

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

Criminal Writ Petition No.231 of 2015

Prafula s/o Vithalrao Mhetre. .. **Petitioner.**

Versus

The State of Maharashtra
And Another. .. **Respondents.**

Shri. N.B. Khandare, Advocate, for petitioner.

Shri. V.D. Godbharle, Additional Public Prosecutor, for
respondent No.1.

Shri. R.N. Dhorde, Senior Advocate, instructed by Shri.
V.R. Dhorde, Advocate, for respondent No.2.

With

Criminal Writ Petition No.226 of 2015

Narsinh s/o Ramkrishna Patil
And Another. .. **Petitioners.**

Versus

Sudhir s/o Keshavrao Patil
And Others. .. **Respondents.**

Shri. V.D. Salunke, Advocate, for petitioners.

Shri. R.N. Dhorde, Senior Advocate, instructed by Shri.
V.R. Dhorde, Advocate, for respondent No.1.

Shri. V.D. Godbharle, Additional Public Prosecutor, for
respondent No.4.

**CORAM: T.V. NALAWADE
Smt. I.K. JAIN, JJ.**

DATE : 23rd APRIL 2015

ORDER:

1) Both the petitions are filed for the relief of setting aside the order of investigation made under section 156(3) of the Code of Criminal Procedure by the learned Chief Judicial Magistrate, Osmanabad in Criminal Misc. Application No.33 of 2015 which was filed by respondent - Sudhir Keshavrao Patil from both the proceedings. Prayer is also made to quash the entire proceeding, F.I.R. Both the sides are heard. Learned Additional Public Prosecutor produced papers of investigation and submitted that there is sufficient material against the petitioners of both the proceedings to proceed against them.

2) In the complaint filed by respondent No.2 he has contended that under a registered sale deed dated 17-1-2011 he has purchased land Gat No.115/2 admeasuring 2 Hectares 7 R (5 acres 9 gunthas) situated at Osmanabad from the General Power of Attorney holder of the owner Prafulla Mehetre, petitioner from Criminal Writ Petition

No.231/2015. It is contended that after execution of sale deed, he produced copy of sale deed and applied to Talathi for mutation of his name in the revenue record. It is contended that in that proceeding accused No.4 Mahadev Patil joined hands with the other accused and even when the sale deed executed in favour of the complainant was first in time, he made entry in favour of accused Nos.2 and 3, petitioners of Criminal Writ Petition No.226/2015, on the basis of document of sale deed dated 30-4-2011 shown to be executed by Mehetre in favour of these two persons.

3) It is the case of the complainant that he had verified the record and he had seen the General Power of Attorney (for short, "GPA") and all the relevant record and he had confirmed that the power was given to Subhash Ganpat Gaikwad, witness No.1 mentioned in the complaint, by Prafulla Mehetre to sell the property and so the sale deed is binding on Mehetre. It is contended that only to create problems for him and to deceive him, Prafulla Mehetre created some record subsequently and executed sale deed in favour of the petitioners of Criminal

Writ Petition No.226 of 2015. He has contended that after purchase of the land from Mehetre, Mehetre and revenue officers like Talathi had joined hands and they hatched conspiracy to cause loss to him and thereby they have committed offences punishable under sections 120-B, 420, 467, 468, 471, 34 of the Indian Penal Code. The learned Chief Judicial Magistrate made the order under challenge on 9-2-2015 and the crime came to be registered for aforesaid offences. During investigation the investigating agency has recorded statements of persons like Subhash Gaikwad, the GPA Holder, and other witnesses and has collected copies of relevant documents like GPA executed by Mehetre in favour of Subhash Gaikwad, consent letter given by Mehetre to Subhash Gaikwad and copies of the sale deeds.

4) The learned counsels for the petitioners from both the proceedings argued much on the contents of the GPA. This Court has carefully gone through the said GPA dated 20-12-2008 and also the previous GPA executed in favour of two persons like Subhash Gaikwad and Anil Gorakhnath Munde. The contents of these two documents

show that Prafulla Mehetre was in need of money and for consideration he gave power of attorney to Subhash Gaikwad. When GPA was executed in favour of Subhash Gaikwad, previous GPA dated 18-10-2005 was cancelled. In the GPA there is description of the aforesaid property and there is no dispute over the description and also the execution of the document by Prafulla Mehetre. In the GPA authority was given to Subhash Gaikwad to sell this land on behalf of Prafulla Mehetre and sign on the sale deed for Prafulla Mehetre. He was also allowed to accept the consideration from the purchasers and he was expected to hand over the remaining consideration to owner. Owner had undertaken that he would be bound by the acts of Subhash Gaikwad. The contents of the GPA show that Mehetre was under obligation to make good the amount spent by Gaikwad though no specific amount is mentioned in the document. Subhash Gaikwad was authorised to do everything which was necessary in Courts and in Government offices in respect of the property. At two places it is mentioned that the acts made by Subhash Gaikwad would be binding on Mehetre under GPA. At two places it is mentioned that for such acts his

signature for consent was to be obtained. However, it was also made clear that there was no scope left to Mehetre to withdraw the GPA if there was no consent of Subhash Gaikwad for the same.

5) The complainant has produced the document, the consent letter (Sammati Patra) dated 30-12-2010. In this document there is mention that already GPA was executed in favour of Gaikwad and by this consent letter he was allowed to go on for execution of sale deed in favour of Sudhir Keshavrao Patil and Ghanshyam Trimbakrao Nimbalkar for consideration of Rs. 25 lakh. In this document he admitted that the agreement of sale made with these persons was made with his consent and he had received the consideration. He had given consent for execution of sale deed in favour of these persons and this consent is given in favour of Subhash Ganpat Gaikwad. There is police statement of Subhash Gaikwad to show that such consent letter was given.

6) The copy of sale deed executed in favour of the complainant dated 17-1-2011 shows that aforesaid land

was sold to the complainant and Subhash Gaikwad signed on the sale deed as GPA of Prafulla Mehetre. In the GPA there is mention that Subhash Gaikwad was to hold and manage the property and in the sale deed there is mention that possession was given to the purchaser by Subhash Gaikwad. Admittedly on the basis of this document, application was given to Talathi for mutation by the complainant. It appears that by filing objection dated 31-1-2011 before the revenue authority, Mehetre contended that his consent was not obtained for execution of sale deed and so he had objection for sanctioning the mutation on the basis of the aforesaid sale deed. Then he executed one document like cancellation of GPA in favour of Gaikwad on 3-2-2011. He then executed sale deed in favour of the petitioners from Writ Petition No.226 of 2015 on 30-4-2011 for the consideration of Rs. 50 lakh. Anandrao Patil and Baba Wagmode have signed as witnesses on the cancellation document in respect of the GPA and the same witnesses signed on the sale deed executed in favour of petitioners from Criminal Writ Petition No.226 of 2015. The petitioners from Criminal Writ Petition No.226 of 2015 had then applied for

mutation in their favour on the basis of sale deed executed in their favour.

7) A query was made by this Court and the learned counsel appearing for the petitioners from Criminal Writ Petition No.226 of 2015 was asked to tell the precaution which was taken by the purchasers before purchasing the property from Mehetre. Learned counsel submitted that when in the sale deed itself it is mentioned that Mehetre had title and it was free from any encumbrances, there was no necessity of making further inquiry by the petitioners from this proceeding. The submissions do not show that any attempt was made to take search of the record of the office of the Sub Registrar as the sale deed was already executed in favour of the complainant. No record is produced to show that it was ascertained that Mehetre was in possession of the property.

8) The aforesaid circumstances are sufficient to make out a *prima facie* case even at this stage against the petitioners from both the proceedings. Even at this stage,

there is material to make out a *prima facie* case that title had passed to the complainant and sale deed could not have been executed in favour of the petitioners from Writ Petition No.226 of 2015. If there was any grievance for Mehetre, he ought to have challenged the sale deed executed by Gaikwad in favour of the complainant. This was not done and one more sale deed was executed. Surprisingly the revenue authority acted on the basis of second sale deed and no inquiry as such was made. There is record produced in respect of the order made by the revenue authority and the appellate authority. There is no need to refer that record as the entries in the revenue record cannot confer title on anybody.

9) The learned counsel for the petitioners from Criminal Writ Petition No.226 of 2015 submitted that they have filed a civil suit and so civil Court can give decision in respect of the aforesaid dispute and there is no scope for taking criminal action. On this point he placed reliance on observations made by the Apex Court in the case reported as **AIR 2013 SC 1952 (Chandran Ratnaswami v K.C. Palanisamy)**. The facts of the reported case were

altogether different. The Apex Court came to conclusion that it was a dispute purely of civil nature, the appropriate authority had already decided the dispute in favour of the accused and so there was no scope for initiation of criminal proceeding. The facts of the present case are altogether different. Everything was done knowingly by Mehetre and the petitioners from the second proceeding. In view of these circumstances, there is no scope for quashing the FIR or setting aside the order made by the Chief Judicial Magistrate. The other submission that the Chief Judicial Magistrate ought to have given reasons is also not acceptable as the names of witnesses are given by the complainant and the relevant record is also mentioned in the complaint and it needs to be presumed that this record was made available to the Chief Judicial Magistrate though it is not specifically mentioned in the order.

10) In the result, both the petitions stand dismissed. Interim relief, if any, is vacated.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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