

Order below Exh.1 in
S.C.C. No. 772/2021
CNR-MHSN-12-0001648-2021
(Kusum Aadmuthe vs. Shanabai Sakhale Ors.)

Complainant has filed the private complaint stating that accused have committed offence punishable under Sections 427,447, 379 r/w Section 34 of Indian Penal Code.

2. It is alleged that complainant has purchased the properties bearing block nos. 1022/B and 1483 situated at village-Bhilwadi, Tal. Palus, Dist. Sangli. By way of mutation entry no. 24137, complainant has entered her name over the 7/12 extract of aforesaid properties. Complainant has made partnership with Mahavir Kinikar for cultivation of crop over the said properties. In fact, there is no road existing in the said agricultural properties, however, accused no. 1 filed false case as per the provisions of Section 5 of Mamlatdars Courts Act. Rasta case no. 3/2020 is pending in that regard.

3. It is further averred in the complaint that complainant filed Regular Civil Suit bearing RCS no. 53/2020 in the Court of Civil Judge Jr. Div., Palus. Suit is filed for relief of perpetual injunction, however, trial Court rejected the application of temporary injunction filed vide exh.5. Complainant preferred appeal Civil Misc. Appeal no. 14/2021 was partly allowed and the appellate court came to conclusion that road was and is not in existence. However, appellate Court granted status- quo. Order of appellate Court is challenged by present accused by way of Writ petition no. 7980/2021. Hon'ble Bombay High Court has directed to maintain status-quo and permitted the petitioner (present accused no. 1) to use alleged road. However, concession was given to petitioner to use the road and to

continue it to remain in force till 31/12/2021. But, in fact there was no road in existence, rather, complainant has cultivated sugar cane crop and accused taken away that particular crop and thereby committed theft of it. Accused also caused the damage to crop of the complainant and also cut down Neem tree. Said incident occurred on 30/11/2021 and accused misinterpreted the order passed by Hon'ble Bombay High Court in the aforesaid writ petition. Therefore, on the basis of these allegations, complainant prayed to pass the appropriate order as per Section 156 (3) of Code of Criminal Procedure.

4. Heard the learned advocate for the complainant. He argued that this is fit case to invoke the provisions of Section 156(3) of Code of Criminal Procedure. He further argued that when there was no road in existence then, accused were not expected to use it and also not to create the new road. Accused also taken away sugar cane crop and committed the theft. Therefore, appropriate order be passed in this regard.

5. Prima-facie from the photographs filed by the complainant does not inspiring the confidence that theft of sugar cane has been committed, apart from this, there is delay in lodging the complaint. Because when complainant is alleging that incident occurred on 30/11/2021 and from his application filed vide exh.3/5 prima-facie it appears that he had made complaint on 02/12/2021. Prima-facie relationship between accused and complainant does not appear to be cordial, rather it appears that relationship between them is strained due to filing of Civil cases before various forums. So also, after perusal of the complaint and documents filed by the complainant vide exh.3 and considering the observation passed by Hon'ble Bombay High Court in writ petition no. 7980/2021 as well as

considering the fact that it is not easy to take away the sugar cane crop at large scale and that too in a short span of time, because, there is allegation that road has been created which was not in existence and it is not possible within a short span of time to take away the sugar cane crop and to create road over it. If the accused were creating the road then what was the hurdle for the complainant to immediately call the police and to seek necessary help. Even there was no hurdle to lodge the complaint immediately on same day, especially, when complainant knows that in the early morning of 30/11/2021 incident has occurred. Prima-facie there is delay of 2 days in making the complaint before the Superintendent of Police. Even there is no averment in the complaint that complainant has went at concerned police station immediately on the date of incident. Under such a circumstances, it is not fit case to invoke the provisions of Section 156(3) of Code of Criminal Procedure. Accordingly, I pass the following order.

ORDER

- (1) The complainant is hereby directed to remain present for verification on 18/12/2021 as contemplated under Section 200 of Code of Criminal Procedure.

(Dictated & pronounced in open court)

**Date : 14/12/2021.
Place : Palus.**

Sd/-
(N.D. Rudrabhate)
Judicial Magistrate, First Class, Palus

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer : Pravin G. Sabale

Court : Jt. C.J.J.D. & J.M.F.C., Palus

Date : 14/12/2021

Signed by the Presiding Officer on : 14/12/2021

Uploaded on : 16/12/2021