

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.167 OF 2015

KISHOR S/O TABAJI BHALERAO AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the petitioners: Mr. P.S. Pawar
APP for respondent Nos.1 and 3: Ms. R.P. Gour
Advocate for respondent No.2: Mr. V.S. Bedre

WITH

CRIMINAL APPLICATION NO. 4777 OF 2015
IN
CRIMINAL WRIT PETITION NO. 167 OF 2015

VITHAL S/O BABURAO GADE
VERSUS
KISHOR S/O TABAJI BHALERAO & OTHERS

...

Advocate for Applicant : Mr. V.S. Bedre
Advocate for Respondent No.1 to 3: Mr P.S. Pawar
APP for Respondent No.4 and 5: Ms. R.P. Gour

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CORAM : V. K. JADHAV, J.
DATED : 19th SEPTEMBER, 2016

PER COURT:-

1. Being aggrieved by the separate orders dated 2.2.2015 passed below Exh.5 in each Criminal Revision Nos. 71 of 2013, 72 of 2013, 76 of 2013 and 77 of 2013, by learned Additional Sessions Judge, Ahmednagar, the revision petitioner (legal heirs of original accused Tabaji), preferred present criminal writ petition.

2. Brief facts, giving rise to the present criminal writ petition, are as

follows:-

a) On the basis of complaint lodged by respondent No.2 Vitthal Gade, deceased accused Tabaji, came to be tried by the learned J.M.F.C. Rahuri in four cases i.e. S.T.C. Nos. 448 of 1996, 484 of 1996, 485 of 1996 and 520 of 1996, for the offence punishable under Section 138 of Negotiable Instruments Act. In all the aforesaid four cases, deceased accused Tabaji sentenced to suffer simple imprisonment for a period of two months and also ordered to pay Rs.1,00,000/- by way of compensation to the complainant for the loss suffered by him, as provided under Section 357 (3) of Cr.P.C.

b) Being aggrieved by the same, deceased Tabaji had preferred four separate criminal appeals bearing criminal appeal Nos. 1 of 2008 to 4 of 2008. During pendency of said appeals, Tabaji died and in view of provisions of Section 394 (2) of Cr.P.C. one of the legal heir viz. Kishor Tabaji Bhalerao (son of deceased Tabaji) obtained leave of the court to continue with the said appeals and accordingly said four appeals were not abated. In all those four appeals, learned Additional Sessions Judge, Ahmednagar by separate judgment and order dated 9.12.2010 dismissed the said appeals.

c) Being aggrieved by the same, said Kishor Tabaji Bhalerao had preferred four criminal applications before this Court. However, in

preferring those criminal applications, since there was inordinate delay, applications for condonation of delay were filed. The said criminal applications for condonation of delay came to be rejected by this Court by order dated 23.1.2014. Resultantly, the applications challenging the order dated 9.12.2010 dismissing the criminal appeal Nos. 1 to 2008 to 4 of 2008 were not entertained by this Court.

d) Respondent No.2 original complainant has thereafter filed Criminal Misc. Application Nos. 192 of 2012, 193 of 2012, 194 of 2012 and 195 of 2012 under Section 421 of Cr.P.C. against the present applicants, who are legal representatives of deceased Tabaji for issuance of warrant for the levy of amount to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the immovable property of deceased Tabaji. The present petitioners have strongly resisted the said applications. However, learned J.M.F.C. Rahuri by four separate orders in the said criminal Misc. Applications, as referred above, allowed the applications and further directed to issue warrant to the Collector, Ahmednagar thereby authorizing him to realize the amount of Rs.90,000/- as arrears of land revenue from moveable and immoveable properties, or both, of the opponents.

e) Being aggrieved by the same, present petitioners have preferred four separate criminal revisions bearing Nos. 71 of 2013, 72 of 2013, 76 of 2013 and 77 of 2013, which are pending before the Additional

Sessions Judge, Ahmednagar. During pendency of the those criminal revisions, in each criminal revisions, present petitioners have filed application Exh.5 for staying the effect of the order passed by the Magistrate. However, the learned Additional Sessions Judge by its impugned order dated 2.2.2015, as referred to above, rejected those applications. Hence, this writ petition.

3. Learned counsel for the petitioners submits that learned Additional Sessions Judge, Ahmednagar in his impugned order while rejecting application Exh.5 has observed that so far as the other aspects are concerned, the same can be dealt with elaborately at the time of dealing with the revisions on merits and not at this stage. The petitioners have strong hope of success in criminal revisions pending before the Sessions Judge, Ahmednagar. The Additional Sessions Judge, Ahmednagar ought to have allowed applications Exh.5 since the said applications Exh.5 came to be rejected in all those four criminal revisions, the very purpose of filing of said criminal revisions before the Sessions Court stands frustrated.

4. Learned counsel for respondent No.2 original complainant submits that the judgment of conviction and order of sentence came to be passed by the J.M.F.C. Rahuri in the year 2007 in Summary Criminal case registered in the year 1996. The said judgment and order was assailed before the learned Additional Sessions Judge, Ahmednagar in

Criminal Appeal Nos. 1 to 2008 to 4 of 2008. The learned Additional Sessions Judge has dismissed the said appeals by judgment and order dated 9.12.2010. Criminal Revision applications alongwith applications for condonation of delay preferred against the said judgment and order dated 9.12.2010 came to be rejected by this court. Learned counsel submits that still respondent No.2 complainant has not received any amount towards compensation, as directed by the Magistrate. Learned counsel submits that the Additional Sessions Judge has rightly rejected applications Exh.5. Those criminal revisions pending before the Sessions Judge may be decided on its own merits. However, respondent No.2 complainant may be permitted to withdraw the entire amount deposited by the petitioners before this Court and for that purpose even respondent No.2 complainant is ready to give surety.

5. I have also heard learned A.P.P. for the respondent-State.

6. On careful perusal of the record and proceedings, it appears that the judgment and order of conviction passed by the learned Magistrate in those cases filed in the year 1996 attained finality. During pendency of the appeals, one of the legal representatives of deceased Tabaji is permitted to continue with the appeals by order of the court and therefore, those four appeals were not abated. It is not disputed that all four petitioners, at present are representing the moveable and immoveable properties left by deceased Tabaji. Whether learned Magistrate has rightly passed the order in those criminal Misc.

applications, directing issuance of warrant to the Collector, District Ahmednagar, authorizing him to realize the amount stated in detail in the order, as arrears of land revenue from the immoveable and moveable properties, the Additional Sessions Judge will decide those criminal revisions on its own merits. However, I do not find any fault in the order passed below Exh.5 in those four criminal revisions. Undisputadely, all the petitioners are representing the estate left by deceased Tabaji and the same is also evident from the order of attachment of the property, passed by Tahsildar, Rahuri placed on record at page 158, 159 and 160.

7. It further appears that even that order passed by the Magistrate, way back in the year 2007 in the said S.T.Cs., filed in the year 1996 and even though the said judgment and order of conviction passed by the Magistrate has attained finality, respondent No.2 original complainant has not received any amount so far towards compensation granted by the Magistrate. The said amount of Rs.3,60,000/- came to be deposited before this court only after this court has directed the petitioners to deposit the said amount and on deposit of said amount, further attachment process, being undertaken by the revenue authorities, came to be stayed.

8. In view of this, respondent No.2 original complainant is permitted to withdraw the said amount by furnishing surety to the satisfaction of

Registrar (Judicial) of this Court. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition No. 167 of 2015 is hereby dismissed.
- II. Criminal application No. 4777 of 2015 is allowed in terms of prayer clause "B" with condition that the applicant shall furnish surety to the extent of withdrawal of amount, to the satisfaction of Registrar (Judicial) of this Court.
- III. The learned Additional Sessions Judge, Ahmednagar shall pass appropriate order in respect of said amount at the time of disposal of the said criminal revision applications.
- IV. Criminal writ petition as well as criminal application are accordingly disposed of.

(V. K. JADHAV, J.)

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