
Keshav Narher Wani Vs Motilal Ragho Sutar

Criminal Application No. 1138 of 2005

Court: BOMBAY HIGH COURT (AURANGABAD BENCH)

Date of Decision: Nov. 18, 2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 204, Section 482#Penal Code, 1860 (IPC) - Section 323, Section 34, Section 379, Section 427, Section 448, Section 504, Section 506

Citation: (2016) ALLMRCri 5178 : (2017) 2 MhLJCrI 610 : (2017) 1 MhLJCrI 597

Hon'ble Judges: V.K. Jadhav, J.

Bench: Single Bench

Advocate: Mr. R.S. Shinde h/f N.L. Choudhari, Advocate, for the Respondent No.1; Mr. A.R. Kale, APP, for the Respondent No. 2; Mr. L.V. Sangit, Advocate, for the Applicant

Final Decision: Disposed Off

Judgement

V.K. Jadhav, J.(Oral) - Being aggrieved by the order dated 21.3.2005 passed by the Judicial Magistrate First Class, Chalisgaon, District Jalgaon

in RCC No.14/2005 thereby issuing process against the applicant for the offence punishable u/s 379, 448, 427 323, 504, 506 read with section

34 of the IPC, the original accused persons approached to this Court by filing present criminal application.

2. Brief facts, giving rise to the present application are as follows :-

Respondent no.1 has approached to the Magistrate, Chalisgaon, District Jalgaon and filed a complaint against the applicants for having committed

offence as aforesaid. Learned Judicial Magistrate First Class, Chalisgaon after going through the complaint and verification statement sent the

matter to concerned police station for proper investigation as provided under section 156 (3) of Cr.P.C. Accordingly, the concerned police station

has submitted two reports firstly on 10.2.2005 vide Exh.5 and 25.2.2005 vide Exh.7 and submitted before the court that no such incident had

taken place as alleged in the complaint. Thereupon, respondent no.1 original complainant has filed an application Exh.6 contending therein that the

concerned police station has submitted a false report and that, as per the allegations made in the complaint process may be issued against the

applicant's original accused. Learned Magistrate, Chalisgaon by order dated 21.3.2005 allowed said application and accordingly issued process as

aforesaid against the applicant accused by order dated 21.3.2005 impugned in the present criminal application.

3. Learned counsel for the applicant submits that, petitioner no.1 is owner of land gat no.57/2 situated within the limits of Grampanchat, Bahal and

land is adjacent to the Gavthan land of Grampanchayat. Since the land owned and possessed by petitioner no.1 is adjacent to the Gavthan land

many persons though erected their small shops for business purpose in the Gavthan area, some of them also made encroachment on the land

owned and possessed by petitioner no.1. Even petitioner no.1 has measured the land gat no.57/2 and found that respondent no.1 complainant has

encroached to some extent upon his land. Consequently, petitioner no.1 has submitted an application before the Grampanchayat for removal of

said encroachment for the reason that village Grampanchayat, Bahal was recovering rent from the said persons occupying Gavthan area for their

small business. Village Grampanchayat in its meeting dated 28.6.2004 discussed on the application submitted by the petitioner no.1 and further

directed the petitioner that village Grampanchayat has no objection if petitioner removed said encroachment on his own. Learned counsel submits

that, accordingly the petitioner no.1 has approached the Sub Divisional Officer, Pachora requesting therein removal of the encroachment. Sub

Divisional Officer, Pachora has conducted inquiry through the Tahsildar, Chalisgaon and directed the petitioner no.1 that since land on which the

encroachment has been made is privately owned by him, petitioner no.1 may remove said encroachment on his own expenses as directed to him

by the village Grampanchayat by maintaining law and order situation in the village. Sub Divisional Officer, Pachora has passed said order on

11.1.2005. Accordingly, the petitioner has approached the concerned police station and sought police protection for removal of the said

encroachment and also deposited the fees of Rs. 863/- as directed by the said police station. Learned counsel submits that, accordingly petitioner

no.1 has removed encroachment in the presence of the police staff by maintaining the law and order situation in the village and thus, police

submitted report to the Magistrate in response to the order passed by the Magistrate directing investigation into the matter that no such incident

had taken place as alleged in the complaint. Learned counsel submits that, petitioner no.1 along with other applicants had taken recourse to all the

legal remedies available to him for removal of the encroachment and even though on his own expenses under the police protection removed the

encroachment, respondent no. 1 has filed false complaint by making wild allegations. Learned counsel submits that Magistrate has not accepted the

report submitted by the police and further decided to inquire into the allegations himself made in the complaint. However, respondent no.1 has not

examined himself before the court nor Magistrate has directed respondent no.1 to examine himself and to examine his witness before the court to

consider the allegations made in the complaint to the effect whether a prima facie case is made out for issuance of the process as alleged in the

complaint. Learned counsel submits that, for no reason Magistrate has ignored report submitted by the police and issued process against the

applicants.

4. Learned counsel for respondent no.1 original complainant submits that at the time of passing an order of issuance of process, presence of the

accused persons is not solicited. Consequently, probable defence of the accused cannot be considered. Learned counsel submits that there are

allegations made in the complaint and respondent no.1-complainant was given a short notice of removal of encroachment by the police on the date

of incident itself, respondent no.1 went to consult his lawyer. Thus behind his back incident had taken place and therefore he approached the court

by filing a private complaint. Learned counsel submits that, considering the verification statement of respondent no.1 original complainant, learned

Judicial Magistrate First Class, Chalisgaon has rightly issued process against the applicant. No interference is required. Criminal application is thus

liable to be dismissed.

5. On perusal of the record, it appears that, concerned police station has brought to the notice of the court by filing a report that no such incident

has taken place as alleged in the complaint still then, Magistrate has ignored said report and allowed the application filed by respondent no.1

original complainant Exh.6. It is a part of record and same is also not disputed that the applicant no.1 had initially approached the concerned

Grampanchayat for removal of the encroachment by filing an application and since village Grampanchayat had directed him to remove the

encroachment on his own approached Sub Divisional Officer of the division seeking help for removal of the encroachment made on his property by

respondent no.1 original complainant. Even though, Sub Divisional Officer has conducted inquiry through Tahsildar, Sub Divisional Officer has

directed the petitioner no.1 to remove encroachment on his own under his own expenses by maintaining law and order situation. It is also a part of

record that, petitioner no.1 has thereafter approached the concerned police station and deposited charges for availing police protection. It is thus

clear that, applicant no.1 has taken recourse to all legal remedies available to him. It is clearly mentioned in the police report that police staff was

present between 11 a.m. to 8 p.m. in the village and no such incident as alleged in the complaint had taken place. There was an apprehension in the

mind of the applicant no.1 that respondent no.1 original complainant may file complaint against him for removal of encroachment and therefore he

has taken all care by approaching village Grampanchayat and Sub Divisional Office and finally concerned police station.

6. Respondent no.1 original complainant has filed an application Exh.6 after police submitted negative report in the court requesting therein to issue

process against applicants accused. However, the learned Magistrate by ignoring said report decided to conduct inquiry by himself into the

allegations made in the complaint. Even, the learned Magistrate had called upon the learned APP to submit the say and the learned APP before the

Trial court submitted that State has no objection if the chance is given to the complainant for adducing the evidence. Even then, respondent no.1-

original complainant has not examined himself nor examined any witnesses. Learned Magistrate while conducting inquiry into the allegations of the

complaint has not directed respondent no.1-complainant to adduce evidence in support of the allegations.

7. In view of the aforesaid admitted facts and said approach of the Magistrate, I find that, order of issuance of process only on the basis of

application Exh.6 is improper, incorrect and illegal.

8. On the basis of admitted record as discussed in the foregoing paragraph no purpose would be served in remanding the matter directing the

Magistrate to record the statement of the complainant and his witnesses, if any. In view of the above, I proceed to pass the following order.

Hence, following order.

ORDER

1. Criminal application is hereby allowed in terms of prayer clause "A".
2. Rule is made absolute in above terms.
3. Criminal application accordingly disposed off.