

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

CRIMINAL APPLICATION NO. 5410 OF 2013

1. Shivaji s/o Rajaram Wattre
Age : 50 Yrs., Occ. Service,
R/o : Village Pimpalgaon
(Kamleshwar), Tq. Washi,
Dist. Osmanabad.
2. Kalyan s/o Rajaram Wattre
Age : 47 Yrs., Occ. Service,
R/o : Village Pimpalgaon
(Kamleshwar), Tq. Washi,
Dist. Osmanabad.
3. Kakasaheb s/o Rajaram Wattre
Age : 45 Yrs., Occ. Agril.,
R/o : Village Pimpalgaon
(Kamleshwar), Tq. Washi,
Dist. Osmanabad.
4. Murlidhar s/o Kerba Jagtap
Age : 78 Yrs., Occ. Retired
from Service, R/o : Village
Washi, Tq. Washi,
Dist. Osmanabad.

.... APPLICANTS

V E R S U S

1. The State of Maharashtra
Through the Superintendent

of Police, Osmanabad,
Dist. Osmanabad.

2. The State of Maharashtra
Through the incharge
Investigating Officer,
Police Station Kalamb,
Tq. Kalamb, Dist.
Osmanabad.
3. Kalawati Madhukarrao Khomne
Age : 64 Yrs., Occ. Household,
R/o : Hatola, at present
Pimpalgaon (Kamleshwar),
Tq. Washi, Dist. Osmanabad.

.... RESPONDENTS

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Mr. V.S.Undre, Advocate for Applicants.

Mr. V.D.Godbharle, A.P.P. for R -1 State.

Mr. S.B.Choudhari, Advocate for R – 3.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 20th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of parties, heard Mr. V.S.Undre, the learned counsel for the applicants, the learned A.P.P. for respondent No. 1 –

State and Mr. S.B.Choudhari, the learned counsel for respondent No. 3 finally.

2. The present applicant Nos. 1 to 3 are sons of one Rajaram. Rajaram is real brother of Kalawati. Kalawati filed proceedings in the Court of the Judicial Magistrate First Class and prayed to issue directions to the police u/s 156 (3) of the Code of Criminal Procedure. The said prayer was accepted by the learned Magistrate and in pursuance to that the Police Station Officer, police station Kalamb, district Osmanabad registered offence punishable u/s 468, 471, 167, 506 read with 34 of the Indian Penal Code vide Crime No. 68/2006 against the present applicant Nos. 1 and 3 and at the relevant time, applicant No. 4 Murlidhar s/o Kerba Jagtap was discharging his duty as Talathi.

3. Charge Sheet was filed and the case was registered as R.C.C. No. 152/2008 and is pending on the file of the Judicial Magistrate First Class, Washi.

4. In between, Kalawati approached Civil Court by filing Suit for partition and separate possession. The said Suit

was registered as Spl. Civil Suit No. 26/2010. The said Suit was filed on 12/12/2005. The said Suit was decreed by the learned Jt. Civil Judge (Sr.Division), Osmanabad on 29/03/2010.

5. Feeling aggrieved thereby, present applicant Nos. 1 to 3 preferred Regular Civil Appeal No. 118/2010 in the Court of the learned District Judge – 1, Osmanabad. During the pendency of the said Appeal, the parties to the said Appeal settled their dispute amicably and filed compromise pursis in the Court of the District Judge -1, Osmanabad. In view of the compromise, compromise decree was passed by the learned District Judge – 1, Osmanabad on 16/09/2012. The said decree clearly reveals that on accepting ₹ 18,00,000/- [Rupees Eighteen Lacs] from the present applicant Nos. 1 to 3, Kalawati has relinquished her right, title, interest and claim whatsoever in nature in the suit properties. The offence pertains to the said suit properties.

Clause No. 6 of the compromise decree reads as under :

“ हे की, तरी सदर तडजोडीप्रमाणे अपीलकार यांनी दाखल केलेले अपील निकाली काढण्यात यावे. तसेच

रीसपॉनडट न. १ हिने अपीलकार यांचेविरुद्ध मे.
प्रथमवर्ग दंडाधिकारी साहेब, वाशी यांचे कोर्टातील
आर .सी.सी.न. ५५२/०८ स्टेट वि. शिवाजी व इतर हे
प्रकरण विनाशर्त काढून घेण्याचे ठरले आहे. ”

6. In pursuance to the said, an application was moved in the said criminal case vide Exh. 77 on 09/10/2012, however, the said application was rejected by the learned Magistrate by holding that the offences are not compoundable.

7. Again, fresh attempt was also made on 09/12/2012 by moving application [Exh.78], however, received the same fate. Therefore, the present Criminal Application u/s 482 of the Code of Criminal Procedure for quashing of R.C.C. No. 552/2008 is moved. The parties namely original complainant viz. Kalavati Khomane and the applicants are present in person. Kalavati filed affidavit in reply on her behalf, which is taken on record. She is represented by Mr. S.B.Choudhari. Mr. S.B.Choudhari has identified her as Kalavati Madhukar Khomne, the complainant. The Court has also verified from her about the compromise and she has admitted that the parties to the present application have settled their dispute out of Court and she has

received entire amount.

8. In view of the recent authoritative pronouncement of Hon'ble Apex Court reported in **Narinder Singh & Ors. Vs. State of Punjab & Anr., 2014 AIR [SCW] 2065**, since the parties have settled their dispute amicably out of Court and there is no chance of securing conviction, asking the parties to stand for trial is nothing but futile exercise and it will nothing but wastage of judicial time.

9. In that view of the matter, the present Criminal Application is allowed. Charge Sheet No. 66/2007 filed by the Police Station Officer, Police Station Kalamb, district Osmanabad against the present applicants for the offences punishable u/s 468, 471, 167 and 506 read with 34 of the Indian Penal Code, together with R.C.C. No. 552/2008 pending on the file of the Judicial Magistrate First Class, Washi are hereby quashed.

10. Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Cr. Apln. 5410.2013 - [J]