



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

81 CRIMINAL APPLICATION NO.4922 OF 2024

- 1 Ashok Suryabhan Aadhagale,
Age 56 yrs., Occ. Agri.,
R/o Dighi, Tq. Newasa,
Dist. Ahmednagar.
- 2 Bhimabai w/o Ashok Aadhagale,
Age 46 yrs., Occ. Household & Agri.,
R/o Dighi, Tq. Newasa,
Dist. Ahmednagar.
- 3 Yosef Suryabhan Aadhagale,
Age 71 yrs., Occ. Agri.,
R/o Dighi, Tq. Newasa,
Dist. Ahmednagar.
- 4 Aabasaheb Suryabhan Aadhagale,
Age 51 yrs., Occ. Agri.,
R/o Newasa (Kd), Tq. Newasa,
Dist. Ahmednagar.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
- 2 Kalabai Dada Bharaskar,
Age 66 yrs., Occ. Household,
R/o Tarwadi, Tq. Newasa,
Dist. Ahmednagar.

... Respondents

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Mr. A.J. Nagode, Advocate for applicants

Mrs. R.P. Gour, APP for respondent No.1

Mr. M.R. Khutwad, Advocate for respondent No.2 - **absent**

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 22nd APRIL, 2025

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

1 Present application has been filed for quashing the proceedings in Regular Criminal Case No.440/2023 pending before the Court of Judicial Magistrate First Class, Newasa, Tq. Newasa, Dist. Ahmednagar, arising out of First Information Report vide Crime No.293/2023 dated 10.03.2023 registered with Police Station, Newasa, Tq. Newasa, Dist. Ahmednagar, for the offence punishable under Sections 452, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.J. Nagode for applicants and learned APP Mrs. R.P. Gour for respondent No.1. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 In First Information Report, informant – respondent No.2 has stated that she resides in tin shed erected in land Gat No.238/11 situated in

village Tarwadi, Tq. Newasa, Dist. Ahmednagar. She admits that civil suit is pending in between her family and applicant No.1 and others. Then she quotes about an incident that had allegedly taken place at 3.00 p.m. on 10.03.2023. She states that applicants came to her shed, dragged her out of the shed by saying that the land belongs to them and she should not reside. She was abused. She tried to say that since last 25 years her family is cultivating the land, but applicant No.1 got annoyed and assaulted on her back with the help of stick. Other three accused persons made her to lie on the ground and then gave kicks and fists to her. Threats were given to kill her. Accused persons then damaged the tin shed. The informant then came to village with another person and told the incident to her son. Thereafter, she gave the report.

4 Here, applicants have produced copies of Judgments. Present applicant Nos.1, 3 and 4 were plaintiffs in Regular Civil Suit No.1074/2011 which was filed before 2nd Joint Civil Judge Junior Division, Newasa, Dist. Ahmednagar. It was against one Sakharbai Maruti Bharaskar, but when she expired, her legal heir was brought on record as Shivaji Dada Bharaskar, who is son of present informant – respondent No.2. Said suit was for declaration and perpetual injunction. Plaintiffs were claiming to be the owner of suit property in view of Will dated 10.02.2005 left by one Malanbai Maruti

Bharaskar. The property that was the subject-matter was 02 Hectare land from Gat No.238/11 situated at Tarwadi, Tq. Newasa, Dist. Ahmednagar i.e. the land which has been referred in First Information Report. By Judgment and Decree dated 15.01.2022 the concerned Court decreed the suit. It was declared that plaintiffs are the owners of suit property by virtue of Will. The defendant was restrained from disturbing plaintiffs' possession over the suit property by himself or through his agents, servants or any other person in his behalf. The defendant therein i.e. son of present informant – respondent No.2 preferred appeal by filing Regular Civil Appeal No.9/2022 before learned District Judge, Newasa. By Judgment dated 29.09.2022 Appellate Court dismissed the appeal. Thereafter the son of present informant approached this Court in Second Appeal No.755 of 2022. This Court by order dated 13.02.2023 dismissed the Second Appeal on the ground that Second Appeal does not involve any substantial question of law. Thus, it is to be noted that present applicants have been held to be in possession of the suit property by all the Courts since 2011 at least. Under such circumstance, the possession as claimed by informant in the said premises is not factually correct and, therefore, when applicants themselves are the owners and possessors of the said property, ingredients of Section 452 of the Indian Penal Code will not get attracted.

5 The informant states that she was assaulted by stick and simple hurt has been caused. But stick seized in the matter is 2½ feet long. Other dimensions are not given. Therefore, it is not an instrument of shooting, stabbing, cutting etc., which are required under Section 324 of the Indian Penal Code. Therefore, those ingredients are not even *prima facie* get attracted. Though in the charge sheet there is a spot panchnama showing the shed in the suit property and statements of witnesses are there, it appears that Investigating Officer had not taken note of decisions of the Civil Courts to consider whose land it is. Other sections involved are non cognizable offences and, therefore, it would be unjust to ask the applicants to face the trial. Case is made out for use of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.440/2023 pending before the Court of Judicial Magistrate First Class, Newasa, Tq. Newasa, Dist. Ahmednagar, arising out of First Information Report vide Crime No.293/2023 dated 10.03.2023 registered with Police Station, Newasa, Tq. Newasa, Dist. Ahmednagar, for the offence punishable under Sections 452, 324, 323, 504,

506 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Ashok Suryabhan Aadhagale**, 2) **Bhimabai w/o Ashok Aadhagale**, 3) **Yosef Suryabhan Aadhagale** and 4) **Aabasaheb Suryabhan Aadhagale**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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