

**(2012) 11 BOM CK 0111**

**In the Bombay High Court**

**Case No : Criminal Application No. 5494 of 2011**

Vishnu and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

**Date of Decision : 19-11-2012**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)  
Penal Code, 1860 (IPC) — Section 191, 192, 193, 307, 34

**Citation : (2013) ALLMR(Cri) 120**

**Hon'ble Judges : T.V. Nalawade, J**

**Bench : Single Bench**

**Advocate : S.R. Choukidar, for the Appellant; D.V. Tele, APP for State and Mr. S.B. Ghatol-Patil, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent, both the sides are heard for final disposal. This Court has perused copies of charge-sheet and the papers of investigation and also copies of other documents with regard to the dispute, which was going on between original complainant and some of the petitioners. The proceeding is filed for quashing of the criminal case bearing R.C.C.No. 95/2011, which is pending in the Court of Judicial Magistrate, First Class, Wadvani, District Beed. The chargesheet is filed against the petitioners for offences punishable under sections 420, 471, 499, 500, 504, 506, 191, 192, 193 and 34 of Indian Penal Code. The copy of order made by J.M.F.C. on Exh. 83 is produced and it shows that application filed by accused for discharge is partly allowed and the petitioners are already discharged of the offences punishable under sections 191, 192, 193 of I.P.C. Thus, present proceeding is in respect of remaining offences.

2. A private complaint was filed by respondent No. 2 in the Court of J.M.F.C. against the petitioners for aforesaid offences. The J.M.F.C. made an order of investigation u/s 156 (3) of Criminal Procedure Code. On the basis of this order,

the crime came to be registered and after making investigation of the case, the chargesheet is filed by the police.

3. Accused Nos. 1 to 6 are close relatives interse and the relationship is mentioned in the complaint. Similarly, accused Nos. 8, 9, 13, 16 and 17 are related to each other. Allegations are made that accused Nos. 8, 9, 13, 16 and 17 are friends and associates of accused Nos. 1 to 6. Accused Nos. 10, 11 and 12 are also said to be relatives of accused Nos. 1 and 2.

4. Accused No. 14 Shri. Bandu Choukidar is said to be advocate of accused Nos. 1 to 6 as he has filed appearance for these accused in Regular Civil Suit No. 230/2000. In this suit, accused No. 15 Shri. Prakash Muli was appointed as Court Commissioner and he is also an advocate.

5. The complainant has dispute with accused Nos. 1 to 6. It is his contention that some portion of Government property, a road, is sold by accused No. 3 to accused Nos. 1 and 2 and there, some construction is made by accused Nos. 1 to 3. On the sale deed accused Nos. 16 and 17 have put their signatures as witnesses. Allegations are made that on the portion shown to be sold in the sale deed, which is a public road, construction of the house is made by accused Nos. 1 to 6. Regular Civil Suit No. 230/2000 is filed by complainant due to this dispute.

6. Accused No. 7 is Revenue Officer and it is contended that complainant had given application to revenue office for making inquiry of the aforesaid act of the accused, but accused No. 7 made a false record to show that nothing wrong is done by the accused.

7. Allegations are made that accused No. 13 has filed a false affidavit in aforesaid civil suit in support of the case of defendants.

8. Allegations are made against accused Nos. 14 and 15 that they joined hands and they created false record when accused No. 15 was appointed as a Court Commissioner in the aforesaid suit.

9. It is the case of the complainant that some false cases are filed against him and so defamation is caused to him. He has contended that after getting the order of injunction in R.C.S. No. 230/2000, accused Nos. 1 to 13, 16 and 17 started to pick up quarrels with him and they are threatening him to finish him. Allegations are made that even when there is order of Court, the encroachment is not removed by the accused.

10. Copy of plaint of R.C.S. NO. 230/2000 is filed on the record and it shows that relief of declaration in respect of Gat No. 4 is claimed by the complainant. He has claimed that he is the owner of this property. He has claimed relief of injunction against accused Nos. 1 to 6 that they should not interfere in his right of use of way, which is Dukadegaon-Chinchala public way. This suit was filed on 18.10.2000. Copy of judgment of R.C.S. No. 230/2000 shows that the Trial Court dismissed the suit by judgment and decree dated 31.3.2007. The Trial Court has considered the report given by the Court Commissioner and the Trial Court has

held that the house of defendants is not constructed on Dhanora road and it has not created an obstruction to Dukadegaon-Chinchala road. It appears that appeal against this decision is filed by the complainant and it is still pending.

11. A copy of judgment delivered by 3rd Ad hoc Additional Sessions Judge in Sessions Case No. 24/2002 is produced and it shows that in case filed against complainant and one more person for offence punishable u/s 307, 34 of I.P.C. the complainant was convicted and sentenced for the offence punishable u/s 307 r/w. 34 of I.P.C. Accused No. 2 Nathuba Bade is shown as the first informant and the witness in the said case. Copy of a private complaint filed by present complainant against Presiding Officer of the Court of Civil Judge, Junior Division, Majalgaon is produced and it shows that after decision of aforesaid suit, he filed complaint against Judicial Officer also. Copy of order made by this Court (Principal Seat) shows that in a proceeding filed for quashing of this case by the Presiding Officer, relief is granted to her and the case against her is quashed and set aside. [Criminal Writ Petition No. 626/2011].

12. Though in the police papers, there is document like panchanama of the spot prepared by the police and it shows that the road has become narrow due to some construction, this circumstance is under consideration of Civil Court. In any case, the dispute mentioned in the complaint appears to be purely of civil nature and the complainant has tried to rope in several persons, who have gone against him. He did not spare even the Judicial Officer, who gave decision of suit against him. If he has some grievance against Court Commissioner, he was at liberty to file objection against the report of Court Commissioner and he could have given application in the suit against the Court Commissioner, if he had a grievance of nature mentioned in the present complaint. The judgment delivered by the Trial Court shows that no such step was taken by the complainant and he did not even call the Court Commissioner for cross examination. This grievance can be considered by Civil Court in the pending civil dispute.

13. The other allegations of defamation, giving abuses and threat are very vague in nature and no specific incident as such is mentioned in the complaint. Police papers also do not show that they could collect material about specific incident of quarrel. This Court has no hesitation to observe that the complainant has tried to give different colour to the civil dispute. If the relevant dates which are quoted above are considered, it can be said that when the relief of temporary injunction was given, the complainant decided to take such steps. After that suit came to be decided against him on merits. In view of these circumstances, this Court holds that if the case filed against the petitioners is allowed to proceed, that will be abuse of process of Court.

14. One Advocate Shri. S.B. Ghatol-Patil was appointed to represent the original complainant in this proceeding and sufficient time was given to him to go through the papers and for arguing the matter. In view of the aforesaid circumstances, this Court holds that the proceeding deserves to be allowed and the following order is made.

## ORDER

1. The petition is allowed. Criminal case bearing R.C.C. No. 95/20 31 pending in the Court of J.M.F.C., Wadwani, Dist. Beed which is filed for offence punishable under sections 420, 471, 499, 500, 504, 506 and 34 of I.P.C., is hereby quashed and set aside.
2. Rule is made absolute in the aforesaid terms.
3. Fees of the Amicus Curie is quantified at Rs. 3,000/- (Rupees three thousand).