

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

CRIMINAL APPLICATION NO. 2343 OF 2015

Mohan Kanhaiyalal Chitte

.... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. Amol S.Sawant, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

Mr. S.P.Brahme, Advocate for first informant.

.....

WITH

CRIMINAL APPLICATION NO. 2241 OF 2015

Jalindar s/o Gulab Thorat

.... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. A.B.Girase, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

Mr. S.P.Brahme, Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 7th MAY, 2015

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PER COURT :

1. These two applications can be disposed of by the common order, as the applicants in both these applications are claiming anticipatory bail, since they are apprehending their arrest in connection with Crime No. 25/2015 registered with police station Songir, Dist. Dhule for the offences punishable u/s 420,467,468,471,201,202,120-B read with 34 of the Indian Penal Code.

2. Heard Mr. Amol S.Sawant, learned counsel for the applicant in Criminal Application No. 2343 of 2015, Mr. A.B.Girase, learned counsel for the applicant in Criminal Application No. 2241 of 2015. Both these applications were strongly opposed by Mr. A.S.Shinde, learned A.P.P. In both these two applications, Mr. S.P.Brahme, learned counsel who is appearing for original complainant, has not only assisted the learned A.P.P., but he has also made submissions and argued the case independently on behalf of original complainant.

3. G.No. 283 situated at Mauje Nandane was owned by Ramdas Narayan Patil. Undisputedly, partition took place in the year 2000 amongst the family members of Ramdas Patil. In the said partition, G.No. 283, which was originally admeasuring 3 Hectors 48 R., was divided into six parts. Family partition took place amongst the members of said family and each member took 58 R. land from G.No. 283. Necessary mutation in the relevant revenue record was taken on 02/01/2000. Mutation entries were duly certified by the superior Officers of the revenue department.

4. F.I.R. is lodged by Atul Vitthal Shirsath on 26/02/2015. Said F.I.R. discloses that the first informant is member of Gram Panchayat at Nandane since 2012. In the month of November, 2014, when he had been to the office of Talathi of Nandane for taking 7/12 extract of his own land, that time it was revealed to him from some residents of village that the Talathi and others have prepared bogus and fabricated document and on the basis of the same, six sale deeds were executed. F.I.R. further states that, though sub-part of G.No. 283 was only for the area of 58 R., sale deed shows that said sub-part admeasures 2 Hectors. F.I.R. also discloses that on 10/11/2014, he submitted Complaint to the police Officer.

5. Applicant in Criminal Application No. 2343 of 2015 is a purchaser. He has purchased land G.No. 283/4 and G.No. 283/5 by two different registered sale deeds on 22/07/2014. Copies of the sale deeds are placed on record. Those sale deeds show that the land, which the applicant has purchased, is 2 Hectors respectively.

6. It is to be noted that on 19/11/2014, applicant Mohan Kanhaiyalal Chitte executed deed of re-conveyance. Said deed of re-conveyance recites that in view of the disclosure to him that G.No. 283/5 is admeasuring only 58 R. and more land is sold in his favour, therefore, he is executing deed of re-conveyance for the entire land in favour of original land owner. Said deed of re-conveyance is duly registered with the office of the Sub Registrar. It is also not in dispute

that the amount was repaid to the applicant Mohan by the original land owner.

7. In so far as application dated 26/02/2015 is concerned, it is filed by Jalindar Gulab Thorat, who is Talathi of village Nandane. It is not in dispute that he took charge of the said office on 17/07/2013. It is also not in dispute that enquiry was conducted by the revenue Officers and statement of Jalindar was recorded by the Circle Officer, Lamkani on 30/01/2015.

8. In this back-drop, the rival contentions of the parties are to be considered.

9. F.I.R. does not reveal that applicant Mohan Kanhaiyalal Chitte has played any active role in preparing any official record. It is also not alleged in the F.I.R. that he has facilitate any revenue Officer for his own benefit. Undoubtely, applicant Mohan will be the beneficiary, had sale deed dated 21/07/2014 stand as it is. However, merely because, he is beneficiary, that is not sufficient to cast any imputations on such person that he has played any active role and/or he was having knowledge that originally the land was admeasuring only 58 R.

10. In this back-drop, conduct of applicant Mohan has to be considered, in the opinion of the Court, positively. He has executed deed of re-conveyance on 19/11/2014. There is nothing available on record that in between 21/07/2014 and

19/11/2014, applicant Mohan has derived any benefits from the transaction dated 21/07/2014.

Learned counsel for the first informant has submitted that the recitals in the deed of re-conveyance are cryptic in nature. According to him, said recital does not reflect as to how the executant viz. Mohan got the knowledge about wrong mentioning of the area. However, learned counsel fairly submitted that, of-course, it will have to be ultimately decided during the course of trial.

11. As observed above, applicant Jalindar Gulab Thorat took charge on 17/07/2013. Learned A.P.P. fairly submitted that the original registers, on the basis of which the copies of 7/12 extracts are prepared, are already seized and those are in possession of the Investigating Officer. According to him, custody of Jalindar is necessary for taking his specimen hand-writing and signature. In that behalf, Court can not keep blind eye on the statement made by Jalindar before the Circle Officer on 30/01/2015, wherein he himself has offered that his specimen signature and hand-writing be taken for sending the same to the Expert, so as to reach to the conclusion as to whether he is responsible for tampering any official record. He has also submitted that, that time, he was also ready for his Norco analysis test. Thus, at the first opportunity, he himself has submitted that he is ready for any type of investigation and interrogation. In this back-drop, submission of Mr. Girase, learned counsel representing applicant Jalindar assumes importance that he has only carried out the entries as were available in the official record

right from 2000, which were certified by the higher officials.

12. Applicant Jalindar Gulab Thorat is already suspended. Thus, he has no control over the official record of the office of Talathi coupled with the fact that the entire record concerning to the case is already in possession of the Investigating Officer. In that view of the matter, merely for the purpose of interrogation, custodial presence of the applicants is not necessary. This reasoning gets support from the reported decision of this Court in the case of **Jagannath Ramchandra Biyani Vs. State of Maharashtra, 1981 Mh.L.J. 791**, which was based on the authoritative pronouncement of the Constitution Bench of the Hon'ble Apex Court in the case of **Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, (1980) 2 Supreme Court Cases 565**.

13. From the aforesaid discussion and looking to the fact that applicant Mohan Kanhaiyalal Chitte has already executed deed of re-conveyance coupled with the fact that there is nothing on record to show that prior to obtaining the execution of sale deed in his favour, he was aware about the original position in respect of the area of the land, in my considered view, his custodial presence will not be necessary.

14. In so far as applicant Jalindar Gulab Thorat is concerned, he is already suspended from service. He is not having any control over any official document. Further, the entire record concerning the present case is seized and is in possession of the Investigating Officer. In so far as specimen

hand-writing and signature is concerned, that can be taken care of by issuing directions to the applicant Jalindar to attend police station in that behalf. That leads me to pass the following order.

(i) Criminal Application No. 2343 of 2015 is allowed.

(ii) In the event of arrest, applicant Mohan Kanhaiyalal Chitte be released on anticipatory bail in connection with Crime No. 25/2015 registered with police station Songir, Dist. Dhule for the offences punishable u/s 420,467,468,471,201, 202,20-B read with 34 of the Indian Penal Code on he executing P.R. Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] with two solvent sureties of like amount.

(iii) Applicant Mohan Kanhaiyalal Chitte shall attend police station Songir once in a week preferably on every Sunday between 10.00 a.m. and 1.00 p.m. till the charge sheet is filed.

(iv) Criminal Application No. 2241 of 2015 is allowed.

(v) In the event of arrest, applicant Jalindar Gulab Thorat be released on anticipatory bail in connection with Crime No. 25/2015 registered

with police station Songir, Dist. Dhule for the offences punishable u/s 420,467,468,471,201, 202,20-B read with 34 of the Indian Penal Code on he executing P.R. Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] with two solvent sureties of like amount.

(vi) Applicant Jalindar Gulab Thorat shall attend police station Songir on 14/05/2015, 21/05/2015 and 28/05/2015 and he shall remain with the Investigating Officer for the purpose of interrogation between 2.00 p.m. to 5.00 p.m. Applicant Jalindar shall give his specimen handwriting and signature. After 28/05/2015, applicant Jalindar shall attend police station Songir once in a week preferably on every Tuesday between 10.00 a.m. and 12.00 noon till the charge sheet is filed.

(vii) With these observations, both the present Criminal Applications are disposed of.

[V.M.DESHPANDE, J.]