

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

CRIMINAL APPLICATION NO.6502 OF 2013

Paras s/o Lalman Nand (Yadav) ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENT

.....
Shri S.S. Kazi, Advocate for applicant
Shri B.L. Dhas, A.P.P. for respondent No.1/State
Shri S.J. Salunke, Advocate for respondent No.2
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CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 29th July, 2015.

ORAL ORDER :

1. This application is filed praying therein for quashing the proceedings in R.C.C. No.308/2012 filed by the respondent No.2 in the Court of Chief Judicial Magistrate, Jalna.

2. The learned counsel appearing for the applicant

submits that, about the land in question, already civil litigation was initiated and as a matter of fact, the same civil litigation has resulted in favour of the present applicant. It is submitted that, against the outcome of the suit, appeal was filed, however, the said appeal was also unsuccessful. The learned counsel appearing for the applicant invited our attention to the observations of the Judicial Magistrate, First Class, Jalna in para No.11 in judgment delivered in R.C.S. No.226/2007 (Eknath Sukhlal Pawar Vs. Paras Lalman Nand & ors.), decided on 31.7.2008, which is placed on record at Exhibit E at Page 61 of the compilation of the petition. The learned counsel submits that, as a matter of fact, the sale deed was executed and same was signed by the executant. The sum and substance of the arguments of the counsel appearing for the applicant is that, since the civil proceedings have been initiated and disposed of holding that the said sale transaction was valid, no criminal proceedings could have been initiated and entertained. It is submitted that, in spite of the interim order passed by this Court not to file the charge sheet, the concerned investigating officer has filed the charge sheet and, therefore, the concerned investigating officer is required to be dealt with in accordance with provisions of Article 215 of the Constitution of India and Contempt of Courts Act, 1971. It is submitted that, the order

passed by the Magistrate directing the investigation under Section 156(3) of the Criminal Procedure Code is without assigning any reason and, therefore, same is not sustainable. In support of said contention, the learned counsel for applicant relied on the report judgment of the Supreme Court in the case of **Keki Hormusji Gharda & ors. Vs. Mehervan Rustom Irani & anr.**, reported in **2009(6) SCC 475** and also the judgments of the Bombay High Court at Nagpur Bench in Criminal Application No.258/2013 [State of Maharashtra Vs. Shashikant s/o Eknath Shinde) and also in Criminal Application No.280/2013 [M/s Birla Tyres Ltd. & ors. Vs. IBC Impex Pvt. Ltd. & ors. Relying upon the grounds taken in the application and annexures thereto, the learned counsel appearing for the applicant submits that the application deserves to be allowed.

3. On the other hand, learned counsel appearing for respondent No.2 invited our attention to all accompaniments of the charge sheet and the statements of the witnesses and submits that, not only the statement of Eknath Sukhlal Pawar mentions about the forged signature and fabricated documents, however, the statements of the Government officers are also to the effect that, the documents are fabricated and signatures are forged. The land in dispute is Government land. Therefore, the

learned counsel for respondent No.2 and learned A.P.P. jointly submit that the application may be rejected.

4. We have heard the counsel appearing for the applicant, learned counsel appearing for respondent No.2 and learned A.P.P. appearing for the respondent No.1/ State. There are two affidavits filed on behalf of respondent No.1 on 12.12.2014 and 28.12.2014. The sum and substance of the said affidavits is that, the prosecution agency has collected sufficient material so as to proceed with trial and, therefore, the prayer in the application may be rejected.

5. Upon perusal of the documents placed on record and in particular Exhibit R-1, i.e. the statement of Eknath Sukhlal Pawar, prima facie it appears that, the sale deed and also the signatures, which is the subject matter of criminal proceedings, is fabricated and forged one. Apart from the statement of said Eknath Sukhlal Pawar, the concerned investigating officer has recorded the statements of other witnesses namely Shri Mahadeo Gopalrao Sahani, working as Deputy Superintendent of Land record, Jalna, the statement of one Shri Madhav Pandurang Ogle, statement of one Manoj Ganeshlal Chaudhari and Santosh Gangaram Madhavani. Upon conjoint reading of statements of

witnesses, it is alleged that the documents in the nature of sale deed or sale transaction, are fabricated and forged one. The record of issuance of P.R. Card and other documents are not traceable in the Government Office. It is not necessary for this Court to elaborate on the material collected by the prosecution agency, suffice it to say that, upon perusal of the statements of the witnesses prima facie it appears that the land in question belongs to the Government. When there is a prayer for quashing the charge sheet and further proceedings based upon the charge sheet, this Court, while exercising jurisdiction under Section 482 of the Criminal Procedure Code has to endeavour to find out whether the prosecution agency has collected sufficient material so as to proceed with trial. It is not possible for this Court to find out the evidentiary value of the documents/ material collected by the prosecution agency. In the facts of the present case, the prosecution agency has collected sufficient material so as to proceed for trial. Any further adjudication or drawing inferences by this Court while exercising jurisdiction under Section 482 of the Criminal Procedure Code, may lead to disputed questions of facts and, therefore, once having been convinced that prosecution agency has collected sufficient material for trial, this Court has to leave the matter to Court for further adjudication.

6. So far the contentions of the learned counsel appearing for the applicant that, the order passed by the Magistrate is without assigning reasons, it is necessary to observe that, not only that the investigation has been carried out, but the charge sheet is filed by the investigating officer and in fact case is pending for trial. In that view of the matter, in our opinion, in the facts and circumstances of this case, it is not desirable to quash the said order passed by the Magistrate on the ground that, no reasons are assigned. The overall material collected by the prosecution agency is sufficient for trial.

7. For the reasons aforesaid, the criminal application sans merits, hence rejected.

8. The observations made hereinabove are prima facie and the trial Court should not get influenced by the said observations during trial.

9. It appears that, while issuing notice to the respondents, this Court, in its order dated 10.2.2014, observed that, investigation to proceed, however, charge sheet should not be filed till next date of hearing. it appears that, said interim relief was continued time to time. However, the investigating

officer proceeded to file charge sheet on 16.8.2014. Though we have rejected this application, we direct the Superintendent of Police, Jalna to issue notice to the concerned investigating officer, seek his explanation and after hearing him, take suitable action against him for breach of the order passed by this Court, as expeditiously as possible, however, within three months from today and communicate the same to the office of the Public Prosecutor.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)

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