



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

CRIMINAL APPLICATION NO. 595 OF 2024

Ankush s/o Gulabrao Kolte
Age : 57 years, Occu. : Pensioner
R/o. : Plot No. 87, Keshav Nivas,
Vyankatesh Nagar, Behind Totala Hospital,
Jalna Road, Aurangabad .. Applicant
(Orig. Respondent No. 1)

Versus

1. The State of Maharashtra
Through Mukundwadi Police Station, Aurangabad
2. Balaji s/o Vyankatesh Kottawar
Age : 53 years, Occu. : Business,
Golden Nest, Plot No. 413, E-Sector, N-1,
Cidco, Aurangabad. .. Respondents

Mr. M. B. Borse, Advocate for the Applicant.
Smt. M. N. Ghanekar, APP for Respondent No. 1.
Mr. P. D. Jarare, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 12th June, 2025.

Date on which order pronounced : 26th June, 2025.

FINAL ORDER :-

. The applicant has approached this Court for quashing of the proceedings of R.C.C. No. 650/2017 pending before the learned J.M.F.C., Aurangabad. The proceeding is initiated on a private complaint filed by respondent No. 2 for the offences punishable under

Sections 452, 455, 342, 395, 427, 504, 506 r/w Section 34 of the Indian Penal Code (for the sake of brevity hereinafter referred to as "I.P.C."). Initially, he filed Criminal Misc. Application No. 1949/2013 seeking direction to the State to register the FIR. The learned Court, however, directed the complainant to give statement under Section 200 and on the basis of the same he issued process.

2. The present applicant is shown as accused in the said complaint. It is stated that, the complainant had erected a tin shed for his watchman on his land in Garkheda, Taluka and District Aurangabad. It is alleged that, the accused persons had tried to interfere with the possession of the complainant. The complainant had filed regular civil suit bearing R.C.S. No. 79/2010 seeking injunction and the same is pending. It is alleged that, the accused persons have created false documents to claim ownership on the said land. The said land is in the name of co-operative society and the name is also mutated. It is alleged that, on 15.03.2010 the watchman was attacked by group of 40-50 unknown persons. He was threatened with life.

3. On receiving this, the learned Magistrate by order dated 12.08.2013 observed that, the dispute appears to be of civil nature and instead of directing the police to register a complaint directed

complainant to give a statement on 31.08.2013. Statement of watchman also came to be recorded. On the basis of two statements the learned J.M.F.C. issued process in the year 2017.

4. The learned advocate Mr. Borse for the applicant submits that, in the complaint, no case is made out to issue process against the applicant. The dispute is purely of civil nature. The suit filed by the complainant came to be dismissed in the year 2014. It is thus clear that, he could not prove his case even before the Civil Court. It is clear that, the complainant could not establish his right or any case against the applicant. He submits that, from the verification statements it is seen that, no exact date and time of occurrence of the incident is given. A private complaint was filed in the year 2013 and the incident alleged is of 2010. He submits that, under such circumstances, the proceeding of the complaint itself would be an abuse of process of law and prays for allowing the criminal application.

5. The learned advocate Mr. Jarare for the respondent No. 2 opposes the present application. At the outset, he raised an objection as to maintainability of the petition. He submits that, the order of issuance of process can be challenged by filing revision before the appropriate Court. This Court need not entertain the application in view of availability of alternative remedy. He further submits that, the

learned J.M.F.C. has rightly issued process in the case. The learned J.M.F.C. has issued process only after recording the verification and finding substance in the complaint. The learned J.M.F.C. has rightly applied his mind and therefore, rightly decided not to issue directions under Section 156 (3) of the Code of Criminal Procedure and instead proceeded to record verification. He submits that, statements of two persons were recorded. One of the complainant himself and second of the watchman who was attacked. He thus prays for rejection of the application.

6. The learned A.P.P submits that, appropriate order be passed.

7. After hearing the parties, this Court has gone through the complaint. It is seen that, in a complaint the allegations are about an incident allegedly taken place on 15.03.2010. Nothing appears as to why it took three years thereafter for the complainant to lodge the complaint. Except date no other particulars are given. It is stated that, on 16.03.2010 i.e. next day of the alleged incident complainant had given written complaint to the Police Commissioner, however, nothing appears as to what action was taken thereafter. From looking to the verification of the informant it is only seen that, in the month of January 2010 there was dispute over marking of the land. An incident

of 15.03.2010 is alleged against 30-40 unknown persons. Out of them 8-10 persons had going to tin shed of the watchman, however, no name of any of the persons is given. Only suspicion is expressed that since there was earlier dispute with the accused persons named in the complaint he had suspicion got them. So far as statement of the watchman is concerned, he also stated that, around three and half years ago 30-40 unknown persons had been to the land of the complainant. 8-10 persons entered in the tin shed with the sticks, however, no name of any of the persons is given. He has not even given the date of the incident. Thus, nothing is appearing from the verification to show that case is made out to take cognizance.

8. Considering the judgment in the case of Kailash Vijayvargiya Vs. Rajlakshmi Chaudhuri and others reported in (2023) 14 SCC 1, the Hon'ble Apex Court has held that, after recording statement it is duty of the Magistrate to see material and to see as to whether there are grounds to proceed further. The Magistrate has to see as to whether there is evidence in support of allegations of the complainant. It is not necessary at this stage to see as to whether the said material is sufficient to warrant of conviction.

9. Mr. Jarare, learned advocate for respondent No. 2 on the basis of this judgment strenuously submits that, at this stage, the learned

Magistrate has rightly seen that there is material to proceed with the complaint. The statements would clearly indicate that some incident has taken place for which the complaint is filed.

10. This Court has considered this aspect as well. As discussed above, there is no sufficient particulars of the incident are given. No name of any particular accused is mentioned either by the complainant or by the watchman. This Court certainly finds that, there is no sufficient material even to proceed with the complaint. So far as alternative remedy is concerned, this Court has seen the facts given. An incident alleged is of March 2010. The complaint is filed in the year 2013. For considerable period even process was not issued. The process for the first time is issued in the year 2017. This Court finds that, under such circumstances, it is clear that, continuance of such proceeding would be clearly an abuse of process of law.

11. In the circumstances of this Court, this Court finds that, taking a technical view of maintainability of alternative remedy would be again dragging the parties to another proceeding. In such facts, this Court finds that, entertaining the application would be justified. In view of the above, this Court has decided to entertain the application.

12. In view of overall discussion and the facts of this case, this Court is inclined to allow the application. The criminal application is allowed in terms of prayer clause (B) and the same is disposed of.

(KISHORE C. SANT, J.)

PS.B.