

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

CRIMINAL WRIT PETITION NO. 309 OF 2002

Manik S/o Shankarrao Yadav

Age : 40 Yrs., Occ. : Agril.,

R/o : Hadgaon, Tq. Kaij,

Dist. : Beed.

..... PETITIONER

V E R S U S

1. Chandrabhan S/o Ganpatrao Yadav

Age : 78 Yrs., Occ. Agril.,

R/o : Hadgaon, Tq. Kaij,

Dist. : Beed.

2. Narhari S/o Ginandeo Sirsat

Age : 70 Yrs., Occ. Agril.,

R/o : Arangaon, Tq. Kaij,

Dist. : Beed.

3. Apparao S/o Bhanudas Kothule

Age : 50 Yrs., Occ. Agril.,

R/o : Kothawala Pimpalgaon,

Tq. Kallam, Dist. : Osmanabad.

4. Ashruba Bhikaji Shirsat

Age : 75 Yrs., Occ. Agril.,

R/o : Arangaon, Tq. Kaij,

Dist. : Beed.

5. The State of Maharashtra.

..... RESPONDENTS

**[Abated against R 2 & 4 as
per Order dated 23/01/2003].**

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Mr. S.J.Salunke, Advocate for Petitioner.

Mr. B.A.Darak, Advocate for R – 1.

Mr.D.R.Kale, A.P.P. for R - 5 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 12th FEBRUARY, 2015

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ORAL JUDGMENT :

1. The petitioner has approached to this Court since the petitioner is aggrieved by the order dated 03/05/2002 passed by the learned Additional Sessions Judge, Ambajogai in Criminal Revision No. 9/1999, whereby the learned revisional Court allowed the Revision filed on behalf of respondent Nos. 1 to 4 and thereby set aside the order dated 30/12/1997 passed by the learned Judicial Magistrate First Class, Kaij, district Beed in R.C.C. No. 368/1990, framing Charge u/s 468 read with 34 of the Indian Penal Code against them.

2. Heard Mr. S.J.Salunke, the learned counsel for the Petitioner, Mr. B.A.Darak, the learned counsel for

respondent No. 1 and Mr. D.R.Kale, the learned A.P.P. for respondent No. 5 – State.

3. During the pendency of the present Writ Petition, respondent No. 2 Narhari S/o Ginandeo Sirsat and respondent No. 4 Ashruba Bhikaji Shirsat were dead and, therefore, the proceedings against them were ordered to be abated as per order passed by this Court on 23/01/2003. Respondent No. 3 though served, is not represented by any Advocate.

4. The petitioner filed Private Complaint, thereby alleging property agricultural field S.No. 76/2/1 to be originally belonging to his father Shankar Narayan. On 12/08/1986, there was partition on stamp paper of ₹ 5/- and according to the said partition, said agricultural field was allotted to the share of complainant/petitioner. It is further alleged that respondent No.1/accused No. 1 with an ill intention in collusion with accused No. 2 Narhari and accused No. 3 Ashruba, prepared bogus and fabricated sale deed, which was duly registered with the Sub Registrar at Day Book No. 947/86. According to the petitioner/complainant, at no

point of time such sale deed was executed and thereby they committed offence punishable u/s 420, 465, 467, 468 of the Indian Penal Code.

5. Evidence before charge was conducted in the Court of the learned Magistrate. Shankar, the father of the complainant was examined as C.W. 1, whereas the petitioner/complainant entered into witness box as C.W. 2. One Madhukar Ghule was examined as C.W. 3. It is pertinent to note that the finger print expert's opinion No. 3/94 was also filed on record by the complainant. The learned Magistrate vide order dated 30/12/1997 framed charge for the offence punishable u/s 468 read with 34 of the Indian Penal Code.

6. Admittedly, the proceedings/Complaint which was filed before the learned Magistrate was a case otherwise than police report. The present case being an offence punishable u/s 468 of the Indian Penal Code, has to be tried as warrant case.

Two different procedures are prescribed for the warrant case instituted on police report and the warrant case

instituted otherwise than on police report.

7. Chapter XIX of the Code of Criminal Procedure deals with trial of warrant case by the Magistrate. Section 238 to 243 of the said Chapter deals with the procedure in respect of the case instituted on police report.

Whereas, Section 244 to 247 of the said Chapter deals with the case instituted otherwise than on police report. What should be the approach while framing of the charge in the case instituted on the police report, is found to be in Section 227 and 228 of the Code of Criminal Procedures, which reads as under :

*“ 227. **Discharge** - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing ”.*

*“ 228. **Framing of charge** - (1) If, after*

such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of

the offence charged or claims to be tried ”.

Whereas, what shall be the parameter for framing charge in the case instituted otherwise than on police report is mentioned in Section 244 and 245 of the Code of Criminal Procedure. Section 244 and 245 reads as under :

“ 244.Evidence for prosecution -

(1) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. ”

“ 245.When accused shall be discharged -

(1) If, upon taking all the evidence referred to in section 244, the Magistrate

considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless ”

8. The present case has to be analytically examined with the available facts on record in the light of Section 244 and 245 of the Code of Criminal Procedure. Though the finger print expert's report was placed on record, for the reasons best known to the complainant, the expert was not examined as his witness. Thus, the said report remain to be proved. The basic allegation against the respondents in the complaint was that the thumb impression which is appearing on the sale deed does not belong to Shankar, the father of the complainant, but it was of some other person. The said aspect, therefore, goes to the root of the matter. Therefore, it was obligatory on the part of the complainant to examine

the finger print expert.

This is important because the plain reading of Section 245 of the Code of Criminal Procedure clearly spelt that the evidence before charge must be such in nature, if remains un-rebutted, it should result in conviction.

In so far as the case instituted on police report is concerned, the striking difference is that the Court must be satisfied that there are sufficient grounds to proceed against the accused. In that view of the matter, the quality of the evidence that is required for framing of the charge in the cases instituted otherwise than on the police report is on higher pedestal and much stricter than the evidence that can be used for framing of the charge in respect of the case filed on the police report.

9. Further, though the complainant has proceeded on the assumption in the complaint that he got the ownership of the land on the basis of the partition, that took place between him and his father. If the statement of facts in that behalf is perused, it is stated in paragraph 2 of the Complaint, which reads as under :

“ हे की, फिर्यादीचा वडील जमिनीवर काबीज राहून उपयोग घेत असताना फिर्यादी, त्याची आई रतुबाई व वडील यांच्यामध्ये दि. १२/०८/१९८६ रोजी आपसात वाटण्या करून ५/- रु. च्या स्टम्पवर एक वाटणीपत्र तयार केले. वाटणीपत्राधारे स.न. ७६/२/१ हा सर्वे नंबर फिर्यादीच्या वाटणीस आलेला आहे. वाटणीपत्राधारे फिर्यादी वरील जमिनीवर प्रत्यक्ष काबीज राहून उपभोग घेत आहे. ”

10. When partition is effected under a document, then such document is required to be registered compulsorily. In the present case, from aforesaid, it is clear that complainant claims title under a document which is a “Watni Patra” and from reading of complaint, it is clear that it is an unregistered document. Therefore, such document is not admissible in evidence.

11. Mr. Salunke, the learned counsel for the petitioner invited my attention to the decision of Hon'ble Apex Court in **R.S.Nayak Vs. A.R.Antulay and Anr., AIR 1986 SC 2045**. In the present case, though C.W. 1 Shankar, the father of the complainant was in the witness box, his attention was not drawn to the disputed sale deed, nor he has

stated from the witness box that the thumb impression appearing on the said sale deed does not belong to him. Coupled with the fact that the hand writing expert was not examined, I am of the considered view that the reasoning supplemented by the revisional Court while allowing the Revision can not be faulted with.

12. In that view of the matter, the present Writ Petition is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 309.2002 - [J]
