

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1593 OF 2015

MACHHINDRA BABAJI MOTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. D.G. Nagode
APP for Respondent No.1: Mr. N.T. Bhagat

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CORAM : V. K. JADHAV, J.
DATED : 4th AUGUST, 2016

ORAL ORDER:-

1. Being aggrieved by the judgment and order dated 15.09.2015, passed by the learned Additional Sessions Judge, Newasa in criminal revision No. 53 of 2014, the original complainant has preferred this writ petition.

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

a) The agricultural lands, bearing Gat Nos. 200/1, 200/2, 200/3 and 200/4 were the properties of joint family of the complainant. Deceased Rangnath, who happens to be real uncle of the complainant, had executed sale deeds on 11.10.1984 of the said lands in favour of respondents-original accused. The said agricultural lands were grant lands and same could not be alienated without prior permission of the State Government. It

has alleged in the complaint that the respondents-accused, by suppressing the terms of grants, got executed the sale deeds of the aforesaid lands and thereby cheated him. It has also alleged in the complaint that the respondents-accused had prepared false 7x12 extract by deleting the word "new grants" in 7x12 extract and accordingly got executed the sale deed in the office of Sub Registrar, Newasa. On receipt of complaint, learned J.M.F.C. Newasa, initially directed inquiry under Section 202 of Cr.P.C. to the Police at Newasa. On the basis of report filed by the concerned police, learned Magistrate has issued process against the respondents-accused for the offences punishable under Sections 420, 467, 468 r.w. 34 of I.P.C.

b) Being aggrieved by the same, the respondents-original accused had preferred criminal revision No. 53 of 2014 before the Sessions Court. The learned Additional Sessions Judge, Newasa by its impugned order dated 15.09.2015 allowed the revision and thereby set aside the order of issuance of process dated 18.04.2013, passed by the learned Magistrate, Newasa in Criminal M.A. No. 186 of 2012 (R.T.C. No. 111 of 2013). Hence, this writ petition.

3. Learned counsel for the petitioner-original complainant submits that his grandfather Vitthal Mote had received the agricultural land for

cultivation from the Government without any condition. However, on account of non payment of *Tagai* (revenue), the land was forfeited by the Government. The said Vitthal had three sons viz. Babaji, Rangnath and Kashinath. The complainant is from the branch of Babaji. Deceased Babaji paid Government dues in the year 1959 and thus, there was re-grant. The mutation entry No. 1320 also came to be mutated on 16.03.1960. During the life time of Babaji, vide mutation entry No. 1581, the property was transferred/mutated in the names of his brothers Rangnath and Kashinath. In the year 1984, deceased Rangnath sold the property in favour of the respondents-accused by three separate registered sale deeds. In 7x12 extract, though new tenure is mentioned, the same is not produced before the Sub Registrar at the time of execution of sale deeds and different 7x12 extract was produced before the Sub Registrar, wherein the said word "new tenure" was deleted. In the light of said execution of sale deed, mutation came to be effected, however, the complainant has challenged the same before the competent authority and accordingly said mutation came to be set aside on the ground that prior permission of State Government was not taken for alienating the said land in favour of the respondents-accused. Learned counsel submits that the Magistrate has directed enquiry at the hands of police, as provided under Section 202 of Cr.P.C., in which after due investigation, the concerned police have submitted a report wherein it is specifically mentioned that said Rangnath was old aged and illiterate person and by taking undue

advantage of the same, respondents-accused got executed the said sale deeds. Learned Magistrate has therefore, rightly issued the process against the respondents-accused. However, learned Additional Sessions Judge has ignored the said report submitted by the police and set aside the order of issuance of process passed by the Magistrate.

4. In the present case, the complainant has alleged in the complaint that at the time of execution of sale deeds, the respondents-accused persons did not point out the condition of new tenure to the Sub Registrar. During the course of enquiry under Section 202 of Cr.P.C. a statement of the then Sub Registrar came to be recorded and as per the said statement, at the time of execution of sale deed, it is not mandatory to attach 7x12 extract and to go through the contents thereof. The said 7x12 extract is neither produced before the Court nor the same revealed during the course of investigation carried out by the police. The said transaction had taken place way back in the year 1984 and present complaint came to be lodged in the year 2012. Further, this court while deciding writ petition No. 7908 of 2010 alongwith connected matters, by order dated 11.01.2012 has observed that so far as condition No.2, stipulated in re-grant dated 11.6.1959 is concerned, the orders of cancelling of mutation entry Nos. 2426, 2427 and 2428 do not call for any interference. Learned Commissioner has made it amply clear that unless original mutation entry No. 1230 of re-grant dated 16.3.1960 is questioned, the subsequent sale by the branch of Rangnath would not

be legally permissible. This court has further observed that parties are in possession of the respective properties and they are at liberty to exhaust available civil remedies as has been observed by the learned Commissioner in the orders under challenge therein.

5. In the light of pending litigation between the parties, learned Additional Sessions Judge has also observed that the question of law, which is under dispute, cannot be a subject of criminal prosecution and it is perfectly civil cause for which the parties have to approach the civil court with suitable pleadings and plaint. I do not find any fault in the impugned judgment and order passed by the Additional Sessions Judge, Newasa in criminal revision No. 53 of 2014. Thus, the order passed by the learned Magistrate is not sustainable. The learned Additional Sessions Judge has therefore, rightly set aside the order of issuance of process against the respondents-accused. No interference is warranted. The writ petition is, therefore, dismissed.

(V. K. JADHAV, J.)

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