

Bombay High Court

Gopal S/O. Devidas Salfale And ... vs State Of Maharashtra Thr. Police ... on 22 August, 2017

Bench: V.A. Naik

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jg.apl 416.17

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.

Criminal Application (APL) No. 416 of 2017

(1) Gopal S/o Devidas Salfale  
Aged adult, Occ : Agriculturist,

(2) Sadanand S/o Devidas Salfale  
Aged adult, Occ : Agriculturist,  
Both R/o. Borgaon Peth, Tq.  
Achalpur, District Amravati.

.... Applicants

// Versus //

(1) State of Maharashtra,  
through Police Station Officer,  
Police Station, Sarmaspur,  
Achalpur, District Amravati.

(2) Navin Sudhakar Goge,  
Aged about 37 years, Occ.  
Business, R/o Shivsena  
Vasahat, Old Balapur, Akola,  
Tah. & Distt. Akola.

.... Non-applicants

Shri M. P. Kariya, Advocate for the applicants

Shri A. M. Joshi, Additional Public Prosecutor for the non-applicant no. 1

Shri A. M. Tirukh, Advocate for the non-applicant no. 2

CORAM : SMT. VASANTI A NAIK AND  
M. G. GIRATKAR, JJ.

DATE : 22-08-2017.

JUDGMENT (Per : M. G. GIRATKAR, J.)

Rule. Rule made returnable forthwith. The criminal application is heard finally at the stage of admission with the consent of the learned counsel for the parties.

.....2/-

2 jg.apl 416.17.odt

2. The applicants have challenged the First Information Report (FIR) lodged by the non-applicant no. 2 in the Police Station, Sarmaspur, Achalpur, District Amravati.

3. It is submitted that the applicants are agriculturists. Agriculture Field Survey No. 41, 91 R situated at Mouza Meghnathpur, Tq. Achalpur, District Amravati is the ancestral land of the applicants. They are in possession of said land. It is submitted that father of applicants, namely, Shri Devidas Zabusa Salfale, aged about 80 years alleged to be sold field to the non-applicant no. 2. It is submitted that 7/12 extract is still in the name of the applicants. They are in exclusive possession of the field. It is submitted that the non-applicant no. 2, close relative of the applicants claimed that he purchased said agriculture land from the father of the applicants vide sale deed dated 19-12-2015. It is submitted that the applicants are in exclusive possession of field and there was no such any transaction between the father of the applicants and the non-applicant no. 2.

4. The non-applicant no. 2 lodged false report against the applicants about theft of Tur crop. The non-applicant no. 1, Police Station, Sarmaspur (Achalpur) registered crime against the applicants. Prima facie the applicants have not committed any offence and, therefore, .....3/-

3 jg.apl 416.17.odt FIR registered against them is liable to be quashed and set aside.

5. The non-applicant nos. 1 and 2 filed their respective reply. The non-applicant no. 1 submitted that on the basis of report lodged by the non-applicant no. 2, crime was registered and investigation is in progress. The non-applicant no. 2 submitted that Field Gat No. 41, admeasuring about 91 R, situated at Mouza Meghnathpur, Tq. Achalpur, District Amravati was owned by Devidas Zabusa Salfale. The said property was exclusively owned by Devidas Salfale. Devidas Salfale partitioned his own property. The applicants received their own shares. They have no any right in Gat No. 94. Devidas Salfale received Gat No. 94 in partition. The non-applicant no. 2 purchased the said field from Devidas Salfale and he is in possession. The applicants are not in possession. The non-applicant no. 2 sown Tur and Soyabean crop in the field. Behind their back, the applicants removed Tur crop and caused loss to the extent of Rs. 30,000/-. It is submitted that the applicants have committed theft of agriculture yield. At last, it is submitted that the non- applicant no. 2 is the owner and in possession of the field. The applicants have committed theft of Tur crop and hence, application be rejected.

6. Heard Shri M. P. Kariya, learned counsel for the applicants, .....4/-

4 jg.apl 416.17.odt Shri A. M. Joshi, learned Additional Public Prosecutor for the non- applicant no. 1 and Shri A. M. Tirukh, Advocate for the non-applicant no. 2.

7. From perusal of the documents, it is clear that Naib Tahsildar, Achalpur passed the order dated 22-5-2017 and come to the conclusion that the applicants are in possession of Field Gat No. 41. It was accordingly ordered by Naib Tahsildar, Achalpur that name of Gopal Devidas Salfale i.e. the applicant no. 1 be recorded in 7/12 extract in the possession column. It was observed by the Naib Tahsildar that in the year 2016-17, the applicants sown Soyabean and Tur crop in Field Gat No. 41 for which the non-applicant no. 2 is claiming ownership. In the report, it was alleged that both the applicants removed the crop of Tur from field of non-applicant no. 2 valued about Rs. 30,000/- and, therefore, crime was registered for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code. It is clear from the revenue record and order of Naib Tahsildar that in the relevant year i.e. 2016-17, the applicants cultivated Field Gat No. 41 and sown Tur and Soyabean

crop in the disputed field. As per the observations of Naib Tahsildar, Achalpur, the applicants are in possession, therefore, it cannot be said that the non-applicant no. 2 sown Soyabean and Tur crop. The allegations made by the non-applicant no. 2 that the applicant nos. 1 and .....5/-

5 jg.apl 416.17.odt 2 in furtherance of their common intention removed Tur crop valued at Rs. 30,000/- from his field is not reliable. Prima facie it appears that the non-applicant no. 2 was not in possession of the suit field, therefore, material ingredients of Section 379 of the Indian Penal Code are not made out. Hence, prima facie no offence is made out. As per the guidelines of the Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal reported in 1992 Supp.(1) SCC 335, prima facie FIR lodged by the non-applicant no. 2 does not show any offence is made out against the applicants. Hence, FIR lodged by the non-applicant no. 2 vide Crime No. 5/2017 is liable to be quashed and set aside. Accordingly, we allow the application in terms of prayer clause (i) and quash and set aside FIR No. 5/2017 registered with Police Station, Samraspur (Achalpur) for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code against the applicants on the report of the non-applicant no. 2.

The criminal application is disposed of with no order as to costs.

JUDGE

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