

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

Criminal Application No. 5106 of 2013

Smt. Satyabhama w/o. Suresh Patil,
Age : 41 years,
Occupation : Household,
R/o. Bhatkhede, Taluka : Erandol,
District : Jalgaon.

.. Applicant
(Original complainant)

versus

1. Shri Ravindra Ramesh Bharde,
Age : 38 years,
Occupation : Service,
R/o. Nashik Road, Nashik,
Taluka & District : Nashik.

2. The State of Maharashtra,
Through Police Inspector,
Erandol Police Station, Erandol,
Taluka : Erandol, District : Jalgaon.

.. Respondents
(No.1 - Original accused)

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*Mr. Surendra V. Suryawanshi, Advocate, for the
applicant.*

Mr. U.S. Malte, Advocate, for respondent no.1.

*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for respondent no.2 - State.*

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CORAM : A.M. BADAR, J.

DATE : 3RD MARCH 2015

PER COURT :

1. By the instant application, the applicant is praying for quashing and setting aside the judgment and order dated 21-09-2011, passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Revision Application No. 109 of 2010, thereby quashing and setting aside the order of issuance of process passed against revision petitioner - Ravindra s/o. Ramesh Bharde - by the learned Judicial Magistrate (First Class), Erandol, on 16-2-2010, in R.C.C. No. 220/2008.

2. Heard the learned Counsel appearing for the parties and perused the documents made available.

3. It is vehemently argued by the learned Counsel for the applicant / original complainant, that though the notice for removal of encroachment was in respect of the land in Survey No.87, in fact, the respondent / accused had demolished entire house of the complainant situated in C.T.S. No.91. Therefore, according to the learned Counsel for the applicant / original complainant, the order directing issuance of process for the offences punishable under Sections 420, 471, 468, read with Section 34 of Indian Penal Code, by the learned Judicial Magistrate (F.C.), Erandol, was perfectly legal and was not warranting any interference at the hands of the learned Additional Sessions Judge in his revisional jurisdiction. By relying on the judgment of the Hon'ble Apex Court, in the case of *Om Dr. Dhankar Vs. State of Haryana and another*, reported in *2012 AIR SCW 1821*, it is sought to be contended by the learned Counsel for the applicant, that offence of cheating under Section 420 of IPC, or for that matter, offences relatable to Sections 467, 468, 471 and

120-B of IPC can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. Hence, according to the learned Counsel for the applicant / original complainant, the impugned order is not sustainable and, therefore, liable to be set aside.

4. Perusal of the criminal complaint filed by the present applicant before the learned Judicial Magistrate (F.C.), Erandol, shows that she contended that house on C.T.S. No. 91, admeasuring 87.5 square metres was owned by her as well as her son after death of her husband Suresh Patil. Respondent no.1 - Ravindra Bharde - who was working as Tahsildar, had issued a notice under Section 50 of the Maharashtra Land Revenue Code, 1966, for removal of encroachment by directing the present applicant / original complainant to remove encroachment from Survey No.87. As averred in the complaint, under the garb of that notice, respondent no.1 - Ravindra Bharde, Tahsildar - had, in fact, demolished her entire house located in C.T.S. No. 91, admeasuring 87.5 square metres. This act, according to the present applicant / original complainant amounts to commission of offence punishable under Sections 406, 409, 420, 452, 465, 468, 471, read with Section 34 of Indian Penal Code, by accused persons including respondent no.1 - Ravindra Bharde, Tahsildar. The learned Judicial Magistrate (First Class), Erandol, on considering verification statement as well as statement of witnesses was pleased to order issuance of process for the offences punishable under Sections 420, 471, 468, read with Section 34 of Indian Penal Code, against accused persons. This order was carried in revision by respondent no.1 - Ravindra Bharde - and by the impugned judgment and order, the learned Additional

Sessions Judge was pleased to quash and set aside the said order.

5. Perusal of the complaint filed by the present applicant, and particularly para 6 thereof, do show that the act of offence alleged in the said complaint was stated to have been committed by accused persons in discharge of their official duty. It is not in dispute, that respondent no.1 / original accused no.1, at the relevant time, was working as Tahsildar, Erandol, and in discharge of his official duty, he had issued the notice under Section 50 of the Maharashtra Land Revenue Code, directing the present applicant / original complainant to remove encroachment on Gat No.87. In implementation of that notice, it is alleged that, in fact, house from C.T.S. No.91 came to be demolished by accused persons. It is, thus, clear that the notice for removal of encroachment was issued in discharge of his official duty by respondent no.1 - Ravindra Bharde - who at the relevant time was working as Tahsildar. That notice was not even challenged by the present applicant / original complainant, by adhering to the provisions of the Maharashtra Land Revenue Code, 1966. It is not in dispute, that after the notice period was over, action as contemplated in the notice was taken by respondent no.1 / accused and co-accused. Section 197 of the Code of Criminal Procedure, 1973, in no unclear terms provides that criminal court is not competent to take cognizance of the offence alleged to have been committed by the public servant in discharge of his official duty without previous sanction from the competent authority. The scope and object of this Section is to provide necessary protection to the public servant in discharge of his official duty. In that view of the matter, we do not find any fault in the impugned judgment and order passed by the learned Additional Sessions Judge, Jalgaon, warranting interference at the

hands of this Court.

6. So far as the judgment of the Hon'ble Apex Court, in the case of *Om Dr. Dhankar Vs. State of Haryana and another (supra)*, is concerned, the facts therein are totally different. In that matter, allegations against the public servant were regarding embezzlement of the funds of the State and receipt of illegal gratification. In the light of facts in that case, the Hon'ble Apex Court has observed that such act cannot be attributable to the discharge of official duty by the concerned public servant. In the case in hand, the act allegedly constituting the offence is removal of encroachment in pursuance to the statutory notice issued by the Tahsildar. As such, the judgment so cited has no application to the facts of the case in hand.

7. In the light of foregoing discussion, the Application is devoid of any merit. Accordingly, the Application is rejected. It is made clear that our observations will not come in way of the present applicant for seeking any other remedy as prescribed by law.

(A.M. BADAR)
JUDGE

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