that there are specific allegations levelled against the respondents and sufficient evidence exists to establish the same. It is further submitted that the revisional court has erred while passing the impugned order since the truthfulness and reliability cannot be considered at the preliminary stage. Hence, prayed to allow the petition.

9. Per contra, the learned counsel for the respondents supported the order under challenge.

10. Heard the respective learned counsel for the litigating sides and perused the record.

11. The material on record indicates that the complaint rests on allegations connected to a dispute over the condition of the premises and its consequent demolition. The record of the civil proceedings indicates that the disputed portion had already been pulled down prior to the order of injunction. Once the acts of demolition occurred prior to the interim protection, the assertion for alleged unlawful dispossession, criminal trespass or violation of a subsisting order does not survive.

12. The ingredients of the alleged offences require a *prima facie* record indicating of dishonest intention, conspiracy, or misappropriation. The complaint does not disclose facts suggesting that the respondents acted with criminal intent beyond asserting their rights as property owners. The allegations of theft or damage remain unsupported by material capable of indicating more than a civil disagreement. A criminal prosecution cannot be allowed to continue only on assertions lacking specific and corroborative circumstances.

13. The revisional court has rightly assessed whether the basic ingredients of a criminal case were disclosed. In absence of same, continuation of a criminal proceeding would amount to abuse of the process of law and pressurizing a party in a purely civil dispute.

14. In absence of *prima facie* case against the respondents, the revisional court has properly exercised its jurisdiction to prevent an unwarranted prosecution and eventual abuse of process of law.

15. In the light of the aforesaid discussion, the criminal writ petition stands dismissed.

[SACHIN S. DESHMUKH, J.]

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