



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 CRIMINAL APPLICATION NO.3250 OF 2022

- 1 Vilas Narayan Telore,
Age 58 yrs., Occ. Agri,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar.
- 2 Akash Vilas Telore,
Age 26 yrs., Occ. Agri.,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar.
- 3 Vikas Vilas Telore,
Age 25 yrs., Occ. Agri.,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through The Investigating Officer,
Police Station, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
- 2 Rajendra Narayan Telore,
Age 48 yrs., Occ. Service,
R/o Brahmani, Tq. Rahuri,
Dist. Ahmednagar.
At present : Flat No.11, Building No.4,
Abhishek Nagar, Shivajinagar, Nashik,
Tq. & Dist. Nashik.

... Respondents

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Mr. P.A. Bharat, Advocate h/f Mr. U.L. Momale, Advocate for applicants

Mr. A.D. Wange, APP for respondent No.1

Mr. S.V. Dixit, Advocate for respondent No.2

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

DATE : 02nd JANUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing the First Information Report vide Crime No.730/2022 dated 06.08.2022 registered with Police Station, Rahuri, Tq. Rahuri, Dist. Ahmednagar and by way of amendment for quashing proceedings in Regular Criminal Case No.179/2023 pending before learned Judicial Magistrate First Class, Rahuri, for the offence punishable under Sections 379, 427 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. P.A. Bharat holding for learned Advocate Mr. U.L. Momale for applicants, learned APP Mr. A.D. Wange for respondent No.1 and learned Advocate Mr. S.V. Dixit for respondent No.2.

3 Learned Advocate appearing for applicants has taken us through the First Information Report and charge sheet. He submits that as per the First Information Report, the informant says that applicants have committed theft of sugarcane crop grown in his land and thereafter by ploughing the land they have caused mischief. It is stated that the informant has sustained loss of Rs.1,47,775/-. However, there are civil disputes those are pending in respect of said land. Applicant No.1's father had filed Regular Civil Suit No.855/2018 for specific performance of contract and by way of amendment present respondent No.2 was added as party defendant. After death of father of applicant No.1, applicant No.1 has been added as plaintiff. In the said suit there was an application below Exh.5 for temporary injunction, which was allowed on 01.04.2021. The original owners against whom the specific performance was claimed were temporarily restrained by the concerned Court from alienating the suit property in favour of respondent No.2 or any other third person from creating third party interest in the suit property and from dispossessing the plaintiff from the suit property till the final disposal of the suit. Respondent No.2 has also filed Regular Civil Suit No.892/2021 for permanent injunction against present applicants and others, in which he had filed application for temporary injunction and after hearing both parties the concerned Court had rejected the said application on 22.04.2022. Further, on the basis of application by respondent No.2 proceedings under Section

145 of the Code of Criminal Procedure was taken up against applicants and in Criminal Revision No.72/2022 the learned Sessions Judge, Ahmednagar on 16.08.2022 had stayed the order passed by the learned Executive Magistrate. Therefore, it cannot be said that on the date of the First Information Report in the present case i.e. 06.08.2022 respondent No.2 was possessing and cultivating the land and he was the owner of sugarcane. The First Information Report is nothing but an assertion tried to be made by respondent No.2 to support his civil suit.

4 Learned APP submitted that now the charge sheet is filed, there is evidence against present applicants as it has come on record that present applicants have given the said sugarcane that was cut in the suit land to the sugarcane factory, therefore, let the trial be held.

5 Learned Advocate for respondent No.2 strenuously submitted that though the Civil Court while passing order below Exh.5 in Regular Civil Suit No.855/2018 that is filed by father of present applicant No.1 had restrained the original owners; yet, it is to be noted that, that order was came to be passed on 01.04.2021, whereas the original owners had purchased the land prior to that date on 12.03.2021. He was put in possession of the property on the basis of sale deed. Though his application for temporary

injunction has been rejected, it can be considered that the original owners have reiterated about the sale of the land in his favour. The stay has been granted in Criminal Revision on technical ground as there was no show cause notice issued by the Executive Magistrate. The applicants cannot get advantage of the orders passed in the civil suits as those suits are still pending and present respondent No.2 is still fighting for his rights. He had cultivated the land and taken the sugarcane crop. If the application is allowed, then it will affect the rights of present applicants and if he succeeds in the suit, then at that time he will not be able to lodge the report. Therefore, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised, as there are disputed questions of fact.

6 At the outset, it is to be noted that the First Information Report is in respect of the sugarcane crop which was stated to be cultivated in 01 H 60 R land from Gat No.575 situated at village Brahmani. According to the First Information Report, respondent No.2 had taken the sugarcane crop since December, 2020. The incident is stated to have taken place around 10.30 a.m. on 19.02.2022. When the informant went to the land, he found that the sugarcane crop has been cut and there is damage to the roots of the sugarcane (where the roots are kept as it is to grow sugarcane crop from the

same root). Upon inquiry, he came to know that present applicants had cut the said crop without his consent and given it to sugarcane factory to the valuation of Rs.1,47,775/-. He says that the sugarcane has been supplied by applicants between 16.01.2022 to 31.01.2022. In order to show even *prima facie* offence under Section 379 of the Indian Penal Code the prosecution has to prove that the informant was either the owner or possessor of the property stolen. The applicants have produced the copy of order below Exh.5 in Regular Civil Suit No.855/2018 dated 01.04.2021, wherein the application was allowed and the original defendant Nos.1 to 5 (not including the informant) were temporarily restrained from alienating the suit property in favour of Rajendra Narayan Telore (respondent No.2) or any other third person from creating third party interest in respect of the suit property, and from dispossessing the plaintiff from the suit property till the final disposal of the suit. Thus, the temporary injunction order was two folds; i) restraining the other defendants from transferring/alienating the suit property in favour of present informant – respondent No.2 and ii) not to dispossess the plaintiff from the suit property. It has come on record that present applicant No.1's father expired on 26.05.2021. That means, after the order below Exh.5 on 01.04.2021 was passed, present applicant No.1 has been brought on record in that matter, but the natural corollary is that the said order was in favour of the father and unless it would have been set aside or stayed by the superior

Courts, it would have remained in existence till the disposal of the suit. The said suit is still pending as it is informed. A specific query was made to the learned Advocate for respondent No.2, as it appears that he was added as defendant No.6 subsequently, as to whether he has challenged the said order dated 01.04.2021 ? The answer that was given was that he has filed Regular Civil Suit No.892/2021. The fact remains is, in the said suit, which was filed by present respondent No.2, the application for temporary injunction came to be rejected on 22.04.2022 and in the discussion there was a reference of the suit that was filed by the deceased father of applicant No.1 and note was also taken of the order dated 01.04.2021 in Regular Civil Suit No.855/2018. Therefore, there is *prima facie* evidence on the basis of undisputed facts because the order below Exh.5 in Regular Civil Suit No.855/2018 has not been challenged by respondent No.2 that the present applicant No.1 and others, who are included as heirs in the said suit are in possession of the said land. The question then arises, as to on what basis the informant was claiming possession over the suit land, that too, from December, 2020 ? His sale deed as per the recitals in the plaint in Regular Civil Suit No.855/2018 is dated 12.03.2021, then how he could have been in possession since December, 2020, is also a question. When it is on record that respondent No.2 was not the possessor or the owner of the sugarcane that was grown in the suit land on 06.08.2022 or between 16.01.2022 to 31.01.2022, we

cannot come to the conclusion that cutting of sugarcane by the applicants and selling it to the sugar factory by them would amount to offence of theft. Ploughing of the land by applicants, which as per the protection that is granted under orders of Courts to them, will not amount to mischief.

7 When both the suits are still pending, we know our limitations that we cannot make comment on the other aspects regarding the ownership of the land. The observations above made are in respect of sugarcane and not the land. Quashment of the First Information Report and the proceedings will not have any effect on the civil suits those are pending. The apprehension expressed on behalf of respondent No.2 is without any base. We are also not taking into consideration the chapter case and the proceedings therein as those proceedings are also still pending as it is informed. However, on the basis of the unchallenged order below Exh.5 in Regular Civil Suit No.855/2018, case is made out for exercise of powers of this Court under Section 482 of the Code of Criminal Procedure. Under the circumstances, it would be unjust to ask the applicants to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) Regular Criminal Case No.179/2023 pending before learned Judicial Magistrate First Class, Rahuri, Tq. Rahuri, Dist. Ahmednagar arising out of First Information Report vide Crime No.730/2022 dated 06.08.2022 registered with Police Station, Rahuri, for the offence punishable under Sections 379, 427 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicants viz. 1) **Vilas Narayan Telore**, 2) **Akash Vilas Telore** and 3) **Vikas Vilas Telore**.

iii) We clarify that the observations in this order shall not have any effect on the pending civil suits.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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