

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

CRIMINAL WRIT PETITION NO.470 OF 2010

Karim S/o. Jafar Mulla, .. Petitioner
Age-59 years, Occu-Service,
R/o.Balepeer Beed,
Tq. & Dist. Beed

Versus

1. State of Maharashtra .. Respondents
Through Police Station
Shivaji Nagar, Beed
2. Ambajogai Peoples Co-op
Bank Ltd., Beed Through
Mr.Sudhakar Jijarao Shinde
Age-40 years, R/o. Subhash Road,
Branch Beed

Mr.G.K.Thigale, Advocate for the petitioner
Mr.S.J.Salgare, APP for the respondent No.1/State
Mr.Nitin Jagdale, Advocate h/f Mr.V.D.Salunke, Advocate
for the respondent No.2

**CORAM : T.V. NALAWADE &
S.M. GAVHANE, JJ.
DATED : 26.09.2017**

J U D G M E N T [PER: S.M. GAVHANE, J.]

. The petitioner against whom and others Crime No. 24/2010 for the offences under Sections 420,468,471 r/w Section 34 of the Indian Penal Code has been registered at Shivajinagar Police Station, Beed has filed this

criminal writ petition under Section 482 of the Criminal Procedure Code and under Article 227 of the Constitution of India to quash and set aside the said FIR dated 05.02.2010 to his extent lodged at the instance of respondent No.2-Bank.

2. The petitioner contends that he is in service in department of Stamp and Registration Office, Beed as a Joint Sub-Registrar Class-2. He took charge of said post on 30.05.2008. He is under duty to register a document in pursuance to the provisions of Indian Registration Act. He had no other option than to register a document which is presented, if it fulfills the conditions such as identification of property, identification of persons and other documents providing status of the parties. Therefore, according to him no offence even prima facie attracted against him because he has registered a document of sale deed dated 08.12.2009 executed by Namdeo Nathuba Kute in favour of Ankush Bhagwan Kute.

3. Respondents have not filed affidavit-in-reply. On admission interim relief in terms of prayer clause-C was granted.

4. We have heard learned Advocates for the petitioner, APP for respondent No.1/State and respondent

No.2. So also, we have perused the papers produced by the petitioner.

5. On perusal of the FIR dated 05.02.2010 lodged by respondent No.2 Bank's Recovery Officer Sudhakar Shinde against the petitioner and four others it appears that bank had given loan amount of Rs.5,00,000/- to Sangita Kute against the mortgage of immovable property i.e. house and shop bearing 3-14-102 (old) i.e. 3-14-104 (New) owned by her father-in-law Namdeo Kute. On 08.12.2009 sale deed of said property came to be registered by the vendor Namdeo Kute in favour of Ankush Bhagwan Kute. The bank had taken action under Section 101 of the Maharashtra Co-operative Societies Act for recovery of the said amount. One Shivle Kute brother of Ankush Kute has filed suit in respect of the said house property in the Court of Civil Judge, Junior Division, Beed. The Bank has filed writ petition in the High Court against the decision of the District Court and thereafter this petition has been filed. It is alleged that house property was mortgaged with respondent No.2 -Bank and in order to deny claim of the bank of the loan without giving knowledge to the bank and to cheat the bank all the accused in furtherance of common intention the property mortgaged with the bank has been sold by aforesaid sale deed for consideration of Rs.14,21,000/-.

6. The substance of above allegations in the FIR is that although house property was mortgaged with the respondent No.2-Bank for loan of Rs.5,00,000/- the same has been sold and the petitioner Sub-Registrar has registered the document. The act of the petitioner in registering the document produced before him is as per the provisions of Registration Act. Sub-Registrar has to register a document as per Section 32 and 44 of the Registration Act and he cannot refuse to register a document in case property to be sold is mortgaged. Learned Advocate appearing for respondent No.2-Bank could not point out the provisions in the Registration Act empowering the Joint Sub Registrar to refuse registration of sale deed in the circumstance alleged in the FIR and particularly when the property being sold as per sale deed is already mortgaged. Therefore, when it appears that the petitioner has by following procedure laid down in the Registration Act registered the sale deed of the property mortgaged with the respondent No.2-Bank prima facie it cannot be said that the ingredients of the offences alleged against the petitioner under section 420,468,471 r/w Section 34 of the IPC are attracted. Naturally therefore, allowing the crime registered against the petitioner to continue will amount to abuse of process of law. Therefore, we hold that FIR deserves

to be quashed and set aside to the extent of the petitioner. In the result the petition is allowed. Crime No.24/2010 under section 420,468,471 r/w Section 34 of the IPC registered at Shivajinagar Police Station, Beed is quashed and set aside to the extent of the petitioner-Karim S/o. Jafar Mulla. Rule is made absolute in above said terms.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]