

ORAL JUDGMENT : [PER : A.V. NIRGUDE, J.] :-

1. The petitioners are accused Nos. 5 and 6 in crime No. 211 of 2010 registered at Nanded Rural Police Station for the offences punishable under Sections 420, 468, 471, 447 r.w. 34 of I.P.C.

2. The complainant alleged that he and others were members of a proposed co-operative housing society for which a piece of land was purchased at village Vasarani near Nanded city. A person by name Shivram Mistri was appointed as chief promoter of the said proposed society. The land was purchased in his name way back in the year 1980-81. Shivram died on 25.8.2005. Thereafter, his wife and son applied to the revenue authorities seeking mutation of the land in their names. It was granted to them. They thereafter, started representing that they are owners of the land. The land was then purchased by the present petitioners along with others. Thereafter, the complainant and others filed a Civil Suit in the year 2007 asserting that the land could not have been purchased by the petitioners and others and for some other relief.

3. The complaint was filed on 11.6.2010 in which it is stated that the petitioners and others have

manipulated the revenue record and have obtained fraudulent sale deed of the land in their favour. It was also alleged that other accused tried to take possession of the land forcibly but such attempt was foiled.

4. The petitioners are before us for getting the complaint as well as criminal case quashed. We have permitted to amend the petition for challenging the charge-sheet also. As said above, the complaint alleged that the petitioners and their vendors forged the land record and then transferred the land and caused loss to them. The first part of the allegation is that the petitioners colluded with their vendors to get their vendors' name mutated in land record. The mutation of land record was in-deed an official act and the same cannot be an act of forgery. Much less an outsider like the petitioners or for that matter the vendors would be able to forge any document which is part of land record. Forging land record is a serious allegation and can be made at the most against those who have such records in their custody.

5. Though the petitioners claimed that they are bonafide purchasers, for the sake of complaint we are inclined to assume that the petitioners were aware that their vendors did not have good title. The land was

purchased for and on behalf of a proposed co-operative housing society and yet they entered into the transaction. Whether such an act would amount to an offence punishable under the Indian Penal Code? The answer is in negative. The petitioners took risk of purchasing a piece of land from persons who did not have clear title. So, if their vendors' title is not clear, they would not get a clear title. For the sake of the complaint, we assume that the complainants have better title. The transaction would not affect that title. The person having such title cannot be cheated by collusion of two persons having no title to the property. The solution to the problem was already found in 2007. A suit for title was filed and in such a suit the complainant would be able to vindicate their case. In such situation, filing of complaint in 2010 was not only after thought but was an act in futility.

6. In addition to this, there is no allegation against the petitioners that they tried to enter the land forcibly. There is one more aspect of this case, which is required to be mentioned in the order that the present petitioners and other accused had earlier filed writ petition No.861 of 2010 in which the learned Single Judge of this Court had directed the police not to file charge sheet against the present petitioners. Despite the said

order, the charge sheet was filed. This writ petition was admitted on 08.10.2014.

7. Hence, the writ petition is allowed in terms of prayer clause "A" and disposed of.

8. Rule made absolute in the above terms.

[V.K. JADHAV, J.]

[A.V.NIRGUDE, J.]