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

CRIMINAL APPLICATION NO. 2455 OF 2015

Balasaheb s/o Umata Patil,
Age: 55 years, Occ: Agri.,
R/o. Upkhed, Tq. Chalisgaon,
Dist. Jalgaon.

..APPLICANT

VERSUS

1. Devidas s/o Waman Patil,
Age: 58 years, Occ: Labour,
R/o. Upkhed, Tq. Chalisgaon,
Dist. Jalgaon.

2. The Police Station,
Mehunbare Through P.S.O.

Tq. Chalisgaon, Dist.Jalgaon. ..RESPONDENTS

Mr C.R. Thorat, Advocate for applicant;
Mr M.M. Bhokarikar, Advocate for respondent No.1;
Mr R.V. Dasalkar, Addl. Public Prosecutor for
respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 16th FEBRUARY, 2017

ORAL ORDER :

Heard Mr. C.R. Thorat, learned Counsel for
the applicant and Mr. M.M. Bhokarikar, learned
Counsel for respondent No.1.

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2. Present application is directed against the order dated 11th October, 2014 passed by learned Judicial Magistrate, First Class, Chalisgaon, District Jalgaon in Regular Criminal Case No. 248 of 2014 ordering issuance of process for offence punishable under Section 420 of the Indian Penal Code against the applicant at the behest of the respondent-complainant.

3. Respondent-complainant claimed to be owner of Gat No. 410/B at village Upkhed, Taluka Chalisgaon, District Jalgaon, being his ancestral property. According to him, present non-applicant, for earning livelihood, claimed to have stayed out of village, taking disadvantage of the same applicant-accused impersonated and got sale deed executed of the said land and carried out mutation entry in relation to the said property vide Entry No. 2588, approved by Circle Officer on 16th June, 1998 based on sale deed. According to him, he has never executed sale deed, much less sale deed on 21st May, 1998 in favour of the applicant and the

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applicant has practiced fraud thereby carrying out mutation entry.

4. Mr. Thorat, learned Counsel for the applicant – original accused would rely upon the registered sale deed dated 21st May, 1990 registered with the office of Sub Registrar, Chalisgaon, District Jalgaon, at Serial No.504, wherein the respondent-complainant has transferred 76 Are land from Gat No. 410/B of village Upkhed, Taluka Chalisgaon, District Jalgaon in favour of the applicant. According to him, procedure as is provided under Maharashtra Land Revenue Code contemplates that when request for mutation is made, Talathi is required to first carry out entry and then submit the same to Circle Officer for approval. According to him, in view thereof, M.E. No. 2588 dated 24th May, 1998 is carried out and same is based on registered sale deed dated 21st May, 1990. He would then submit that the sale deed in question still govern the issue and same is not challenged by the present respondent-complainant

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before competent civil Court. According to him, in absence of challenge to the sale deed, order of issuance of process is not maintainable as title lawfully stood transferred in favour of present applicant from the respondent-complainant. So as to substantiate the same, he would place reliance on registered sale deed and mutation entry carried out. He would then urge that alleged mention of sale deed dated 21st May, 1998 is a mistake on the part of revenue authorities as registered sale deed is dated 21st May, 1990 and he has already taken out appropriate proceedings for carrying out the said correction before the revenue authorities.

5. Per contra, Mr. Bhokarikar, learned Counsel for respondent-complainant would urge that once the magistrate, having perused the complaint and based on the report of the Police Officer received under Section 202 of the Code of Criminal Procedure, has found that prima facie case in favour of the complainant is made out, as such ordered issuance of process against the applicant-

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accused for the offence punishable under Section 420 of the Indian Penal Code. According to him, mutation entry carried out pursuant to the alleged sale deed dated 21st May, 1998, which is informed under Right to Information Act to respondent-complainant to be non existed document. As such, alleged sale deed of 1998, which is formed to be a basis for carrying out entry, since is non existed, present applicant along with public servants i.e. Talathi and Circle Officer have practiced fraud. He would then invite attention of this Court to the factual matrix that present respondent-complainant has filed civil suit questioning the alleged sale deed about a fortnight ago. In addition, Mr. Bhokarikar also questioned the jurisdiction of this Court and would urge that once the complaint depicts of cognizable offence, this Court should not interfere in extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure. In addition, he would then urge that the order of magistrate of issuance of process is revisable and as such, application is not maintainable.

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6. With an object of unification and amendment, law relating to the land and land revenue in the state of Maharashtra "The Maharashtra Land Revenue code, 1966" came to be enacted. Under the said Code, Section 149 provides for the acquisition of rights to be reported. The plain reading of the said provision in the backdrop of the factual matrix narrated herein above mandates a person acquiring by purchase any right as an owner of a land situated in the state of Maharashtra, to report orally or in writing such acquisition of right to the concerned Talathi within a period of three months from the date of such acquisition. Second proviso thereto makes it directory for a person acquiring a right by a registered document to report such acquisition and is exempted from the obligation to report. Cause for said exemption from obligation to report is answered in the provisions under Section 154 of the said Code, which provides for intimation of transfer by registering officers. The officer

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registering the purchase document under law is obligated to send intimation to the Talathi of the village in which the land is situated. Section 157 presumes correctness of the entries in the record of rights and register of mutation.

7. In the aforesaid backdrop, what is required to be inferred is, there exists a registered document in favour of applicant in relation to the purchase of the land in question from the original complainant and pursuant to such purchase, the entry is made by the Talathi in the revenue record. Such entries in record of rights and register of mutations are presumed to be correct pursuant to the provisions of Section 157 of the Maharashtra Land Revenue Code.

8. No doubt, if there is any mistake in the entry of record of rights; either clerical or otherwise, the party is not left remedyless including that of revenue officers, who have every right to carry out corrections after following the

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procedure laid down under the Maharashtra Land Revenue Code.

9. Under Rule 11 of the record of Rights and Registers (Preparation and Maintenance) Rules 1971, as soon as a Talathi gets an intimation regarding registration of a document, the said statute duty bounds to make separate entries in the register of mutations based on such document. As such, there appears to be substance in the submission of the learned Counsel for the applicant that the prima facie involvement of the applicant in the crime in question, particularly when there is a registered sale deed of the disputed land in his favour and he is being falsely prosecuted.

10. It is required to be noted that the Apex Court in the matter of ***Dhariwal Tobacco Products Ltd. and others vs State of Maharashtra and another*** reported in ***AIR 2009 SC 1032*** has discussed scope of Article 227 of the Constitution of India read with Section 482 of the Code of Criminal

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Procedure. The Apex Court while dealing with issue qua maintainability of the proceedings under the above referred provisions in paragraph-8 of the judgment has observed that issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. In support of aforesaid proposition, the Supreme Court has relied upon the judgment of the Apex Court in the matter of Som Mittal vs Govt. of Karnataka [(2008) 3 SCC 574] and in the matter of R.P. Kapur vs State of Punjab [AIR 1960 SC 866]. The Apex Court then considered criteria laid down for entertaining the application under Section 482 of the Code and then proceeded to observe that just because revision petition is maintainable, same by itself, would not constitute a bar for entertaining an application under Section 482 of the Code. Paragraph-8 of the said judgment is worth referring to, which reads thus :

"8. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from

R.P. Kapur v. State of Punjab, AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka, [(2008) 3 SCC 574] has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code.

Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908 this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai and others, [(2003) 6 SCC 675]).

Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred under Section 397 (2) of the Code, the inherent power of the Court has been held to be available."

11. In view of above, the Court has every jurisdiction to entertain present application

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against an order questioning the issuance of process against the accused, under Article 227 of the Constitution of India read with Section 482 of the Code. The Apex Court was of the view that Section 483 of the Code cast duty on the High Court to exercise continuous superintendence over the Courts of Judicial Magistrates. The inherent power of the High Court as saved under Section 482 of the Code is not by virtue of statutory provision but has been saved under the said provision and as such, Apex Court proceeded to observe that jurisdiction of the High Court to entertain proceedings under the provisions of Article 227 read with Section 482 of the Code will not be barred by plea of maintainability of alternate remedy i.e. revision.

12. In the light of above, preliminary objection as regards non maintainability of the application is required to be over ruled.

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13. The second objection of learned Counsel for the respondent-complainant Mr. Bhokarikar that once the magistrate has prima facie found to be a case for taking cognizance is made out, this Court should be slow in interfering in extraordinary jurisdiction. It is required to be seen from the complaint as is presented by the respondent, whether the contents thereof if not controverted, whether makes out case for cognizable offence. The embargo on the right of High Court to exercise jurisdiction under Article 227 read with Section 482 of the Code is restricted one and the working of probabilities, reliabilities or genuineness of allegations made therein cannot be appreciated at that stage.

In the present case, the fact as regards existence of sale deed in favour of the applicant – original accused in relation to land to the extent of 76 Are from Gat No. 410/B of village Upkhed, Taluka Chalisgaon, District Jalgaon being sale deed registered on 21st May, 1990 by the complainant in

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favour of applicant is on record. The fact remains that the said sale deed as is informed by Mr. Bhokarikar, learned Counsel is subject matter of challenge in the suit which is initiated during the pendency of the present application. i.e. about fortnight back.

14. In view of above, only inference that could be drawn is existence of sale deed in relation to the land in question was very well within knowledge of the complainant and the complainant has not disclosed the same while filing complaint in which process is issued by the magistrate. The complainant though has relied upon the information received by him under Right to Information Act, however the said information is sought by the complainant in twisted manner, so as to draw benefit from the same. What is sought for under R.T.I. provision is whether there exists sale deed dated 21st May, 1998. The fact remains that there exists registered sale deed dated 21st May, 1990 and not of 1998 a fact within the knowledge of

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complainant. The applicant-accused has already taken out proceedings before the revenue authorities for correction of date of sale deed. The steps for carrying out correction are aptly based on factual matrix i.e. existence of sale deed dated 21st May, 1990 in favour of applicant. It is in this background, what could be inferred is, civil litigation is given colour of criminal proceedings. In the background of the fact that respondent-complainant has already initiated civil proceedings questioning alleged sale deed before competent civil Court, the criminal intention and motive against the applicant cannot be inferred at this stage. It is then to be noted that in the factual matrix as has been considered and discussed herein above as regards existence of sale deed dated 21st May, 1990 and not of 1998, likelihood of commission of by revenue authorities in recording year 1998 in stead of 1990 cannot be prima facie ruled out, for which appropriate proceedings are already taken out by the applicant.

15. The law laid down by the Apex Court in the matter of ***Vinod Raghuvanshi vs Ajay Arora and others*** reported in ***AIR 2014 SC (Supp) 1516***, particularly observations made in paragraph-19 are worth referring to, which reads thus:

"19. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance.

When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence or nor the

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court should judge the probability, reliability or genuineness of the allegations made therein. Moreso, the charge sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage."

16. This Court has taken document as is placed on record to its face value and also taken note of the fact as regards filing of suit by respondent-complainant questioning the sale deed. In the wake of above, this Court is not judging any probability or reliability or genuineness of allegations but factual matrix which is born out of public document is taken into account so as to infer that case filed by the complainant-respondent has colour of civil litigation, criminal complaint is initiated by suppressing material fact from the Court.

17. The Apex Court in the matter of ***Inder Mohan Goswami and another vs State of Uttaranchal and others*** reported in ***AIR 2008 SC 251*** has observed in paragraph-22 as under.

"22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court."

Proviso to said Section does not mandate such person to report acquiring by purchase, if it is by registered document.

18. In the backdrop of above, what could be noticed is, pursuant to the title vested in the

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applicant vide registered sale deed dated 21st May, 1990, it was mandatory to have process entry qua mutation in the name of purchaser and as such, procedure came to be followed by mentioning incorrect year of execution of sale deed as 1990 instead of 1998. What could be noticed is, authority while taking out mutation entry has acted in accordance with the mandate of statute and said Act on the part of authority is pursuant to legal right exercised by the applicant. In this background, no criminal intention or motive could be inferred against the applicant.

19. In the backdrop of above, it could be easily inferred that the allegations in the complaint even if taken to be true on its face value and accepted in its entirety, said do not constitute any offence as has been alleged.

20. As a consequence of above, in my opinion, the case for indulgence as prayed by the applicant-accused is made out. Criminal Application stands

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allowed in terms of prayer clauses (A) and (B).

(N.W. SAMBRE, J.)

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