

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 44 OF 2015

Smt.Linabai @ Pramilabai w/o. Ashok .. Applicant
Dhivare

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. B.R. Kedar, Advocate for the applicant.
Mr. S.D. Kaldate, APP for respondent/State.
Mr. P.S. Paranjape, Advocate for respondent No.2.

**CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 09.04.2015**

P.C. :-

1. Heard learned Counsel for the applicant, learned APP and learned Counsel for the respondent. Respondent No.2 herein filed a complaint before the J.M.F.C. at Shirpur on 17.05.2014 alleging therein that the present applicant has taken undue advantage of the relations between the parties and has transferred the land standing in the name of the respondent No.2 in their own name. The mutation entry was subject matter of the record of rights proceedings. According to the complainant, the said entries were taken in the year 1993. Respondent

No.2 after 18 years has challenged the Mutation Entry No.1590 before the Sub-Divisional Officer at Shirpur, in R.T.S. Revision No.2 of 2010, which was allowed on 25.01.2010. Respondent No.2 has filed an appeal challenging the said order which was registered as R.T.S. Appeal No.6 of 2011. The Dy. Collector, Dhule vide order dated 28th February, 2012 was pleased to allow the said proceedings and the said Mutation Entry No.1590 was confirmed in favour of the applicant. The complainant i.e. respondent No.2 had sought directions under section 156(3) of Cr.P.C. from the learned J.M.F.C. contending therein that the applicant has committed offence punishable under section 420, 406, 465, 467, 468, 471 r/w 34 of the Indian Penal Code. The learned Magistrate by an order dated 03.09.2014 was of the opinion that the enquiry under section 202 of Cr.P.C. was necessary and therefore had called for report under section 202 of Cr.P.C. from Thalner Police Station. It is pertinent to note that before calling for report under section 202 of

Cr.P.C., learned Magistrate had recorded verification of the complainant on 13.08.2014. It is apparent that the learned Magistrate was of the opinion that this would be a fit case for taking cognizance and issuing process. However, subsequently, the report under section 202 of Cr.P.C. was called. By order dated 02.01.2015, learned Magistrate had issued directions under section 156 (3) of Cr.P.C. It appears from the record that the learned Magistrate has exercised the discretionary power by taking recourse to the first step before taking cognizance and simultaneously issued directions under section 156(3) of Cr.P.C.

2. Learned Counsel for the applicant submits that in view of patent irregularities committed by the learned Magistrate, proceedings bearing Cri.Misc. Application No.105 of 2014 deserves to be quashed and set aside. In-fact, in mean time, Thalner Police Station had complied the directions under section 156(3) of Cr.P.C. and had

registered Crime No.2 of 2015 against the applicant on 05.01.2015 for offence punishable under section 420, 465, 467, 468, 471, 504, 506 r/w 34 of Indian penal Code. At this stage, learned APP submits that the investigation in the Crime No.2 of 2015 is in progress.

3. It is true that the learned Magistrate has committed grave error by taking recourse to all alternative powers at the same time. In-fact, there was no occasion for calling of report under section 202 of Cr.P.C. or issuing directions under section 156(3) of Cr.P.C. after recording verification statement of the complainant. However, same can be treated as an irregularity. The learned Counsel for the respondent submits that the complainant had only prayed for direction under section 156(3) of Cr.P.C. and there was no occasion to examine the complainant. That after registration of crime pursuant to the direction under section 156(3) of Cr.P.C. law would take its own course

and Cri.Misc. Application No.105 of 2015 does not survive any more before the learned J.M.F.C.

4. According to learned Counsel for the applicant, he may be granted liberty to seek relief of quashing of F.I.R. on the basis of which Crime No.2 of 2015 is registered as Thalner Police Station. In this case, it is pertinent to note that Misc. Application No.105 of 2014 was filed before the J.M.F.C. specifically seeking directions under section 156(3) of Cr.P.C. Once the said directions have been complied with by the police, the only course open to the investigating agency would be to file a report under section 173 of Cr.P.C. and the application filed before the Magistrate could not be taken to a better logical end. It is an inadvertent error on the part of J.M.F.C. to have recorded verification statement and then to pass an order under section 156(3) of Cr.P.C. However, no order of issuance of process has been passed after recording of

verification statement and therefore, the proceedings or application would come to an end before the J.M.F.C. In view of this, since Cri.Misc. Application No.105 of 2014 has been rounded up, no specific orders are necessary for quashing the proceedings in the said application.

5. The investigating agency shall not be influenced by the order passed by this Court and shall continue to investigate Crime No.2 of 2015 in accordance with law.

6. The Criminal Application, accordingly, stands disposed of. The applicant is at liberty to file appropriate proceedings seeking quashing of F.I.R. on the basis of which Crime No.2 of 2015 is registered at Thalner Police Station. All contentions are kept open.

[SMT. SADHANA S. JADHAV,J.]