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

CRIMINAL WRIT PETITION NO. 106 OF 2016

Manoj s/o Bhimrao Mudgal,
Age: 40 years, Occu: Agriculture,
R/o. Bomble Hanuman Chowk,
Osmanabad, Tq. & Dist. Osmanabad

..PETITIONER

VERSUS

1. Ashok s/o Baburao Umbre,
Age: 53 years, Occu: Service,
R/o. Umbre Kotha, Osmanabad

2. Fulchand Limbraj Gade,
Age: 60 years, Occu: Pensioner,
R/o. Shikshak Coloney,
Osmanabad

3. Arun Mohanrao Bobade,
Age: 59 years, Occu: Pensioner,
R/o. As above

4. Shivajirao Vitthalrao Deshmukh,
Age: 61 years, Occu: Pensioner,
R/o. As above

5. Arun Narayan Gore,
Age: 52 years, Occu: Agriculture,
R/o. RTO Office, Vidya Nagar,
Tambri Vibhag, Osmanabad,
Tq. & Dist. Osmanabad

..RESPONDENTS

Mr V. D. Salunke, Advocate holding for Mr M. V. Salunke, Advocate for
petitioner;

Mr M. B. Kolpe, Advocate for respondent Nos. 1 to 4;

Mr P. N. Muley, Advocate for respondent No. 5

CORAM : N.W. SAMBRE, J.

DATE : 20th August, 2016

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ORAL ORDER :

The present petition is filed by the complainant to the Misc. Criminal Application No.517 of 2012, moved before the learned Judicial Magistrate First Class, Osmanabad, seeking initiation of process through a private complaint for offences punishable under sections 420, 465, 468, 471 read with section 34 of the Indian Penal Code against the respondents, which prayer came to be rejected by an order dated 7th May, 2014, confirmed by the learned Sessions Judge, Osmanabad, vide order dated 24th July, 2014, in Criminal Revision No.52 of 2014.

2. The facts, as are necessary for decision of the present petition, are as under :-

It is the case of the complainant that out of the total holding of 7 Hectares, survey no.30/3 at mouja Osmanabad, Bhimrao, father of the complainant sold to respondents no.1 to 4, land to the extent of 1 Acre 1 Guntha, vide sale deed dated 9th February, 1988, for a consideration of Rs.35,000/-. It is claimed by the petitioner that the said sale deed was a proforma sale deed and was not to be acted upon, however, according to him, without considering the effect of said proforma sale deed, all the accused connived with each other and got the said property mutated in the name of respondents no.1 to 4 through respondent no.5, who is a Talathi. It is then claimed by the complainant that since he got knowledge that the respondents-accused, without complying with all terms of the sale deed, are trying to mutate the land in their name, he lodged objection with

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respondent no.5 on 24th December, 1999. It is also claimed by the complainant in the complaint that all the respondents-accused, in connivance with each other, purchased stamp paper of Rs.100/-, dated 18th December, 1999 from witness no.1, changed month on the said stamp paper from December to October and prepared a consent letter, thereby consenting the mutation in the name of respondent no.1 by respondents no.2 to 4, which document was acted upon by respondent no.5 ordering mutation entry no.5565, dated 23rd December, 1999 and as such, by tendering a consent letter in the back date by tampering the deed of purchase on stamp paper, committed forgery and as such crime in question.

3. The learned Magistrate recorded evidence before issuance of process by examining the present petitioner and stamp vendor Ramesh and by an order dated 7th May, 2014 dismissed the complaint under section 203 of the Code of Criminal Procedure.

4. Feeling aggrieved thereby, the petitioner preferred revision petition No.52 of 2014, which also came to be dismissed by the learned Additional Sessions Judge, Osmanabad on 30th July, 2015. As such, present petition.

5. While invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, Mr Salunke, learned Counsel appearing on behalf of the petitioner, would urge that pursuant to the provisions of section 150 of the Maharashtra Land Revenue Code,

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respondent no.5 – accused (Talathi) was required to follow the procedure prescribed therein, which includes notice to the petitioner and hearing. According to him, the date of purchase of stamp paper on the consent letter was forged, with an intention to create a picture that it was before the date of lodging of the objection, i.e. 24th December, 1999, the stamp paper was shown to have been purchased by tampering the month from December to October, so as to cause legal injury to the petitioner, particularly so as to avoid the proceedings under section 150 of the Maharashtra Land Revenue Code. He would then urge that in view of legal injury caused to the petitioner pursuant to the forgery, it could easily be inferred that the requirement of section 463 of the Indian Penal Code (forgery) is very much satisfied by the petitioner from the contents of the complaint, verification and other material evidence brought on record. According to him, the learned Magistrate has overlooked the said issue and has committed an error by observing that once the land stood transferred by virtue of registered sale deed dated 9th February, 1998 in favour of respondents no.1 to 4, the mutation entry, that too after a period of almost twelve years, is only for fiscal purpose and no offence could be made out. According to him, the learned Additional Sessions Judge has also committed an error, which warrants interference by this Court in extraordinary jurisdiction by endorsing the view of the learned Magistrate. According to him, the finding recorded that no offence is made out against the respondents-accused is a finding recorded contrary to the evidence. He would submit that this Court should set aside the judgments and be pleased to order issuance of process against the respondents-accused, for

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offences punishable under sections 420, 465, 468, 471 read with section 34 of the Indian Penal Code.

6. At the outset, the undisputed position on record, as appears from the respective pleadings of the parties, is as under :-

The father of the complainant has executed a registered sale deed on 9th February, 1998 in favour of respondents no.1 to 4, which is a subject-matter of challenge in a civil suit at the behest of the present petitioner. The petitioner, having lost in both the courts, i.e. at trial level and first appellate level, the said issue is *sub-judice* in a second appeal and no interim relief is operating in favour of the petitioner.

7. The mutation entry no.5565, dated 23rd December, 1999, which is formed to be a basis for initiating the complaint in question, is already set aside in a revision by the Divisional Commissioner and as such, the fact remains that the property stood mutated as was existing before the names of respondents no.1 to 4 were mutated against the said property.

8. It is then required to be noted that the necessary ingredients for making out offences punishable under sections 420, 465, 468, 471 read with section 34 of the Indian Penal Code, if are to be ascertained from the contents of the complaint, verification of the complainant, evidence of witness no.2 Ramesh, it is required to be noted that it is not in dispute that as on date there exists a registered sale deed in favour of respondents no.1

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to 4 for the property in question. So far as an offence punishable under section 420 of the Indian Penal Code, i.e. cheating and dishonestly inducing delivery of property is concerned, the said provision, *prima facie*, in my opinion, is not attracted as there already exists a registered sale deed in favour of respondents no.1 to 4. So far as the other sections 465, 468 and 471 of the Indian Penal Code are concerned, the same deal with punishment for forgery, forgery for the purpose of cheating and using a forged document, in my opinion, has been rightly looked into by both the Courts below, in the background of the registered sale deed of the property in question in favour of respondents no.1 to 4. Apart therefrom, it is to be noted that so far as the document, i.e. stamp paper, which is formed to be the basis for initiation of the complaint alleging a crime is concerned, the said document no way affects the right of the petitioner, particularly in view of the contents thereof, which are in the form of a consent given by respondents no.2 to 4 in favour of respondent no.1, who are joint purchasers of the property by virtue of the registered sale deed. The issue of mutation or cause of legal injury as claimed is concerned, the same is already subject-matter of different proceedings.

9. Apart from above, this Court is required to take judicial note of the fact that in the civil suit, the petitioner has already lost at two levels, i.e. at trial level and at first appellate level and perhaps, he is trying to use the present proceedings in the form of a complaint case initiated against respondents no.1 to 4, who are purchasers of the property by registered sale deed and respondent no.5 is a public servant, so as to twist their

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arms, with an intention to get back the property, which was already transferred by his father.

10. In my opinion, both the Courts below have rightly recorded the findings and dismissed the complaint, which in extraordinary jurisdiction, do not call for for any interference. Thus, Criminal Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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