

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

**CRIMINAL WRIT PETITION NO. 379 OF 2015**

IBRAHIM SHARIF S/O CHANDSARIF MOMIN &  
OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA & ANOTHER.

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Advocate for Petitioners: Mr R B Narwade h/f S B Madde  
APP for Respondent 1 : Mr P G Borade  
Advocate for Respondent 2 : Mr Shirsat Suhas R.

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**CORAM : V.K. JADHAV, J.**

**Dated: August 16, 2016**

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**PER COURT :-**

1. Being aggrieved by the order of issue of process passed by the learned 2<sup>nd</sup> Jt. Judicial Magistrate First Class, Ahmedpur dated 18.5.2013 in Criminal Application No.42/2012 and confirmed by the learned Additional Sessions Judge, Ahmedpur dated 7.1.2015 in Criminal Revision Application No.3/2013, the original accused persons preferred this writ petition.

2. Brief facts, giving rise to the present writ petition are as follows :-

Respondent No.2 has filed a Criminal Application No.42/2012 before the Judicial Magistrate First Class,

Ahmedpur alleging therein that her deceased husband Nizam Sharif Momin had four brothers and they were jointly running a hotel for their family livelihood. Out of the income from the hotel, they had also purchased some agricultural land, however, some part of the agricultural land came to be purchased in the name of her deceased Husband. It has further alleged in the said complaint that entire hotel business was in the hands of elder brother Ibrahim till the year 2001. In the year 2000, her husband Nizam Sharif Momin died and the present petitioners/original accused persons in collusion with each other forcibly entered in her house. They had threatened her to kill and obtained her thumb impression on a blank bond paper. Consequently, she had filed a complaint at Police Station Kingaon. Thereafter on 25.6.2001, the petitioners/original accused took her to Ahmedpur by giving her false promise that half of the house property would be given to her and obtained her thumb impression for the decree of the said house. Even, she had instituted a Regular Civil Suit No.591/2001 which came to be dismissed. In fact, the said suit came to be dismissed

without her knowledge and the petitioners/original accused no.1 had manipulated the same. Furthermore, her son had also instituted a Special Civil Suit No.1/2006. She came to know about the dismissal of her Regular Civil Suit No.591/2001 when she appeared in the suit instituted by her son. It has thus alleged in the complaint that the petitioners/original accused 1 to 9 cheated her and got executed the sale deed in respect of the land under the pretext of execution of a decree of the house property. On the basis of these allegations, the learned Magistrate has called the report of the Police Station as provided under section 202 of Criminal Procedure Code and on perusal of verification statement and the report received from the concerned police station, the learned Magistrate by order dated 18.5.2013 issued process against the petitioners/original accused for the offences punishable under sections 406, 417, 420 of the Indian Penal Code with the further directions to register the said Criminal Application as Regular Criminal Case. Being aggrieved by the same, the petitioners/original accused preferred Criminal Revision Application No.3/2013 before the Additional Sessions

Judge, Ahmedpur. The learned Additional Sessions Judge, Ahmedpur by its impugned Judgment and Order dated 7.1.2015 dismissed the Revision Petition by confirming the order passed by the Magistrate. Hence, this writ petition.

3. The learned counsel for the petitioners/original accused persons submits that, the complaint is filed in the year 2012 alleging therein about the incident which had taken place in the year 2001. The learned counsel further submits that in RCS No.25/2013 (Old Special Civil Suit No.1/2006) wherein the complainant and her son were parties, the learned Jt. Civil Judge S.D., Ahmedpur by its impugned Judgment and decree dated 2.8.2013 dismissed the suit with the findings that the suit properties as mentioned in the plaint are the self acquired properties as alleged by the defendants. The suit properties as mentioned in the said suit also includes the property alienated under the registered sale deed dated 25.6.2001. The learned counsel submits that, the complainant has made wild allegations in respect of this sale deed in the complaint which came to

be lodged eleven (11) years after the incident. There is no explanation whatsoever in the complaint for the inordinate delay occurred in filing the complaint before the Court. Learned counsel submits that so far as RCS No.591/2001 is concerned, same was instituted by the present complainant and said suit came to be dismissed in the year 2001 itself. Learned counsel submits that, said suit was instituted for declaration of ownership and a decree of perpetual injunction. The copy of the plaint of the said suit is produced on record. Learned counsel submits that there are no allegations in the said suit about the incident as alleged in the present complaint. Learned counsel submits that though the facts of institution of a Regular Civil Suit 591/2001 and the Special Civil Suit No.1/2006 are mentioned in the complaint, both the Courts below have not gone through the contents of the said suit. Learned counsel submits that, so far as findings recorded in RCS No.25/2013 (Old Special Civil Suit No.1/2006) are concerned, said findings have attained finality. Learned counsel submits that the complainant after 11 years of the alleged incident, filed present complaint with an ulterior

motive.

4. Learned counsel for respondent no.2/original complainant submits that on 25.6.2001 respondent no.2/original complainant was taken to Ahmedpur by the petitioners by giving her false promise and by taking undue advantage of her illiteracy got registered the sale deeds in respect of landed property. Even though respondent no.2-original complainant had instituted a Regular Civil Suit No. 591/2001 for declaration of ownership in respect of the said property, the petitioners/original accused no.1 got managed to dismiss the said suit and respondent no.2-original complainant came to know about the dismissal of the said suit only when she appeared in a Special Civil Suit No.1/2006 before the Court. Learned counsel submits that, there is no question of limitation and considering the punishment prescribed for the offences alleged to have been committed by the petitioners/original accused, the complaint can be entertained. Learned counsel submits that, both the Courts below have considered the verification statement of the complainant

as well as the report submitted by the police and accordingly the learned Magistrate rightly issued the process for the offences punishable under sections 406, 417, 420 of the Indian Penal Code and the learned Additional Sessions Judge, Ahmedpur has confirmed the same in the Revision. No interference is required. There is no substance in the writ petition and writ petition is liable to be dismissed.

5. On careful perusal of the complaint, it appears that, respondent no.2-original complainant has alleged in the complaint that on 25.6.2001 the petitioners took her to Ahmedpur by giving her false promises. She was taken to Ahmedpur under the pretext that she would be getting the decree in respect of the house property and accordingly her thumb impressions were obtained on the document which alleged to have been executed on 25.6.2001. On perusal of the copy of R.C.S. No.591/2001, which was instituted by the respondent no.2-original plaintiff against the elder brother of her husband Ibrahim Sharif and others for decree of perpetual injunction and declaration of ownership, the

Respondent-original complainant has not pleaded about the incident as alleged in the complaint on 25.6.2001. Furthermore, on careful perusal of the Judgment and decree passed by the learned Jt. Civil Judge S.D. in RCS No.25/2013 (Old Special Civil Suit No.1/2006), it appears that the said suit was instituted by one Mohin Mehboob against respondent no.2-original complainant and her sons and also present petitioners. In the said suit, the learned Judge had an occasion to examine the documents as per the pleadings of the parties which includes the document executed on 25.6.2001 and in paragraph No.100 of the Judgment, the learned Judge has observed that the sale deeds dated 30.4.2001, 14.5.2001, 25.6.2001, 6.1.2005 and 16.3.2005 are genuine transactions. In view of the said observations the learned Judge has further held that the plaintiffs in the said suit are not entitled to claim partition in respect of the suit lands and the suit houses.

6. In view of this, I do not find any reason to issue process against the accused for the offences punishable under sections 406, 417, 420 of the Indian Penal Code.

No case is made out for issuance of the process. Allegations made in the complaint are nothing but an abuse of process of the Court. In the result, I proceed to pass the following order.

**O R D E R**

- I. Criminal Writ Petition is hereby allowed.
- II. The order passed by the learned Judicial Magistrate First Class, Ahmedpur dated 18.5.2013 in Criminal Application No.42/2012 and confirmed by the learned Additional Sessions Judge, Ahmedpur in Criminal Revision Application No.3/2013 dated 7.1.2015 are hereby quashed and set aside.
- III. The complaint bearing Criminal Application No.42/2012 (RCC No.144/2013) filed by respondent No.2-original complainant is hereby dismissed.
- IV. Criminal Writ Petition is accordingly disposed of.

**( V.K. JADHAV, J. )**

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