

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

CRIMINAL WRIT PETITION NO. 1511 OF 2015

Suresh Shankar Khanure .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri Vikram S. Undre, Advocate for the Petitioner.
Shri A. S. Shinde, A. P. P. for Respondents.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 10TH DECEMBER, 2015.**

PER COURT :-

1. Mr. Undre, the learned counsel submits that, the petitioner had filed a complaint / application dated 05.09.2015 before the respondent No. 3 to register / lodge F. I. R. against the accused persons as per Section 82 of the Registration Act. The learned counsel submits that, one Lahu Rambhau Masal has purchased the land Gut No. 75 admeasuring 93 R. vide registered sale deed bearing No. 25 of 2015 dated 03.01.2015 showing the consideration amount as Rs. 3,00,000/- The sale deed is executed by Shilabai Baburao Khanure, Rohini Ashruba Kilje and Mohini Mallikarjun Kharade. The learned counsel submits that, the petitioner has filed a civil suit bearing R. C. S. No. 78 of 2015 for enforcing his preferential right to purchase. In the

said suit these persons have filed written statement stating that the said land vide sale deed dated 03.01.2015 is sold and purchased for Rs. 10,77,000/-. According to the learned counsel, false information has been given in the registered document before the Registering Authority. This fact is brought to the notice of the Registering Authority by the petitioner still, as per Section 82 and 83 of the Registration Act, the Authority has not taken any action to lodge the F. I. R. against these accused persons. The learned counsel relies on the judgment of the Apex court in a case of **Dharmadeo Rai V/s. Ramnagina Rai** reported in **1972 (1) S. C. C. 460** and another judgment of learned Single Judge of Orrisa High Court in a case of **Sailendra Pradhan V/s. Vipparla Jyoti and Others** reported in **2006 (1) Cr. Reporter 372.**

2. Mr. Shinde, the learned A. P. P. submits that, the fact of the actual consideration paid is not within the personal knowledge of the Registering Authority in his official capacity. The petitioner may have a right to file a private complaint but as the said fact is not within the personal knowledge of the Registering Authority in his official capacity he cannot proceed to lodge the complaint. The learned A. P. P. relies on the same judgment of **Dharmadeo Rai V/s. Ramnagina Rai** referred to supra.

3. The consideration paid for the sale and purchase of the property would only be within the personal knowledge of the parties to the agreement. The same is not within the

personal knowledge of the Registering Authority under his official capacity. The written statement is not a public document. It is only those matters which are in personal knowledge of the Registering Authority in his official capacity the registering Authority can take cognizance of.

5. The Apex Court in a case of **Dharmadeo Rai V/s. Ramnagina Rai** referred supra has observed as under -

“3. In this Court, the only point argued on behalf of the appellant was that the complaint was incompetent as it was filed by a person without obtaining the necessary permission under Section 83 of the Act and, therefore, the conviction was bad and must be set aside. Section 83 of the Act provides :

“83 (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a magistrate of the second class.”

On a reading of the section, it would be clear that it deals only with prosecution for an offence under the Act coming to the knowledge of the Registering Officer in his official capacity. It, in effect, provides that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of any of the officers mentioned in the section. The section can possibly have no application to cases in which offences are committed under

the Act but the offences do not come to the knowledge of the Registering Officer in his official capacity. If the Registering officer does not know in his official capacity that the document produced before him is a false document or that the person appearing before him is personating some other person, the section has no application. The section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his official capacity the section does not prohibit a private person from commencing a prosecution as the section is clearly, permissive in its language and intent. In other words, the section is an enabling one. It enables the person mentioned there in to commence a prosecution in cases where the commission of the offence under the Act comes to the knowledge of the Registering Officer in his official capacity. The section enables the officers named to use their official position for the purpose of prosecution without personal risk.”

6. In view of the said judgment though a private person may have a right to file a private complaint, as the said fact is not within the personal knowledge of the Registering Officer in his official capacity he could not have commence the prosecution.

7. With the aforesaid observations the writ petition is disposed of.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]