



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2019 OF 2023

1. Rajendra s/o Venunath Folane
Age: 44 years, Occu.: Agri.,
2. Sandesh s/o Rajendra Folane
Age: 20 years, Occu.: Education,
Both R/o. Tandulwadi, Tq. Kannad,
Dist. Aurangabad.
3. Arjun s/o Dattatraya Khairnar
Age: 28 years, Occu.: Agri.,
R/o. Jehur, Tq. Kannad,
Dist. Aurangabad.
4. Kiran s/o Dattu Ghule
Age: 23 years, Occu.: Education,
R/o. Kusmodi, Tq. Yeola,
Dist. Nashik.
5. Akshay @ Akash s/o Raosaheb Godse,
Age: 21 years, Occu.: Education,
R/o. Tandulwadi, Tq. Kannad,
Dist. Aurangabad.
6. Sanjay s/o Rajendra Folane,
Age: 23 years, Occu.: Education,
R/o. Tandulwadi, Tq. Kannad,
Dist. Aurangabad.
7. Vishal s/o Narayan Folane
Age: 20 years, Occu.: Education,
R/o. Tandulwadi, Tq. Kannad,
Dist. Aurangabad.
8. Rohidas s/o Shankar Jadhav
Age: 40 years, Occu.: Agri.,
R/o. Brahmrushi, Mungasapur,
Tq. Kannad, Dist. Aurangabad.

9. Dattu s/o Ramsundar Khairnar,
Age: 34 years, Occu.: Agri.,
R/o. Jehur, Tq. Kannad,
Dist. Aurangabad.

.. Applicants

Versus

1. The State of Maharashtra
Through Police Station, Kannad Rural,
Tq. Kannad, Dist. Aurangabad.
2. Sangita Chimaji Madhe
Age: 27 years, Occu.: Service as
Forest Conservator,
Range Forest Office (Regional)
Kannad, Tq. Kannad,
Dist. Aurangabad.

.. Respondents

...
Ms. Pooja H. Tayde, Advocate for the applicants.
Mr. A. M. Phule, APP for the respondents/State.

...

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

**RESERVED ON : 13 DECEMBER 2025
PRONOUNCED ON : 10 FEBRUARY 2025**

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

. Present application has been filed initially for quashing of
F.I.R. vide Crime No.89 of 2023 dated 10.05.2023 registered with
Kannad Rural Police Station, District Aurangabad and later on by
way of amendment, for quashing the charge-sheet i.e. the
proceedings in R.C.C. No.231 of 2023 pending before the learned
Judicial Magistrate First Class, Kannad for the offences

punishable under Sections 353, 332, 327, 427, 379, 143, 147, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Ms. Pooja H. Tayde for the applicants and learned APP Mr. A. M. Phule for the respondents/State.

3. Learned Advocate for the applicants has vehemently submitted that the present applicants have been arrayed as accused unnecessarily. No specific role has been attributed to them. The FIR has been lodged by respondent No.2, who is serving as Forest Officer and she contends that she as well as her staff were restrained by the present applicants from discharging their official duty, however, while making such allegation, no role has been attributed. In fact, the applicants are the devotees of Sant Janardhan Maharaj and some of the applicants are volunteers in Gaushala, which is near the forest land. The applicants had objected to the illegal activity, but with a concocted story, all the applicants have been roped. Informant has stated that two incidents had taken place one on 08.05.2023 and another on 09.05.2023. There is no explanation as to why immediately any fact was not reported to the police. It is stated that informant and her colleagues noted illegal excavation of

Murum from the forest land, but the applicants are not the owner or driver of the tractor and JCB. Applicant No.2, 4 to 7 are taking education and preparing for competitive exam. Some of the applicants have been selected for the government post. The tractor, which was used for bringing fodder to the cattle in the Gaushala, was illegally detained and, therefore, there was some objection on behalf of the applicants, but taking into consideration the narration in the FIR as well as the statements of the witnesses, none of the offences under which the FIR and the charge-sheet has been registered, would get attracted.

4. Learned APP strongly opposed the application and submitted that the applicants are not denying that the informant and her team was on government duty at the relevant time. Around 7.00 p.m., information was received from Chinchkheda area on 08.05.2023 that a leopard has been seen. Therefore, the forest team went to Chinchkheda Khurd, where around 8.00 p.m. they received information that in the reserved forest land near Sant Janardhan Maharaj Namsadhana Ashram at Dhondur Konduwadi some people were excavating Murum with the help of JCB and taking it in tractor. The informant and the staff went near the spot around 11.00 p.m. They found that in Gut No.17

within the jurisdiction of village Mungsapur, near the hill, 7-8 persons found excavating Murum. The staff stopped the JCB from work. Those persons were told that the Murum is from the reserved forest land and, therefore, they should not excavate. Then those persons had quarrelled with the informant and staff. The JCB number was noted. The tractor driver had then unloaded the Murum with the help of hydrolic button. The tractor was then taken away to Gaushala near the Ashram and by parking it, the tractor driver fled away, thereby the informant and staff member's government duty was disrupted. The officer Mali took possession of the tractor and at that time, the JCB driver also fled away. After some time, some persons came near the staff. By threatening forest officer Mali, the tractor was then taken to Gaushala. This fact was informed by Mali to another forest officer Salunkhe madam. When forest officer tried to enter Gaushala, at that time, they were stopped at the gate. Mali was doing video shooting and then when Salunkhe madam asked the names of those persons, they disclosed their names which are the present applicants. By keeping two guards for security, the other staff went. Then on the next day around 7.00 a.m. i.e. on 09.05.2023 again the forest staff including informant went to the

spot. Five persons amongst the earlier nine persons were present there and it was told that they had snatched the mobile from the possession of the government servants, who were kept for the security at night time. Those mobile phones were then thrown on the ground and damage was caused to the same. Those persons had then assaulted Parasram Rathod, Devidas Rathod, Jayram Chavan, Krushna Dharmu Jadhav. Informant and Salunkhe madam were abused. The mobile phones were taken by Rohidas Maharaj with him in the Ashram and the persons accompanying him took away tractor and JCB from the possession of the forest officer. The spot was then inspected and it was found that from 0.09 Hectare area (28 meter x 20 meter x 2.7 meter) Murum was excavated and stolen.

5. Learned APP submits that perusal of the charge-sheet would show that there are statements of witnesses including those, who were allegedly assaulted. There are medical certificates. Spot panchanama would show the excavation and the tyre marks of the tractor. The 7/12 extract of Gut No.17 would show that it is a reserved forest land. Photographs have also been produced showing excavation which will be proved at the time of trial and, therefore, this is not a fit case where the

inherent powers of this Court under Section 482 of the Code of Criminal Procedure needs to be exercised.

6. As regards the powers under Section 482 of the Code of Criminal Procedure is concerned we know that we can have only limited scrutiny that is required to be done and this Court cannot go into the meticulous analysis of the facts and, therefore, taking into consideration the contents of the FIR and the other material in the charge-sheet including the statements of the witnesses under Section 161 of the Code of Criminal Procedure, it is now required to be seen as to whether ingredients of all the offences have been made out even *prima facie* or not. No doubt, as per 7/12 extract, it appears that Gut No.17 to the extent of 100 Hectare 23 R situated at village Mungasapur, Tq. Kannad, District Aurangabad is a Gairan forest reserved land, but at the same time there is evidence in the form of map, which appears to be a google map, which shows that adjacent to the said land, there is Brahmarshi Janardan Swami Ashram. As regards the incident that had allegedly taken place on 08.05.2023 though it is stated that when Murum was being excavated and the informant and staff had stopped those persons it is alleged that those persons had verbal exchange of words and they entered

into argument with the informant and staff. On that day, there are no allegations about assault or use of criminal force and, therefore, ingredients of offence under Section 353 of Indian Penal Code are not at all attracted. As regards the allegations in respect of incident around 7.00 a.m. on 09.05.2023 is concerned, it is stated that five persons i.e. applicant Nos.1, 2, 4, 8 and 9 went to the spot and they had snatched the mobiles of the two forest employees, who were deployed for the security. Those two persons who were kept for the security are stated to be Jayram Chavan and Devidas Rathod, who were kept for security of JCB and for tractor one Parasram Rathod and Krushna Dharmu Jadhav were kept. It is stated that these four persons were then assaulted. If we consider the injury certificates of these four persons, in respect of three of them, the injuries are stated as pain in neck due to trauma, pain in neck left side due to trauma, pain in right hand fingers due to trauma and pain in neck due to trauma. It is not stated either in the FIR or in the statement of these four persons as to who amongst those five persons have assaulted them. In other words, it is not stated amongst those five persons, who has assaulted or used criminal force to these persons. It is then stated that the mobiles of these persons were

destroyed and were taken away by applicant No.8 and other four persons had taken the tractor and JCB. Important point to be noted here is that while narrating the incident dated 08.05.2023 the informant as well as the witnesses say that the tractor driver had taken away the tractor and parked it near Gaushala, which is near the Ashram. Twice this has been stated and, therefore, exactly what is the chronology cannot be understood. If that tractor was already parked near the Gaushala by the tractor driver and he had fled away, then how the tractor once again came to Gut No.17 and then again by threatening forest officer Mali, tractor was once again taken to Gaushala, then how that tractor and JCB once again came to Gut No.17 on 09.05.2023, all these facts are missing in the FIR. It is tried to be stated that when tractor driver parked the tractor on 08.05.2023 near Gaushala, said officer Mali had taken it in possession. We had specifically asked the learned APP as to whether the forest officer had exercised their powers under the Indian Forest Act, 1927 and then when it is the case of the prosecution that Murum from the reserved forest was excavated and tried to be taken away, then whether the prosecution wants to say that the said Murum is of “forest produce” as defined under the Indian Forest Act, 1927.

Upon instructions, learned APP says that the informant was unable to say under which provisions of law, the tractor was taken in possession by forest officer Mali. When forest officers, though having powers to seize vehicle, have not taken steps under the said Act and at the time of taking possession of the tractor, no panchanama was executed, nor the fact was informed to the police immediately, then there is every doubt about the story. It is tried to be stated that JCB was still in Gut No.17 i.e. in the forest reserved land and as aforesaid, even the tractor is stated to be at the said place. For protecting those two vehicles, four persons were stated to be appointed. Again, at the cost of repetition, we would say that the vehicle was not seized in the matter and, therefore, the forest officers had no right to keep it in their possession. There was no question of keeping guard for the security and even if the vehicles were then taken away, yet it will not amount to any offence. It appears that entire forest staff was there at the spot on 08.05.2023, but no effort was made by anyone of them to inform the incident to the nearest police station. This is not at all expected from the government servants. Again, at the cost of repetition, we would say that the prosecution in this case has failed to point out that the action taken by the

informant and her staff was by itself a legal action within the powers of those officers and, therefore, the actions allegedly taken by these persons cannot be considered to be within the official duty of the forest officer. Mere use of the word “शासकिय कामात अडथळा ” (obstruction in official duty) will not be sufficient. It will have to be demonstrated that the said officer had such duty and whatever he or she was doing was within the legal framework.

7. At one stage it is stated that on 08.05.2023 Murum from the trolley of the tractor was unloaded at the spot and, thereafter the picture that is painted is that both the vehicles were in the possession of the informant and her staff, still it has been stated that Murum from 0.09 Hectare area has been stolen. Now, there is no evidence to support this statement in order to attract the provisions of Section 379 of Indian Penal Code. If the Murum was unloaded and the vehicles were in the possession of the informant and the staff, there was no question of taking away of the property i.e. Murum belonging to the government without the permission of the forest department.

8. Perusal of the charge-sheet would show that from applicant No.8 Rohidas, four mobile phones have been seized under Section

27 of the Indian Evidence Act. In the Panchanama, it is stated that glass of three mobiles was broken. On this count, it appears that prosecution wants to invoke Section 379 and 427 of Indian Penal Code. In fact, it is hard to believe that mobile phones of four persons would have been snatched at the same time and till the damage was caused, these four persons were only looking at the act. The spot panchanama does not say that glass pieces were found at the spot and it is surprising that still how the accused persons managed to take those mobile phones. The story itself is therefore unbelievable.

9. At the cost of repetition, on 08.05.2023 the tractor was taken to Gaushala and it is stated that when forest officers were about to enter Gaushala, they were obstructed at the gate. Certainly that was the private property and forest officers could not have entered the same like that and therefore, their obstruction would then be justified. On 08.05.2023 there was no such act which would show that criminal force was used or assault was given. Then on the next day morning, all of a sudden it is stated that five applicants/accused went and without any dialogue, snatched the mobiles of four persons. They were thrown on the ground thereby causing damage to the mobiles and those

four persons, who were on duty throughout the night, were assaulted in the morning and, thereafter taking tractor and JCB it is stated that the accused persons took away the tractor and JCB. The entire story appears to be concocted or unbelievable on the face of the record. The charge-sheet also contains three photographs one is stated to be the photograph of the excavation of Murum from Gut No.17 and the other two photographs are of the heap of Murum found in Sant Janardhan Maharaj Ashram. But it is to be noted that construction activity was going on and certainly there would be Murum that would be used in such construction activity. There appears to be no investigation as to who was the contractor to whom the said construction activity was given, from where he had fetched the Murum etc. Therefore, only on the basis of heap of Murum, we cannot jump to the conclusion that it is the same Murum which was stolen from Gut No.17. Thus, after taking into consideration the contents of the FIR and the evidence that has been collected, we consider this to be a fit case where the inherent powers of this Court under Section 482 of the Code of Criminal Procedure needs to be exercised, as the case falls within the parameters laid down in ***State of Haryana and others Vs. Ch. Bhajanlal and others,***

[AIR 1992 SC 604], which reads as under :-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following 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, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

1.
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.
4.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”

10. We therefore proceed to pass the following order :-

ORDER

I) Criminal Application stands allowed.

II) The F.I.R. vide Crime No.89 of 2023 dated 10.05.2023 registered with Kannad Rural Police Station, District Aurangabad and the charge-sheet i.e. the proceedings in R.C.C. No.231 of 2023 pending before the learned Judicial Magistrate First Class, Kannad for the offences punishable under Sections 353, 332, 327, 427, 379, 143, 147, 504, 506 of Indian Penal Code, stand quashed and set aside as against the present applicants.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm