

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2522 OF 2024

Shubhangi Shrikant Tillu and Ors.

.. Petitioners

Versus

State of Maharashtra and Anr.

.. Respondents

-
- Mr. Mhaispurkar i/b Adv. Sumedh Modak, Advocates for Petitioners.
 - Mr. Shivamsinh Deshmukh a/w Mr. Aaditya Sharma, Mr. V. Kamble for Respondent No.2.
 - Ms. Gauri Rao, APP for State
 - A.P.I Ambika Gaste (Bazarpeth Police Station)

.....
CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 25, 2025.

P.C.:

1. Heard Mr. Mhaispurkar, learned Advocate for Petitioners; Mr. Deshmukh, learned Advocate for Respondent No.2 and Ms. Rao, learned APP for State.

2. Present Petition is filed for challenging order dated 15.05.2024 passed by the Additional Sessions Judge, Kalyan in Criminal Revision Application Nos. 62 and 63 of 2021 and order dated 29.07.2021 passed by the 6th Judicial Magistrate First Class, Kalyan in Other Miscellaneous Application No. 326 of 2020.

3. Briefly stated, it is pleaded that one Waman Sadashiv Patwardhan and his mother Parvati Sadashiv Patwardhan were owners

of land bearing Survey No. 276/3 new CTS No. 3427 admeasuring 6322.7 square meters (for short “**said property**”). On 17.12.1992 Waman Sadashiv Patwardhan and Parvati Sadashiv Patwardhan entered into an oral agreement for sale of the said property with one Salman Anis Dolare for a consideration of Rs.7,50,000/- which he duly paid. However before execution of the Sale Deed, Waman Sadashiv Patwardhan and Parvati Sadashiv Patwardhan both passed away. Thereafter, Salman Anis Dolare filed Special Civil Suit No. 303 of 2015 before Civil Judge Senior Division, Kalyan seeking execution of Sale Deed which was allowed vide Judgment dated 03.02.2016 declaring Salman Anis Dolare as owner of the said property and Petitioners were directed to execute Sale Deed in favour of Salman Anis Dolare.

3.1. One Mr. Paresh Harishchandra Bhoi (for short “**Respondent No. 2**”) filed Civil Suit No. 348 of 2016 before 5th Joint Civil Judge Senior Division, Kalyan seeking temporary injunction among other reliefs claiming to have his residence and four cow sheds on the disputed property. By order dated 26.10.2018 injunction was granted on sale of the said property. Numerous rounds of litigation ensued thereafter which culminated in the Supreme Court passing order dated 13.01.2021 directing parties to maintain status quo on the said property.

3.2. Thereafter it is Mr. Bhoi’s case that despite pendency of the

proceedings, Salman Anis Dolare, along with on Musab Anis Dolare and one Bilal Ansar Kamle (for short “**Original Respondent Nos. 1 to 3**”) attempted to dispossess Respondent No.2 and on 22/9/2020, original Respondent No. 1 entered into the said property and demolished three cow sheds using a JCB machine and caused death of one of his buffaloes.

3.3. Respondent No.2 approached the concerned police station where NCR No. 0580 of 2020 dated 22.10.2020 was registered, however the officer in-charge did not take cognizance of the offense and declined registration of FIR. Thereafter Respondent No. 2 addressed a written complaint dated 10.10.2020 to Commissioner of Police however no action was taken.

3.4. On 11.10.2020 Respondent No. 2 filed Criminal Miscellaneous Application No. 326 of 2020 before 6th Judicial Magistrate First Class, Kalyan (for short “**Magistrate**”) under Section 156(3) of Criminal Procedure Code, 1973 (for short “**CrPC**”) seeking directions to officer-in-charge of Bazarpeth police station to register FIR under Sections 192, 420, 452, 464, 466, 467, 471 and 395 of the Indian Penal Code, 1860 and to conduct investigation against original Respondent Nos. 1 to 3 as well as present Petitioners for demolition of Respondent No.2’s cow shed and causing death of one of his livestock. On 29.07.2021, Magistrate allowed the aforementioned application

and directed Police Inspector of Bazarpeth Police Station to investigate the alleged offences and submit report.

3.5. Being aggrieved, present Petitioners filed Revision Application Nos. 62 and 63 of 2021 in Additional District and Sessions Court, Kalyan against the order dated 29.07.2021 passed by the Magistrate in Criminal Miscellaneous Application No. 326 of 2020. The Sessions Court passed order dated 15.05.2024 staying investigation into the alleged offences and remanded the matter back to the Magistrate for fresh determination. Hence the present Petition.

4. Mr. Mhaispurkar, learned Advocate for Petitioner would submit that Order dated 15.05.2024 passed by the Magistrate is bad in law, passed without application of mind and due consideration of facts and hence deserves to be set aside. He would submit that present dispute arises out of a purely civil dispute pertaining to the said property between Salman Anis Dolare and Paresh Harishchandra Bhoi.

4.1. He would submit that said property situated at Kalyan was purchased by one Sadashiv Patwardhan in a Court Auction on 24.04.1964. He would submit that after the demise of Sadashiv Patwardhan, said property devolved to his wife Parvati Patwardhan and son Waman Patwardhan. Thereafter, Parvati Patwardhan and Waman Patwardhan were desirous of selling the said property and entered into an oral Agreement for Sale with Salman Anis Dolare and

he paid Rs.7,50,000/- as consideration. However before execution of Sale Deed, Parvati Patwardhan and Waman Patwardhan both expired and therefore Salman Anis Dolare filed Civil Suit seeking seeking specific performance and execution of the Sale Deed by heirs of Parvati Patwardhan and Waman Patwardhan one of whom is Suresh Patwardhan. He would submit that Civil Court decreed the Suit and directed execution of the Sale Deed. He would submit that after Mr. Paresh Harishchandra Bhoi objected to the sale and filed Civil Suit No. 348 of 2016 seeking injunction among other reliefs. He would submit that temporary injunction was granted by Civil Court by Order dated 26.10.2021 and the Suit is pending till date. He would submit that on 22.03.2020, original Respondent Nos. 1 to 3 demolished three cowshed situated upon the said property which killed one of the buffaloes.

4.2. He would submit that on registration of NCR No. 0580 of 2020, Bazarpeth Police Station conducted an inquiry and concluded that none of the offences levied against Petitioners in the Complaint were made out hence no FIR was registered. He would submit that Magistrate failed to consider in the complaint that Petitioners had no role neither it was shown and the complaint is silent as to time, place and manner of demolition of the cow shed. He would submit that since Respondent No. 2's application to Magistrate was not accompanied with an affidavit in support, hence on procedural grounds itself,

present complaint ought to be dismissed. He would submit that bare perusal of Application under Section 156 (3) Cr.P.C to the Magistrate would show that none of the ingredients of the offenses that present Petitioners are accused of are made out, hence Respondent No.2 has failed to make out a case of criminal wrongdoing against present Petitioners. He would submit that Officer in charge of Bazarpeth Police Station was correct in dismissing the complaint filed by Respondent No.2 on the ground that no criminal offence was made out against the present Petitioners.

4.3. He would submit that on perusal of the Complaint, it is seen that Respondent No.2 leveled no allegations against Petitioners. He would submit that Petitioners were not present on the said property at the time of demolition of the cow sheds neither were they aware that Original Respondent Nos. 1 – 3 would take such drastic steps. He would submit that Petitioners have no involvement in the said property and neither was any role assigned to them in the Complaint. He would submit that Petitioner No.4 was appointed as Chairman of Kalyan Janata Sahakari Bank and on 22.09.2020, he was carrying out his duties at the bank's headquarters and was not present on said property, hence he was not present neither was aware that the cow sheds were demolished.

4.4. He would submit that Non – Cognizable Report No. 0580 of 2020 disclosed names of present Petitioners hence their sudden appearance in Application under Section 156(3) CrPC filed before the Magistrate is an afterthought to falsely implicate the present Petitioners.

4.5. In support of his submissions he would rely on the following decisions of the Supreme Court i.e. *(i) Priyanka Srivastava V/s State of UP*¹ and *(ii) State of Haryana V/s. Bhajan Lal*² to contend that the impugned orders passed by the Magistrate and Sessions Court deserve to be quashed and set aside.

5. PER CONTRA Mr. Deshmukh, learned Advocate for Respondent No. 2 – the contesting party would submit that the impugned orders are correctly passed in law with due application of mind and deserve to be upheld. He would submit that the suit property originally belonged to his late father and the same has been in his possession since the last several decades. He would submit that Respondent No.2 came to understand that present Petitioners along with one Mr. Musab Dolare obtained a decree dated 03.02.2016 from the Court of Civil Judge, Senior Division, Kalyan in Special Civil Suit No. 326 of 2015 directing Petitioners to execute Sale Deed in favour of Musab Anis Dolare with respect to the said property.

¹ (2015) 6 SCC 287

² 1992 SCC (Cri) 426

5.1. He would submit that Respondent No.2's late father filed Special Civil Suit No. 348 of 2016 before the Civil Judge Senior Division seeking cancellation of the Sale Deed and for temporary injunction restraining creation of third party rights in the said property which was granted vide Order dated 26.10.2018 and the suit is pending. He would submit that Petitioners filed Appeal from Order (St.) No.33074 of 2018 along with Civil Application (St.) No. 33076 of 2018 before this Court challenging the injunction granted by order dated 26.10.2018 passed by the Civil Judge Senior Division. He would submit that this Court passed Order dated 08.11.2019 staying the Order dated 26.10.2018.

5.2. He would submit that on 22.09.2020, several persons entered upon the said property and demolished 4 cow shed using a JCB which caused 60 to 70 buffaloes to run loose and it led to death of one buffalo. He would submit that a container office bearing the name Bilal Ansar Kamle as developer was installed on suit property. He would submit that in the aftermath, Respondent No. 2 addressed letter dated 27.09.2020 to Bazarpeth Police Station complaining about the aforementioned incident accompanied with pictures. He would submit that on the basis of the said complaint, Bazarpeth Police Station registered Non – Cognizable Report No. 508 of 2020 against Bilal Ansar Kamle for offence under Section 427 of IPC. He would submit that Bazarpeth Police Station addressed letter dated 29.09.2020

disposing of the complaint stating that the complaint filed by Respondent No.2 was civil in nature and disclosed no criminal offence.

5.3. He would submit that Respondent No.2 addressed letter dated 10.10.2020 to the Commissioner of Police, Thane City narrating the facts and sought for registration of FIR. However since no response was received, Respondent No.2 filed Application under Section 156(3) of CrPC being Criminal Miscellaneous Application No. 326 of 2020 before the Magistrate seeking registration of FIR which was allowed by Order dated 29.07.2021. He would submit that Petitioners filed Criminal Revision Application No. 63 of 2021 against Order dated 29.07.2021 which was allowed by order dated 15.05.2024 remanding the matter back to Magistrate for fresh consideration.

5.4. He would submit that name of Petitioner No. 4 is explicitly mentioned in the complaint letter dated 10.10.2020 addressed to the Commissioner of Police as well as in Criminal Miscellaneous Application No. 326 of 2020 wherein his role is described and made out. He would submit that Petitioner No. 4 along with Original Respondent Nos. 1 to 3 attempted to usurp and dispossess Respondent No. 2 and the same is proved from the documents on record. He would therefore vehemently persuade me to dismiss the Petition and uphold the order dated 29.07.2021 passed by the Magistrate directing investigation into the offences recorded in the Non – Cognizable

Report No.0508 of 2020 against Petitioner No. 4. Regarding Petitioner Nos. 1 to 3 are concerned, Mr. Deshmukh in his usual fairness would submit that he has instructions not to press his case against them and it is only pressed against Petitioner No. 4.

6. I have heard Mr. Mhaispurkar learned Advocate of Petitioner and Mr. Deshmukh, learned Advocate for Respondent No.2 and perused the record of the case with their able assistance. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

7. At the outset, *lis* to be decided for decision on this Writ Petition is whether present Petitioners or rather Petitioner No. 4 had any role in demolition of the cow sheds of Respondent No. 2 on 22.09.2020 which resulted in death of one buffalo and whether investigation ought to proceed against the present Petitioners?

8. Admittedly controversy arises out of disputed ownership of the said property. It is seen that although Salman Anis Dolare obtained a decree from the Civil Court which directed execution of Sale Deed between heirs of Waman Patwardhan and Parvati Patwardhan with him, the same was challenged by the late father of Respondent No. 2 i.e. Harishchandra Bhoi whose claim is now supported by his son Paresh Harishchandra Bhoi i.e. Respondent No. 2. Special Civil Suit No. 348 of 2020 is filed to challenge Judgement dated 03.02.2016. It is

seen that the aforementioned Suit is still pending. Hence as far as dispute on ownership of the said property is concerned, the same is to be decided by the concerned Civil Court.

9. As regards demolition of the cow shed which resulted in death of one of Respondent No. 2's livestock, it is seen that Respondent No. 2 addressed complaint dated 22.09.2020 to Bazarpet Police Station who subsequently registered NCR 508 of 2020, however investigation was not carried out on the ground that present dispute is of civil nature and no criminal offence was made out. Respondent No. 2 then addressed letter dated 10.10.2020 to Commissioner of Police Thane City on the same facts however no response was received. Thereafter Respondent No.2 filed Miscellaneous Application No. 326 of 2020 before the Magistrate. It is seen that names of present Petitioner No. 4 appeared for the first time in this complaint made to Commissioner of Police and for the second time in Complaint made to the Magistrate. It is seen that in the initial complaint made to Bazarpet Police Station, name of Petitioner No. 4 is not mentioned. Role of Petitioner No. 4 has not been highlighted save an except to state that he in conjunction with the other accused persons was responsible for the destruction. This is therefore a very important circumstance.

10. It is seen that there is no nexus between Petitioner No.4 and demolition of the cow sheds as he was neither present on the scene of crime on 22.09.2022 nor did he have knowledge of any such actions of Original Respondent Nos. 1 to 3. It is seen that originally Sale Deed was to be executed between Waman Patwardhan, Parvati Patwardhan and Salman Anis Dolare and only upon demise of Waman Patwardhan, Parvati Patwardhan did the Civil Court direct Sale Deed to be executed between Petitioners and Salman Anis Dolare. Therefore Petitioner No. 4 had no gain or loss in interfering with transfer of the said property and was only acting as per directions in the Order dated 03.02.2016. It is seen that Petitioner No.4 has no previous criminal antecedents and is of clean character. It is seen from the Non Cognizable Report No. 508 of 2020, Complaint dated 10.10.2020 addressed to Commissioner of Police Thane City and Application under Section 156(3) of CrPC filed before Magistrate that role of present Petitioners much less Petitioner No. 4 in demolition of the cow sheds nor in the death of the livestock is not shown by Respondent No. 2. It is trite law that role of each accused has to be specifically described and laid out in the commission of any alleged offences. However Respondent No.2 has failed to describe role of Petitioners in the offence allegedly committed by them. It is seen that complaint addressed by Respondent No.2 to Bazarpet Police Station was closed before investigation and complaint addressed to Commissioner of Police, Thane City received no response. It is seen

that complaint to Magistrate was registered and Criminal Miscellaneous Application No. 326 of 2020 was decided in favour of Respondent No. 2. Further the Order passed by the Magistrate was not a reasoned or speaking order and it did not discuss the role or nexus of each of the accused persons. Hence it is not sustainable in law *qua* the Petitioners before me.

11. In the above facts and circumstances, the Petition is partly allowed. Order dated 29.07.2021 passed by Magistrate in Criminal Miscellaneous Application No. 326 of 2020 filed by Respondent No.2 under Section 156(3) CrPC is partly set aside. Investigation against present Petitioner Nos. 1 to 4 i.e. Original Respondent Nos. 7 to 10 is set aside. Investigation is directed to be proceeded against all other accused persons i.e. Original Respondent Nos. 1 to 6. This Order shall be communicated to Officer – in – charge of Bazarpeth Police Station within a period of 1 week from date of uploading of order.

12. Criminal Writ Petition is partly allowed and disposed of in the aforementioned terms.

13. Criminal Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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