

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 5107 OF 2014

Chemnad Pudhiya Purayil Ummer Farook
Shafi & Anr.

... Petitioners.

V/s.

The State of Maharashtra & Others.

... Respondents.

Mr. Lalit V. Jain i/by Rakesh G. Jain, Advocate for the
Petitioners.

Mrs. A. A. Mane, APP for the State.

None for Respondent No.2.

Mrs. V.R.Raje, Advocate for Respondent No. 3.

CORAM : M.L.TAHALIYANI,J.

DATE : 06th APRIL, 2015

P.C. :

1 Heard the learned Advocate for the Petitioners, the
learned Advocate Mrs. Raje for Respondent No.3 and the
learned APP-Mrs.Mane for the State. Respondent No.2 is
absent though served.

2 This writ petition is filed to challenge the order
dated 5th December, 2014 passed by the Judicial Magistrate,
F.C., Court No.3, Pune. The said order came to be passed in a
criminal misc. application no. 8092 of 2014 (Old Cri. M.A.No.
520/2010). This order has been passed by the Magistrate in

execution proceedings in the SCC No.3552 of 1999. Respondent No. 3 was convicted for the offence punishable under section 138 of the Negotiable Instruments Act in the said summary criminal case. It is seen from the record that Respondent No. 3 could not pay the compensation amount and therefore, the said amount is being recovered as arrears of land revenue by the Collector, Manglore. During the course of the execution, the Collector, Manglore was directed by the learned Magistrate, F.C., Court No.3, Pune to auction the property at survey no. 49, 53 in Kadaba Taluka Mangalore. The petitioners submit that this property does not belong to respondent no. 3 and therefore, it could not be sold in auction to recover compensation or arrears by way of land revenue by the collector. The Petitioners claim to be owners of the said property. It is submitted that they have nothing to do with the dispute between Respondent No.2 and Respondent No.3. The learned counsel Mrs. Raje for Respondent no. 3 has also submitted that this property does not belong to Respondent No.3.

3 In such circumstances, in my view, these facts should be brought to the notice of the learned Judicial Magistrate, F.C., Court No.3, Pune who will modify his order accordingly. At the same time, it is also necessary to bring to the notice of the learned Magistrate to examine whether he himself can take part in the execution proceedings, once the

compensation/fine amount is directed to be recovered by way of land revenue.

4 With these observations, the present petition stands disposed of.

5 The petitioners shall approach the learned Judicial Magistrate, FC, Court No.3, Pune who will, after hearing the petitioners and the concerned parties, pass the requisite orders.

6 Stay granted by this court shall remain in force only for a period of two weeks.

7 Order accordingly.

(JUDGE)

.....