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

Criminal Writ Petition No. 0382 of 2012

District : Beed

Rajkumar s/o. Bapurao Sirsat,
Age : 35 years,
Occupation : Advocate &
Agriculture,
R/o. Gajanan Nagar, Beed,
Taluka & District Beed. .. Petitioner
(Original
complainant)

versus

1. The State of Maharashtra,
Through Revenue Department,
Mantralaya, Mumbai - 32.

2. Santoshkumar s/o. Sitaram
Venikar,
Age : 35 years,
Occupation : Service as
Tahsildar, R/o. Ardhapur,
Taluka Ardhapur,
District Nanded.

3. Ramnath s/o. Sahebrao Shelke,
Age : 52 years,
Occupation : Service as
Talathi, R/o. Beed,
Taluka & District Beed.

4. Shivaji s/o. Suryabhan Udan,
Age : Major,
Occupation : Agriculture,
R/o. Barshi Naka Road, Beed,
Taluka & District Beed.

5. Ashruba w/o. Wadju More,
   Age : Major,
   Occupation : Agriculture,
   R/o. Barshi Naka, Beed,
   Taluka & District Beed.

6. Deelip s/o. Abarao Rohite,
   Age : Major,
   Occupation : Agriculture,
   R/o. as above.

7. Shaikh Mazhar Sk. Rasul,
   Age : Major,
   Occupation : Agriculture,
   R/o. as above.

8. Vasant s/o. Atmaram Dhanve,
   Age : Major,
   Occupation : Agriculture,
   R/o. as above.

9. Laxman s/o. Rambhau Dhole,
   Age : Major,
   Occupation : Agriculture,
   R/o. as above.

10. Bhagwan s/o. Punjaji Galdhar,
    Age : Major,
    Occupation : Agriculture,
    R/o. as above.

11. Raghunath Punjaji Galdhar,
    Age : Major,
    Occupation : Agriculture,
    R/o. as above.

12. Pushpa Bhagwat Rakh,
    Age : Major,
    Occupation : Service,
    R/o. S.D.O. Office, Beed.

13. Prakash Manohar Kulkarni,
    Age : Major,
    Occupation : Retired as
    Revenue Circle Inspector,
    R/o. Laxmi Bagh, Beed.

14. Kailash Sahebrao Survase,
Age : Major,
Occupation : Agriculture,
R/o. Barshi Naka, Beed,
Taluka & District Beed.

15. Limbaji Laxman Dhole,
Age : Major,
Occupation : Agriculture,
R/o. Barshi Naka, Beed,
Taluka & District Beed. .. Respondents.

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Mr. M.A. Tandale, Advocate, for the petitioner.

Mr. S.Y. Mahajan, Addl. Public Prosecutor, for respondent no.01.

Mr. A.R. Devkate, Advocate, for respondent nos.02 to 15.

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With

Criminal Writ Petition No. 0625 of 2013

District : Beed

Rajkumar s/o. Bapurao Sirsat,
Age : 35 years,
Occupation : Advocate &
Agriculture, .. Petitioner
R/o. Gajanan Nagar, Beed, (Original
Taluka & District Beed. complainant)

versus

1. The State of Maharashtra,
Through Revenue Department,
Mantralaya, Mumbai - 32.

2. Ramnath s/o. Sahebrao Shelke,
   Age : 52 years,
   Occupation : Service as
   Talathi, R/o. Beed,
   Taluka & District Beed. .. Respondents.

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Mr. M.A. Tandale, Advocate, for the petitioner.

Mr. S.Y. Mahajan, Addl. Public Prosecutor, for respondent no.01.

Mr. A.R. Devkate, Advocate, for respondent no.02.

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With

Criminal Writ Petition No. 0626 of 2013

District : Beed

Rajkumar s/o. Bapurao Sirsat,
Age : 35 years,
Occupation : Advocate &
Agriculture, .. Petitioner
R/o. Gajanan Nagar, Beed, (Original
Taluka & District Beed. complainant)

versus

1. The State of Maharashtra,
   Through Revenue Department,
   Mantralaya, Mumbai - 32.

2. Shivaji s/o. Suryabhan Udan,
   Age : Major,
   Occupation : Agriculture.

3. Ashruba Wadju More,
   Age : Major,
   Occupation : Agriculture.

4. Deelip s/o. Abarao Rohite,
   Age : Major,
   Occupation : Agriculture.

5. Shaikh Mazhar Sk. Rasul,
   Age : Major,
   Occupation : Agriculture.

6. Vasant s/o. Atmaram Dhanve,
   Age : Major,
   Occupation : Agriculture.

7. Laxman s/o. Rambhau Dhole,
   Age : Major,
   Occupation : Agriculture.

8. Bhagwan s/o. Punjaji Galdhar,
   Age : Major,
   Occupation : Agriculture.

9. Raghunath Punjaji Galdhar,
   Age : Major,
   Occupation : Agriculture.

   All R/o. Barshi Naka Road,
   Beed, Taluka & District Beed. .. Respondents.

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Mr. M.A. Tandale, Advocate, for the petitioner.

Mr. S.Y. Mahajan, Addl. Public Prosecutor, for respondent no.01.

Mr. A.R. Devkate, Advocate, for respondent nos.02 to 09.

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CORAM : V.L. ACHLIYA, J.

DATE : 11TH AUGUST 2017

ORAL JUDGMENT :

01. The petitioner herein has filed this petition under Article 227 of the Constitution of India, thereby challenging the order dated 13th February, 2012, passed by learned Additional Sessions Judge, Beed, in Criminal Revision Application Nos. 49 of 2011, 84 of 2011 and 87 of 2011. By the impugned order, learned Additional Sessions Judge has set aside the order dated 06.09.2010 of issuance of process against the respondents, passed in Regular Criminal Case No. 0571 of 2010, by the Judicial Magistrate (First Class), Beed.

02. Heard learned Counsel for the petitioner, learned Additional Public Prosecutor for respondent no.01 and learned Counsel representing respondent nos.02 to 15.

03. Before adverting to appreciate submissions

advanced, it is useful to refer few facts leading to filing of the present petitions.

04. The petitioner herein filed private complaint alleging therein the commission of offences puishable under Sections 166, 167, 420, 467, 468, 470, 471, 109, read with Section 34 of the Indian Penal Code, by respondent nos.02 to 15. It is alleged that the respondent nos.02 to 05 who were then serving as Tahsildar, Clerk, Talathi and Circle Officer, respectively, prepared false *panchanama* which was signed by respondent nos.06 to 15. In short, the complainant has alleged that he and members of his family purchased land bearing Survey No.88 of *Mouje* Taraf Pingle, District Beed. After purchasing the land, the petitioner and their family members moved application before the revenue authority to record mutation entry in their favour. The revenue officer recorded the mutation entries no. 3293 and 3565 in the *Pherphar* register. However, the revenue officer has objected to record entry in 7/12 extract by raising issue that the land in question is

an *Inam* land and in absence of permission to purchase said land from the competent authority, the mutation entry cannot be recorded in their favour. It is alleged that in order to show the land as *Inam* land, the revenue officers i.e. respondent nos.02 to 05 have put the land for *Ek Sala Lavani* for the year 2007-08. They prepared false *panchanama* in respect of said land, which is signed by respondent nos.06 to 15 as a witness. It is alleged that the revenue officers i.e. respondent nos.02 to 05 have wrongly shown the land as *Inam* land and put the said land for cultivation for the year 2007-08. By doing such acts, the respondent nos.02 to 15 have committed offences punishable under Sections 166, 167, 420, 467, 468, 470, 471, 109, read with Section 34 of the Indian Penal Code. The learned Judicial Magistrate, Beed, vide order dated 06.09.2010 issued process against respondent nos.02 to 05 under Sections 166, 167, 420, 467, 468, 470, 471, 109, read with Section 34 of the Indian Penal Code. The order of issuance of process dated 06.09.2010 passed in R.C.C. No. 571 of 2010 came to be challenged by the respondents

before the Sessions Court, Beed, by filing three separate revision petitions. By the order dated 13th February, 2012, learned Addl. Sessions Judge, Beed, has allowed all the three revision petitions and set aside the order of issuance of process. Being aggrieved, the petitioner has preferred these petitions.

05. In nutshell, it is the contention of the petitioner that the order passed by the revisional court is not sustainable in law. It is contended that the revision petitions filed by the respondents - original accused against the order dated 06.09.2010 were not maintainable. According to the petitioner, order of issuance of process being interlocutory order, there is a bar operate under Section 397(2) of the Code of Criminal Procedure, 1973 to entertain such revision petitions. It is further contended that the learned Addl. Sessions Judge erred in observing that the order passed by the learned Magistrate is also not sustainable for the reason that no bar operate under Section 197 of Cr.P.C. to

take cognizance of the complaint against original accused nos.01 to 04 - public servants in absence of prior sanction. It is contended that the allegations made in the complaint supported by documents *prima facie* make out a case to issue process under Sections 166, 167, 420, 467, 468, 470, 471, 109, read with Section 34 of the Indian Penal Code and the learned Addl. Sessions Judge has erred in quashing the proceedings. It is further contended that whether sanction is required or not, being mixed question of facts and law, same cannot be decided at a threshold and same can be decided only during the course of trial. It is further contended that the issue in respect of status of land is also pending before the civil court.

06. In support of the submissions advanced, learned Counsel for the petitioner has referred to and relied upon decisions of the Hon'ble Apex Court in the case of *Madhu Limaye Vs. The State of Maharashtra ((1977) 4 SCC 551)*, *Rajkishor Roy Vs. Kamleshwar Pandey &*

another (2003 (1) Mah.L.R. 34) and *P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation (AIR 2001 SC 2547)*.

07. On the other hand, learned Counsel representing respondent nos.02 to 15 (original accused nos.01 to 14) and learned Addl. Public Prosecutor for respondent no.01 - State have supported the order passed by the revisional court and submitted that the impugned order is well reasoned and there is absolutely no illegality in the order passed so as to call for interference in exercise of writ jurisdiction by this court.

08. Learned Counsel for respondent nos.02 to 15 submitted that filing of the complaint by the petitioner is nothing but a gross abuse of process of law. He has submitted that the petitioner, though claims to be an advocate by profession, has suppressed the material facts and misled the court in getting the process issued against respondent nos.02 to 15. By referring the complaint and the order

passed by the learned Magistrate, it is pointed out that it was pretended before the trial court that besides the list submitted to Sub-Divisional Officer vide communication dated 19.06.2007, no other *Inam* land liable to be put to auction for cultivation on yearly basis. Although the petitioner - complainant was fully aware that the land in question i.e. Survey No.88 is an *Inam* land and in the revenue record i.e. 7/12 extract, the land has been shown as Inam land, still purchased the land without prior permission from the competent authority. In the *Ferfar* register, while taking note of transaction, specific note has been recorded to effect that the land is an *Inam* land and same is purchased without prior permission from the competent authority. So also in the report sent to the superior authority, the revenue authority pointed out said fact. Before purchasing said land, the petitioner was fully aware that the land is an *Inam* land. He was fully aware as to status of the land shown in the revenue record as an *Inam* land. In gross suppression of said facts and the communication dated 30.07.2007 showing the

land as *Inam* land, the petitioner filed false and frivolous complaint against revenue officials, who have raised the objection in due discharge of their duty as a public servant. He has submitted that the allegations made in complaint itself make out no case of cheating, forgery and other offences so as to issue process. It is further pointed out that accused nos.05 to 14 i.e. respondent nos.04 to 11, 14 and 15 have been made accused in the complaint case only for the reason that they have signed the *panchanama* of proclamation dated 21.06.2007 published by Tahsildar of auction to give land for cultivation for the year 2007-2008. In the background of the facts of the case, learned Counsel submitted that the petitioner has not approached with clean hand and clean mind in filing the complaint. In gross suppression of facts regarding status of the land and revenue record, the petitioner made a false and frivolous complaint before the learned Magistrate and got issued the process. By referring the judgment and order passed by the Sessions Court, learned Counsel submitted that the order is well reasoned and

submissions advanced before this court were duly considered by the Sessions Court. It is contended that the petitions are devoid of substance and merit therein and urged to dismiss the same.

09. In order to appreciate submissions advanced, I have perused the record and proceedings as well as copy of the complaint, order passed by learned Magistrate as well as order passed in revision by the learned Addl. Sessions Judge. In my view, there is absolutely no merit in the petitions filed by the petitioner. The order passed by the revisional court is a well reasoned order. There is absolutely no merit in the submission of the learned Counsel for the petitioner, that the order of issuance of process is an interlocutory order. In fact, the issue as to nature of order of issue process is no more *res integra* and it has been consistently held by the Apex Court that the order of issuance of process is not an interlocutory order and no bar operate under Section 397(2) of Cr.P.C. and revision is maintainable against the order of issuance of process. In fact,

in the case of *Madhu Limaye (supra)* itself the Court has observed that the revision is maintainable against the order of issuance of process. The decision in *Madhu Limaye's case (supra)* has been considered in the subsequent decisions of the Apex Court. In the cases of *Adalat Prasad Vs. Rooplal Jindal (AIR 2004 SC 4674)*, *Subramanium Sethuraman Vs. State of Maharashtra (AIR 2004 SC 4711)* and *Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. & others ((2001) 7 SCC 401)* the Apex Court has dealt the issue and consistently held that the order of issuance of process is not an interlocutory order and revision is maintainable against such order. Learned Addl. Sessions Judge has considered the issue in detail while allowing the revision petitions. Thus, the reasons and finding recorded by learned Addl. Sessions Judge calls for no interference in exercise of writ jurisdiction.

10. Similarly, from the facts apparent from the face of record, it is evident that original accused nos.01 to 04 have acted in due discharge of their

duty as a public servant, while working in the revenue department. Issuance of proclamation to put the land in question for cultivation on yearly basis as well as making the *panchanama* of publication of proclamation squarely falls within the scope of discharge of duties of respondent nos.02 to 04 as a public servant. I fail to understand as to how an act of revenue officer to issue notice, publish proclamation and make *panchanama* in due discharge of their duty become an act of cheating and forgery. There may be substance in the say of petitioner that the action taken on the part of respondents was not proper and contrary to law. But for that purpose, there was a remedy available to petitioner to take legal recourse to prevent them from auctioning land for cultivation as well as to seek appropriate declaration from Civil Court. Petitioner has rightly knocked the doors of Civil Court and filed Regular Civil Suit No. 184 of 2008 for declaration and injunction against the State Government and officials of State Government i.e. original accused nos.01 to 04. Petitioner has produced certified copy of the

issues framed in said suit. Issues framed by the Civil Court read as under :-

Issues

01. Do plaintiffs prove that they are owners and possessors of suit property by virtue of two sale transactions ?

02. Do defendants prove that title didn't pass in favour of plaintiffs ?

03. Whether defendant nos.1 and 2 prove that the suit property is *Inam* land ?

04. Whether defendant no.6 proves that, suit property is wakf property ?

05. Whether defendant no.6 proves that, the Gazette notification dated 24.01.1974 is legal and valid ?

06. Whether plaintiff is entitled to relief of declaration and permanent injunction ?

07. What order and decree ?

11. Thus, perusal of the issues as framed spell out that there is a dispute as to status of land in question claimed to be purchased by the petitioner. The issue whether the petitioner is an owner and possession of the land by virtue of the sale deed got executed in the year 1995-96 as well as title of the petitioner to the property is subjudice before Civil

Court. So also the property is an *Inam* land or not is also subject matter of the suit filed before the Civil Court. Petitioner has sought declaration that the land is not an *Inam* land and claimed consequential prohibitory injunction. Filing of the suit for declaration and injunction itself reflects that very title of the petitioner as to the property in question is in dispute. While the civil disput5e was pending, as a vengeance against officials of the revenue department and signatory to the *panchanama*, the petitioner has filed private complaint after a period of three years. Instead of prosecuting the remedies before Civil Court, in order to coerce the revenue officials, to submit to his terms and give up claim that the land is Inam land, the complainant appears to have filed the criminal complaint. Revenue record *prima facie* show that the land purchased by petitioner shown as "*Inam land*" in the record and same was purchased without prior permission of competent authority.

12. It is surprising to take note that accused

nos.05 to 14 (i.e. respondent nos.04 to 11, 14 & 15) the private individuals have been made accused in the complaint filed by the present petitioner only for the reason that they have signed the *panchanama* prepared by the revenue officials and to publication of proclamation to put the land for auction for cultivation in the year 2007-2008. I fail to understand as to how the act of signing the *panchanama* as a witness by them become an act of forgery, cheating and fabrication of record on the part of accused nos.05 to 14. Thus, the entire action on the part of the petitioner is nothing but gross abuse of process of law. The complaint filed by the complainant on its face make out no case for issuance of process. The order passed by the learned Magistrate is a cryptic and passed in a most casual manner.

13. It is settled position in law, that while issuing process, the Magistrate is expected to be very careful and cautious. Although the Magistrate is not expected to hold an elaborate enquiry and pass

a detail order, but it is expected that such order must be passed after due enquiry and there must be reason supporting passing of such order. In this context, it is useful to refer decision of the Apex Court in the case of *Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate & others [(1998) 5 SCC 749]*. The Apex Court has observed as under :-

> " Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused. "

14. The case in hand is a classic example of non-application of mind on the part of the learned

Magistrate in issuing the process. The process cannot be issued merely on asking of complainant. It is a serious business which needs to be transacted by the Magistrate before issuing the process. Magistrate has to carefully scrutinise the evidence and truthfulness of the allegations, which include the conduct of inquiry and pass a reasoned order reflecting due application of mind in passing such order.

15. Thus, the order passed by the learned Addl. Sessions Judge being passed after due consideration of the record and proceedings of the case as well as the revenue record and other documents, the impugned order calls for no interference in exercise of writ jurisdiction. There is absolutely no illegality and impropriety or any flaw in the order passed by the learned Addl. Sessions Judge so as to call for interference in exercise of writ jurisdiction of this Court. The petitions filed by the petitioner, being devoid of merit and substance therein, deserve to be dismissed with costs.

16. In the result, writ petitions are dismissed with costs of Rs. 10,000/- [Rupees ten thousand] each to be payable by petitioner to respondents.

(V.L. Achliya)
JUDGE

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