



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4206 OF 2023

Rajesh s/o Ashok More
Age: 43 years, Occu.: Agriculture
and Business,
R/o. Banewadi, Railway Station,
District Aurangabad.

.. Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
MIDC Waluj Police Station,
Aurangabad.
2. Nilima Chandrakant Alias
Annasaheb Ghadge Deshmukh
Age: 65 years, Occu.: Household,
R/o. Plot No.6, Pushpanagari,
Aurangabad.

.. Respondents

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Mr. S. C. Arora, Advocate for the applicant.
Mr. G. A. Kulkarni, APP for respondent No.1/State.
Ms. Ashwini Lomte h/f Mr. J. V. Deshpande, Advocate for respondent
No.2.

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

DATE : 03 APRIL 2025

ORDER :

. Present application has been filed for quashing the proceedings in
S.C.C. No.985 of 2021 pending before the learned Judicial Magistrate
First Class, Aurangabad arising out of the FIR vide Crime No.351 of

2021 dated 20.04.2021 registered with MIDC Waluj Police Station, District Aurangabad for the offences punishable under Sections 447, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. S. C. Arora for the applicant, learned APP Mr. G. A. Kulkarni for respondent No.1/State and learned Advocate Ms. Ashwini Lomte holding for learned Advocate Mr. J. V. Deshpande for respondent No.2.

3. Learned Advocate for the applicant has taken us through the FIR and the charge-sheet. He submits that admittedly the present applicant has filed Special Civil Suit No.979 of 2022 before the learned Civil Judge Senior Division, Aurangabad against respondent No.2 and others for declaration and perpetual injunction. Though the concerned Court has rejected the application Exhibit-05 and the appeal preferred by the present applicant i.e. Miscellaneous Civil Appeal No.35 of 2024 has been dismissed by the learned Adhoc District Judge-1, Aurangabad on 10.09.2024, yet the record in the present case would show that on the day of alleged incident, the applicant was in his land and not in the land of respondent No.2. The Civil Court had rejected the application and the appeal only on the basis of some erroneous statements or document by Talathi. But here, in this case, though it is a criminal case, yet the documents have been produced, which will show that the boundaries of

the piece of land owned by the present applicant are matching with the disputed area, in which it is alleged that the applicant had made encroachment. The learned Advocate appearing for the applicant has taken us through the sale deed, especially the boundaries in respect of his property, spot panchanama executed on 21.04.2021 and the other revenue entries to support his contention. He also states that the applicant had made an application for measuring his land, however, that measurement was objected by respondent No.2. Only the measurement can further elaborate the claim of ownership. Further, the communication by Talathi, Sharnapur, Taluka and District Aurangabad to Police Inspector, MIDC Waluj Police Station would show that the portion from the agricultural land owned by the predecessor of the applicant was never acquired for percolation tank. Under the said circumstance, it cannot be said that the evidence that has been collected in the matter even *prima facie* disclose the ingredients of Section 447 of the Indian Penal Code, which is the only cognizable offence, but rest of the offences are non cognizable and, therefore, it would be an abuse of process of law if the applicant is asked to face the trial.

4. Per contra, the learned APP as well as learned Advocate Ms. Ashwini Lomte holding for learned Advocate Mr. J. V. Deshpande for respondent No.2 strongly object the application. Learned Advocate for respondent No.2 is relying upon the affidavit-in-reply by respondent No.2

Nilima Chandrakant Alias Annasaheb Ghadge Deshmukh and the order below Exhibit-05 in Special Civil Suit No.979 of 2022 and the Miscellaneous Civil Appeal No.35 of 2024. They both submit that it would be the disputed fact as to exactly where the offence was committed i.e. to the extent of the encroachment and for which, in fact, the civil suit is filed, in which there is no interim relief to the applicant. Therefore, this will not be the fit case where the powers under Section 482 of the Code of Criminal Procedure can be exercised.

5. Before turning to the further facts, we are taking note of what has been stated in the FIR. The informant states that her husband had purchased 54 R land from Gut No.15 situated in Sajapur, Taluka and District Aurangabad in 2004. It was in the name of her daughter, however, by way of gift deed executed on 03.06.2014, the daughter had gifted the said land in the name of informant. When she along with her daughter had gone to inspect the land around 11.30 a.m. on 20.04.2021, at that time, they found that the stone wall behind the petrol pump was damaged with an intention to encroach and the present applicant and two unknown persons were found putting a plaque in respect of the possession over the said land. When the informant and her daughter made inquiry, at that time, the applicant and others had threatened them and abused.

6. The investigation is complete and the charge-sheet is filed only against the present applicant. During the course of investigation various documents have been collected. Panchanama of the spot has been executed and the said spot was shown by the daughter of the informant. Photographs of the spot have also been taken wherein there appears to be a plaque embedded in the earth showing the name of the applicant. There are statements of the daughter of the informant, the servant working in Girja Petrol Pump, which appears to be belonging to the daughter of the informant and the Manager of the said Petrol Pump. There is also the statement of the Predecessor of the applicant, who has stated about the boundaries in the sale deed of the applicant. No doubt, there is a sale deed in favour of the applicant, but the fact remains as on record is that present applicant has filed the civil suit i.e. Special Civil Suit No.979 of 2022 before the learned Civil Judge Senior Division, Aurangabad and the temporary injunction application under Order 39 Rule 1 of the Code of Civil Procedure came to be rejected by order dated 16.02.2024. Important point to be noted is that the suit is for declaration of ownership also. When an appropriate Civil Court, even at the *prima facie* stage, has come to the conclusion that the plaintiff has failed to show *prima facie* case in his favour and rejected the application Exhibit-05 and then the appellate Court dismissed the Miscellaneous Civil Appeal No.35 of 2022, then these two orders will have to be taken

as in favour of the informant. Though the writ petition is stated to be pending before this Court, there are no interim orders in favour of the applicant. The applicant appears to be now raising the dispute in respect of boundaries and on the basis of some issue of possession over the piece of land. Then this Court taking into consideration the scope under Section 482 of the Code of Criminal Procedure cannot go into the disputed facts and, therefore, this cannot be taken as a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. The application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm