

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

CRIMINAL WRIT PETITION NO.728 OF 2015

Shilpa d/o Kisanrao Ghatul
@ Smt. Shilpa w/o Dnyaneshwar Mane,
Age 31 years, Occu. Service,
R/o In front of Swiss Academy,
Near Dattadham, Vasmat road,
Parbhani

..Petitioner

Versus

1. The State of Maharashtra,
2. The Executive Magistrate/
Tahsildar, Purna,
Taluka Purna, District Parbhani

..Respondents

Mr S.S. Jadhavar, Advocate for petitioner
Mrs M.A. Deshpande, A.P.P. for respondent No.1
Respondent No.2 served

CORAM : N.W. SAMBRE, J.

DATE : 1st September 2015

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. The present petitioner, who is serving as Talathi from 19th June 2014, pursuant to the application moved by one Gajanan Gangadhar Walse under Section 457 of the Code of Criminal Procedure, for release of the property i.e. cotton weighing 70 Kgs,, which was stolen from his field, incorporated entry of crop cultivation for the year 2013-2014 in her own handwriting in the 7/12 extract issued by Setu Suwidha Kendra i.e. Center which is managed by the revenue authorities for the benefit of the farmers.

3. For the year 2013-2014, the petitioner took entry in relation to Gut No.143 owned by Gajanan Gangadhar Walse as cultivating and harvesting cotton, sugarcane, soybean.

4. The basis for taking such entry appears to be an original entry in the register maintained in the office of said Talathi or her predecessor under the provisions of Maharashtra Land Revenue Code and the instructions issued by the Collector for maintaining revenue record.

5. Subsequent to the said 7/12 extract, which was issued based on the report dated 20th December 2014, another 7/12 extract was issued in favour of the owner Gajanan in relation to Survey No.143 depicting same entry for the year 2013-2014, which was sought under the Right to Information Act. Needless to say that second 7/12 extract is dated 4th April 2015 issued by subsequent Talathi, a revenue officer under the Maharashtra Land Revenue Code. Learned Judicial Magistrate, First Class, Purna having noticed that the present petitioner has inserted the crop cultivation entry for 2013-2014 in her own handwriting in 7/12 extract issued by Setu Suwidha Kendra, has caused to issue notice to the petitioner calling upon her explanation in the proceedings arising out of Section 457 of the Criminal Procedure Code for release of property.

6. The petitioner then tendered her explanation pointing out that she was not posted as Talathi in year 2013-2014, however, after

taking over the charge, when Gajanan, the land owner of Survey No.143 approached her, she noticed that since Setu Suwidha Kendra was not working and so as to avoid inconvenience to farmers like Gajanan, she has made the crop cultivation entry in her handwriting for 2013-2014. According to her, said entry was carried out on the basis of entry in original register maintained in her office. According to her, there was no intention to commit any offence.

7. Based on the explanation, learned Judicial Magistrate, First Class, Purna, by order dated 22nd January 2015 passed below C.R. No.202/2014 has released 70 Kgs of cotton in favour of applicant Gajanan i.e. land owner of Survey No.143, however, directed the Tahsildar, Purna to lodge criminal case under Sections 465 and 471 of Indian Penal Code against the present petitioner who was posted as Talathi Sajja, Mategaon.

8. A revision at the behest of present petitioner being Revision No.6/2015 came to be partly allowed by the learned Extra Joint Ad hoc Additional Sessions Judge, Parbhani by order dated 23rd February 2015 wherein the directions issued to the Tahsildar for lodging criminal case against the petitioner came to be set aside, however, noted prima facie case against the present petitioner under Sections 465 and 471 of the Indian Penal Code, but in absence of sanction, passed the above referred order in favour of the petitioner.

9. Learned Counsel for the petitioner Mr Jadhavar would urge that in case the sanction is granted against the petitioner the petitioner will

be put to face the prosecution under Sections 465 and 471 of the Indian Penal Code, that too at the very inception career as a Talathi, as she is new incumbent. He would further urge that there is no criminal intention (*mens rea*) on the part of the petitioner to commit the offence, as whatever entries taken by her on 7/12 extract are based on the entries on the original register maintained in her office and there is no deviation or any default or committing an offence so as to mislead, commit forgery or to bring down the authority of the Court, while dealing with the proceedings under Section 457 of the Criminal Procedure Code. According to him, the order passed by the learned Magistrate under Section 457 of Criminal Procedure Code the is based on the said revenue entries. However, according to him the said revenue entries are formed to be the basis for initiation of criminal prosecution against the present petitioner.

10. So far as the Sections under which the present petitioner was directed to be proceeded against are considered, Section 465 of the Indian Penal Code provides punishment for forgery, whereas Section 471 of the Code defines punishment for using as genuine any forged or electronic record. Both these Sections are triable by the Magistrate and maximum punishment provided under Section 465 of the Code is two years with fine, or both whereas under Section 471, the same is punishable for imprisonment for three years and fine.

11. In the above referred factual background, it is required to be considered that whether there was any *mense rea* on the part of the petitioner to commit any offence in the background of a public Officer as a Talathi (Revenue Officer).

12. Perusal of the order passed by the revisional Court reflects that the revisional Court was aware of maintaining various registers and entries to be taken in the register in relation to the land and then issuance of the certificate in the various forms including Form 8, 8-A, etc.

13. It is not disputed or rather not taken into account that the land Survey No.143 in the name of Gajanan holds an entry for the year 2013-2014 as cultivating the crops i.e. cotton, sugarcane, soybean. Once the original entry in the register is not disputed, copying of the same from the original register in 7/12 extract, issued by Setu Suwidha Kendra by the petitioner in the capacity of Talathi of said area, in my opinion, will not be termed as an intentional act to commit offence. In absence of criminal intention to commit forgery, particularly in the background of her explanation before the learned Judicial Magistrate, First Class, it will be improper to infer that petitioner has prima facie committed forgery. It is not noticed herein that the petitioner intended to forge the document, or the record so as to derive any monetary benefit or otherwise. What is noticed upon perusal of explanation tendered by the petitioner is that in view of the fact that Setu Suwidha Kendra, which issues computerised 7/12 extracts since was not operating, the present petitioner has made an endorsement on 7/12 extract issued by Setu Suwidha Kendra, by taking the crop cultivation entry for the year 2013-2014.

14. In view of above referred background, at the most the act on the part of the petitioner can be termed as irregularity but not illegality giving shape of commission of crime which is punishable under Sections 465 or 469 read with Section 471 of the Indian Penal Code .

15. The petitioner who is a public servant, in the above referred background appears to have acted in *bona fide* interest of farmer, which in law she is entitled for certification of such entry in the background of facts of this case.

16. As such, the case that is sought to be canvassed is required to be accepted.

17. In view thereof, the present Criminal Writ Petition is allowed. Rule made absolute in terms of prayer clause (B).

(N.W. SAMBRE, J.)

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