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

CRIMINAL WRIT PETITION NO. 364 OF 2015

Mahadu Janku Gadekar,
Age: 61 years,
Through POA Subhash Mahadu Gadekar,
Since deceased through L.Rs.

1A. Subhash Mahadu Gadekar,
Age: 35 years

1B. Suman Mahadu Gadekar,
Age: 65 years

1C. Pravin Prakash Gadekar,
Age: 28 years

1D. Nitin Prakash Gadekar,
Age: 30 years

1E. Vaibhav Prakash Gadekar,
Age: 26 years

1F. Pratibha Vasant Doke,
Age: 45 years

1G. Sushama Sopan Raskar,
Age: 43 years

1H. Usha Ambadas Doke,
Age: 40 years

1I. Megha Suresh Doke,
Age: 38 years

1J. Alka Praksh Gadekar,
Age: 51 years

Occupation of all : Agricultural,
1A to 1E & 1J are R/o. Borbanwadi,
Ghargaon, Tal. Sangamner,
Dist. Ahmednagar, M.S.
1F is R/o. Otur, Tal. Junnar, Dist. Pune

1G R/o. Raskarwadi, Tal Junnar,
Dist. Pune

1H R/o Kumshet, Tal Junnar, Dist. Pune

..PETITIONERS

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VERSUS

1. The State of Maharashtra,
Through Police Station In-charge,
Ghargaon Police Station,
Tal. Sangamner, Dist. Ahmednagar
2. Keshav Maruti Gadekar,
Age: 61 years, Occu: Agricultural
3. Shivaji Keshav Gadekar,
Age: 32 years, Occu: Agricultural
4. Dattatraya Keshav Gadekar,
Age: 30 years, Occu: Agricultural
5. Dipali Shivaji Gadekar,
Age: 26 years, Occu: Household
6. Jibabai Keshav Gadekar,
Age: 56 years, Occu: Household
7. Nisha Dattatraya Gadekar,
Age: 24 years, Occu: Household

R. Nos. 2 to 7 R/o. Borbanwadi,
Ghargaon, Tal Sangamner,
Dist. Ahmednagar, M.S.

..RESPONDENTS

Mr V. Y. Bhide, Advocate for petitioners;
Mr A. R. Kale, Addl. Public Prosecutor for respondent No. 1;
Mr N. B. Suryawanshi, Advocate for respondent Nos. 2 to 7

CORAM : N.W. SAMBRE, J.**DATE : 20th April, 2016****ORAL ORDER :**

The petitioner – plaintiff in a civil suit was protected by an order of temporary injunction, which was confirmed in an appeal by the District Judge. It is during filing of appeal by respondents no.2 to 7, a document

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styling to be "7/12 extract" came to be produced. It is claimed that the entry in the said document, particularly for the year 2013-14 depicting possession of respondents no.2 to 7 was false and fabricated.

2. In view of above, the petitioner moved an application before the learned District Judge in Misc. Civil Appeal No.9 of 2014 (Keshav vs. Mahadu) praying therein to set criminal law in motion for offences punishable under sections 420, 467, 466, 468, 470 and 471 of the Indian Penal Code. The said application came to be objected by respondents no.2 to 7, which came to be rejected by the learned District Judge on 10th December, 2014. The said application for initiation of criminal proceedings came to be registered as Misc. Application No.9 of 2014, vide Exh.15.

3. Learned Counsel appearing on behalf of the petitioner, while trying to make out a case for indulgence and initiation of action pursuant to the provisions of section 340 of the Code of Criminal Procedure (for short CrPC), would urge that the moment respondents no.2 to 7, who were appellants before the learned District Judge filed an appeal along with the document containing fabricated entry, the learned Judge should have taken recourse to the provisions thereof and should have initiated inquiry against respondents no.2 to 7. He would then submit that so as to substantiate his claim, he has also produced correct copy of 7/12 extract in relation to the property depicting the correct entry than the one fabricated one which was produced by respondents no.2 to 7. He would then submit that in a judicial proceedings if fabricated document is produced, the Court

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must initiate the inquiry in the matter. He would then submit that the order of the learned Sessions Judge rejecting application Exh.15 is without any foundation of law, as the Court below has failed to appreciate both the 7/12 extracts; i.e. one produced by the petitioner and another by respondents no.2 to 7, which was alleged to be fabricated document.

4. While opposing the claim Mr Suryawanshi, learned Counsel appearing on behalf of respondents no.2 to 7 – appellant before the learned District Judge would submit that unless the requirement of section 340 of the CrPC is satisfied and *prima facie* case is brought to the notice of the Court that a fabricated document, pursuant to the provisions of sections 195 and 197 of the CrPC was produced before the Court below, the court was right in rejecting the claim of the present petitioner. He would then urge that mere production of a document in the judicial proceedings would not attract the procedure contemplated under section 340 of the Code of Criminal Procedure and said offence cannot be made punishable under section 195 of the CrPC. He would then submit that the test as is provided in the law laid down by the Apex Court in the matter of **B.K. Gupta vs. Damodar H. Bajaj & ors.**, reported in **(2001) 9 SCC 742**, particularly paragraph 3 of the said judgment speak a volume about satisfaction to be ascertained by the Court before proceeding under section 340 of the CrPC. He would then submit that the requirement of satisfaction under section 340 (1) of the CrPC is confirmed by the Apex Court in the matter of **Sachida Nand Singh & anr. vs. State of Bihar & anr.**, reported in **AIR 1998 SC 1121**, particularly in paragraphs 11, 12 and

13.

5. With the assistance of the respective Counsel, I have perused the entire proceedings. *Prima facie*, it appears that an injunction in favour of the present petitioner is still holding the field. It is out of statutory right vested in the petitioner, an appeal against grant of temporary injunction came to be filed before the learned District Judge, in which the petitioner – plaintiff had moved an application praying therein initiation of proceedings for offence punishable under section 195 of the CrPC.

6. While doing so, the petitioner has relied upon the 7/12 extract issued in his favour, in relation to the disputed property and the one that was produced by respondents no.2 to 7 before the District Judge. If both the 7/12 extracts are perused and compared, there appears to be some entry for the year 2013-14 in relation to certain crops in the name of the present respondents – original defendants. It is claimed that the said entry is forged and inserted.

7. Upon perusal of the record which depicts that there is hardly any material produced by the present petitioner before the learned District Judge so as to satisfy him *prima facie* as regards any tampering carried out by the respondents in the document in question. Apart therefrom, it is also not brought to my notice or is also not reflected in the order of the Court below that such forged entry was used by the respondents for any gain or misdirecting the judicial authorities. In view thereof, in my opinion, the

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learned District Judge has rightly rejected the claim as is sought to be put forth pursuant to the provisions of section 340 (1) for an offence punishable under section 195 of the CrPC.

8. It is then required to be noted that in the matter of Damodar H. Bajaj (supra), the Apex Court while considering the scheme of section 340 of the CrPC has laid down satisfaction of two conditions, namely, (i) a person giving a false affidavit in a proceeding before the court, it should be established that a person has given a false affidavit before the Court and (ii) that in the opinion of the Court it is necessary in the interest of justice an order an enquiry against such person.

9. As observed herein above, there was hardly any material before the learned District Judge to infer that the document was forged or fabricated with an intention to give false evidence.

10. In that view of the matter, no illegality could be noticed in the order impugned in the present petition. Thus, the petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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