

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

Criminal Writ Petition No. 1004 of 2009

* Savita w/o Manoj Chaudhar,
Age 37 years,
Occupation : Service,
(Tahsildar Washi), Taluka Washi,
District Osmanabad. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through the Police Station,
Washi, Taluka Washi,
District Osmanabad.
- 2) Santosh s/o Tukaram Kagade,
Age 30 years, Occupation : Agriculture,
R/o Golegaon, Taluka Washi,
District Osmanabad. **.. Respondents.**

Shri. V.G. Mete, Advocate, for petitioner.
Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.
Shri. P.R. Katneshwarkar, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Date : 15 SEPTEMBER 2017

JUDGMENT (Per T.V. Nalawade, J.) :

1) The petition is filed for relief of quashing and setting aside the order made by the learned Judicial Magistrate, First Class, Washi to police to make

investigation under section 156(3) of the Criminal Procedure Code in M.A. No.72/2009 filed by the present respondent No.2. Relief is also claimed for quashing of the F.I.R. registered on the basis of the order made by the Judicial Magistrate First Class as M-Case No.19/2009. The crime is registered for offences punishable under sections 166, 167, 463, 465, 471, 120-B, 34 etc. of the Indian Penal Code against the present petitioner and others. Both the sides are heard.

2) One Santosh Kagade, respondent No.2, has grievance that even when some order was made by Civil Court in his favour, in a suit filed for partition, and when he had 1/5th share in the property bearing Gat No.218 situated at village Gojwada, the property was sold by defendant of that suit, Radhabai Kagade. It is his grievance that on the basis of the sale deed executed by Radhabai, order of mutation is made by the present petitioner, Tahsildar of Washi. It is his contention that even when the litigation was brought to the notice of the present petitioner, he made order and thereby he committed the offence under the aforesaid sections.

3) The submissions made show that in the revenue record land Gat No.218 was shown to be owned by Radhabai. Even if the contention made by the original complainant, that relief of partition was given in his favour and it is declared by Civil Court that he has 1/5th share in this property that circumstance can be considered as against Radhabai in whose name the property is shown in the revenue record. Admittedly she executed registered sale deed in respect of this property and the sale deed was presented by the purchaser for entering his name in the revenue record. Relevant provisions of sections 149 and 150 of Maharashtra Land Revenue Code, 1966 (MLRC) show the circumstances in which mutation can be effected and the procedure for effecting the mutation. The objections which can be considered are also mentioned in these provisions.

4) In view of the aforesaid circumstances and the duty imposed on the revenue authorities by MLRC and after hearing both the sides and after considering the aforesaid contentions of the original complainant the order was made by the present petitioner. It can be said

that the original complainant has not lost anything and no loss is actually caused to him by such order. This is because if there is partition decree in his favour, there will be equitable partition even in respect of the property shown to be sold by Radhabai. The Tahsildar had acted in discharge of her duty and the allegations against her are of aforesaid nature.

5) In view of these circumstances and as apparently sanction is necessary to prosecute her for offences under sections 166, 167 etc. of the Indian Penal Code, this Court holds that it will be abuse of process of law if the further steps are taken as against present petitioner in the aforesaid crime. In the result, the petition is allowed. The order made by the Judicial Magistrate First Class of directing investigation against present petitioner and the F.I.R. registered to the extent, against the present petitioner are hereby quashed and set aside. Rule is made absolute in those terms.

Sd/-
(S.M. GAVHANE, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)