

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1059 OF 2013**

HEMRAJ VIKRAM RATHOD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Rathod Abhaya R.
APP for Respondent/State : Mr. S.D. Kaldate
Advocate for Respondent no.4 : Mr. Thoke Dhananjay B.

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: January 23, 2015

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PER COURT :-

Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the original complainant and the learned Additional Public Prosecutor for the Respondent/State.

2. The learned counsel appearing for the petitioners submits that, there is delay in lodging the First Information Report. It is submitted that, though the alleged transactions are of the year 2011, belatedly the First Information Report is lodged after lapse of considerable period. It is submitted that, the sale deeds are executed before the Competent Government Authorities and therefore, the Government is aware about such transactions. The learned counsel appearing for the petitioners submits that, Chhangobai is the second wife of

Uttam Rathod and therefore, she has acted in dwell capacity. The learned counsel appearing for the petitioners placed reliance on the judgments in the case of **Ramesh Dutt & ors V/s State of Punjab & ors¹**, **Sambhaji D. Hendre and ors V/s The State of Maharashtra and ors²**, **Madan Mohan Singh and ors V/s Rajni Kant and another³** **Madhavrao Jiwaji Rao Scindia and another etc V/s Sambajirao Chadrojirao Angre and others⁴** The learned counsel appearing for the petitioners submits that, the civil dispute is being converted into criminal. Infact, if the complainant is aggrieved by the said transaction, the remedy to approach Civil Court is open to the complainant. It is submitted that, the Supreme Court in the case of **Madan Mohan Singh and others (supra)** recognized live in relationship, and therefore, entry in the name of Chhangobai is rightly entered since she lived in relationship with Vithal Hira Rathod. He further invited our attention to the grounds taken in the Petition, annexures thereto and submits that, the First Information Report may be quashed.

3. The learned counsel appearing for respondent no.2 i.e. original complainant invited our attention to the affidavit in reply, annexures thereto and submits that, the petitioners were well conversant with the family of respondent no.2. The complainant is illiterate. Two sale deeds got executed by the petitioners from Chhangobai. In

1 2009 All MR (Cri) 2834 (S.C.)

2 1998 All MR (Cri) 522

3 (2010) 9 SCC 209

4 AIR 1988 SCC 709

two sale deeds dated 05.12.2008 and 17.10.2011 got executed from Chhangobai, he invited our attention to the contents of the sale deeds and the fact that, though two sale deeds are executed on the same day, in one sale deed, the name of the person selling the land is written as Chhangobai Vithal Rathod and on another sale deed the name is written as Chhangobai Uttam Rathod. It is submitted that, the petitioners and also the other persons involved in executing two sale deeds on same day posing Chhangobai in different capacity, in as much as, Chhangobai Uttam Rathod and Chhangobai Vithal Rathod. Therefore, according to the learned counsel appearing for the complainant, the criminality is disclosed. Therefore, the First Information Report needs investigation.

4. We have heard the learned counsel appearing for the petitioners, the learned counsel appearing for the respondent no.2- original complainant and the learned Additional Public Prosecutor for the Respondent/State. Perused the allegations in the First Information Report and also the contents of the sale deeds. It is apparent from the reading two sale deeds that, the person selling land i.e. Chhangobai Vithal Rathod and same person is shown as Chhangobai Uttam Rathod. Therefore, there is no similarity as such. In our opinion, upon reading the allegations in the First Information Report and also the contents of the sale deeds, prima facie, it appears that, the criminality alleged in the First Information Report needs investigation. It further appears that, the land fallen to the share of the complainant

from Gat No. 14/B also appears to have been sold by Chhangobai Vithal Rathod. Therefore, both the complaints need investigation. At the threshold when the offences are disclosed, it is not desirable to quash the First Information Report.

5. In the circumstances, at this stage, Petition is dismissed.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

sga/-

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