

THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**CRIMINAL APPLICATION NO. 4028 OF 2009**

Janimiya Hussain Saheb,  
Age 69 yrs, Occ. Agri.,  
R/o Dharmapuri now at Parli,  
Dist. Beed.

**... APPLICANT**  
(Ori. Complainant)

**VERSUS**

1. S. S. Dahiphale,  
Age 54 yrs, Occ. Talathi,  
R/o Dharmapuri, Tq. Parli,  
Dist. Beed.

2. Revenue Circle Inspector (Girdhawar)  
Circle Dharmapuri, Tq. Parli,  
Dist. Beed.

3. The State of Maharashtra.  
(Copy served on P.P.H.C.)

**... RESPONDENTS**  
(Ori. Accused)

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Mr. Vivek Bhavthankar, Advocate for Applicant.  
Mr. S. P. Tiwari, APP for Respondent No.3 / State.

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

DATE : 08<sup>th</sup> December, 2016.

**ORAL JUDGMENT:**

. Being aggrieved by the judgment and order dated 29<sup>th</sup>

May, 2009 passed by the Ad-hoc Additional Sessions Judge-I, Ambajogai in Criminal Revision Application No.68 of 2008, the original Complainant has approached to this Court by filing the present criminal application.

2            Brief facts giving rise to the present criminal application are as follows:

- a. The Applicant / original Complainant had filed a complaint against present Respondent Nos.1 and 2 and 54 others for having committed the offence punishable under Sections 167, 168, 420, 218, 447 and 427 read with 34 of the Indian Penal Code before the Judicial Magistrate First Class, Parli. It has alleged in the complaint that present Respondents / original Accused Nos.1 and 2 are public servants and the remaining Accused are in possession of land bearing Survey Nos.5-A and 5-AA to the extent of certain portion on the basis sale-deed executed in their favour illegally. It has alleged that name of the father and grand-father of Applicant / Complainant recorded in the revenue record

in respect of Survey No.5-A. His father sold some property to one Vithal Laxman in the year 1962 and also sold certain property to one another person in the year 1968. Furthermore, some portion of the property came to be acquired by the Government and finally the land admeasuring 1 Acre 37 Gunthas remained in possession of the Applicant / Complainant. Furthermore, the grandfather of Applicant / Complainant also sold certain property and ultimately 2 Acres and 13 Gunthas of land remained in his possession. Even though the name of the purchasers came to be recorded on the basis of sale-deed executed in their favour by the father and grandfather of the Complainant, those purchasers took illegally possession of the remaining land also. It has further alleged in the complaint that the Applicant / Complainant has instituted a suit, which came to be dismissed. It has further alleged in the complaint that the said purchasers prepared plots in the said agricultural land and sold it. It has thus alleged that all the Accused including present Respondents committed the offence as aforesaid in

furtherance of their common intention.

- b. The learned Judicial Magistrate First Class, Parli-Vaijnath by order dated 9<sup>th</sup> November, 2005, on perusal of complaint, verification statement and also report under Section 202 of the Code of Criminal Procedure, issued the process against the Respondents / original Accused Nos.1 and 2 for the offence punishable under Section 167 and 218 read with 34 of the Indian Penal Code. In response to the said process, the Respondent / original Accused Nos.1 and 2 appeared before the Court and the learned Magistrate by order dated 1<sup>st</sup> July, 2008, directed to frame the charge against the Respondents / original Accused. Being aggrieved by the same, the present Respondents / original Accused Nos.1 and 2 preferred Criminal Revision Application No.68 of 2008 and the learned Ad-hoc Additional Sessions Judge-I, Ambajogai by judgment and order dated 29<sup>th</sup> May, 2009 in Criminal Revision Application No.68 of 2008, allowed the said revision and quashed and set aside the order passed by the learned Magistrate in aforesaid R.C.C. No.312 of

2005. Hence, this criminal application preferred by the original Complainant.

3           The learned counsel for the Applicant / original Complainant submits that the Respondents / original Accused Nos.1 and 2 in collusion with each other recorded false mutation entry and created false and bogus record. The learned counsel submits that it is the part of record that Accused Nos.1 to 7 made plots in the agricultural land and sold it to Accused Nos.8 to 56 and accordingly, the names of those purchasers are recorded in the revenue record. The learned counsel submits that police report is in favour of the Applicant / Complainant, however, the same is not considered by the Revisional Court. The Respondents / Accused Nos.1 and 2 have committed the offence for which the sanction as contemplated under Section 197 is not required. There is *prima facie* evidence against the Respondents / Accused Nos.1 and 2 and therefore, the learned Magistrate has rightly issued the process against them. The Revisional Court without applying the mind, quash and set aside the said order by considering the probable defence of Respondents / Accused Nos.1 and 2.

4           The learned counsel for Respondent / original Accused Nos.1 and 2 submits that there are no allegations at all in the complaint and no documentary evidence produced to substantiate the allegations made in the complaint that the Respondents / Accused Nos.1 and 2 have made any change in the record of right during the period when the stay granted by the Civil Court was in force. It has nowhere alleged in the complaint by referring the documents that Respondents / original Accused Nos.1 and 2 framed the incorrect document with an intention to cause injury. On the other hand, Respondents / original Accused Nos.1 and 2 bound to take the mutation entry if copy of the registered sale-deed is produced before them. The learned counsel submits that there is a reasonable nexus between the act complained against the Respondents / original Accused Nos.1 and 2 and the official duties performed by them. The learned Ad-hoc Additional Sessions Judge, Ambajogai has therefore, rightly observed that Respondents / Accused Nos.1 and 2 are required to be protected in view of the provisions of Section 197 of the Code of Criminal Procedure. The learned counsel submits that the impugned judgment and order passed by the Revisional Court calls no interference. There is no substance in the criminal application and

the same is liable to be dismissed.

5           On careful perusal of the allegations made in the complaint, it appears that the Applicant / Complainant had instituted a civil suit against other Accused named in the complaint and the said suit came to be dismissed. Further the appeal preferred against the said decree is also came to be dismissed. The learned Additional Sessions Judge has observed in the impugned order that the entries in respect of the names of purchasers in 7/12 extract have been taken by the concerned Talathi on the basis of registered documents and on receiving the applications from the concerned purchasers to that effect. It is a matter of record that various transactions took place in respect of the land owned and possessed by the father, grand-father of the Applicant / Complainant. The learned Additional Sessions Judge on perusal of record observed that no document is produced before the Court to show that Respondents / original Accused Nos.1 and 2 have taken those entries or certified those entries. There are vague allegations in the complaint and there is nothing on record to show that Respondents / original Accused Nos.1 and 2 have prepared any false document or any Government record so as to attract the ingredients of Section 167 of the Indian Penal Code. The

Respondents / Accused Nos.1 and 2 are the public servants and so far as the allegations made against them are concerned, there is a reasonable nexus with their official duties. The learned Additional Sessions Judge has therefore, rightly observed that the Respondents / original Accused Nos.1 and 2 are entitled for the protection as contemplated under Section 197 of the Code of Criminal Procedure. I do not find any fault with the judgment and order passed by the learned Additional Sessions Judge, Ambajogai. There is no merit in the criminal application. Hence, the following order:

### **ORDER**

- I. Criminal application is hereby dismissed.
- II. Rule discharged.
- III. Criminal application is accordingly disposed of.

**[ V. K. JADHAV, J. ]**