

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

CRIMINAL WRIT PETITION NO. 1082-2016

Shaikh Nisar S/o Shaikh Isak,
Age : 52 Years, Occ. Government Service-
Presently working as Circle Officer,
Ghantandur, Taluka Ambajogai,
District Beed.

.. PETITIONER.

VERSUS

1. Arjun S/o Dadarao More,
Age : 59 Years, Occ. Labour,
R/o. Chanai, Taluka Ambajogai,
District Beed.

2. The State of Maharashtra,
Through Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad.

..RESPONDENTS.

Respondent No.2 is added as per order dated.02.05.2017

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Shri. S.V. Kurundkar, Advocate, for Petitioner.

Shri. G.L. Kedar, Advocate, for Respondent No.1

Shri. K.S. Patil, APP for Respondent No.2.

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CORAM : PRAKASH D.NAIK, J.

DATE : 10th NOVEMBER, 2017

ORAL ORDER :-

1. The petitioner was accused in the complaint bearing No. Regular Criminal Case No. 26 of 2015 filed by Respondent No.1 before the

Court of Judicial Magistrate, First Class, Ambajogai. The complaint was filed alleging offences under Sections 166, 167, 463, 464, 471 read with 34 of the Indian Penal Code.

The brief facts alleged in the complaint are as follows :-

2. The accused No.1 is a Circle Officer, and at the relevant time, he was appointed as Talathi of village Mouje Lokhandi Savargaon. The accused No.2 was working as Tahsildar in the office of Tahsil Ambajogai. The land bearing survey No. 742 and 745 bearing Gut No. 906 belongs to the Government and marked as *Gairan* Patta. The complainant is landless person and certificate dated 29th December, 2014 has been issued to him in that regard. The complainant is encroacher upon the said *Gairan* land prior to 1990 onwards to the extent of two Hectors extract of entries in that regard is given to complainant on 8/2/2011. The Government had repeatedly issued circulars for regularizing the encroachment with directions to Tahsil Office. Despite several representations by persons their grievance was not looked into. The District Collector, Beed, had called for the report in that regard from the accused. Accused No. 1 (petitioner)

submitted report dated 17.06.2013 to accused No. 2. Prior to that, accused No. 2 gave report to District Collector, Beed on 22.01.2013. On 20.07.2013 Accused No. 2 forwarded letter dated 20.07.2013 to Sub-divisional Officer. Two months prior to submitting report regarding complainants encroachment, the accused No. 1 demanded bribe of Rs. 50,000/- from complainant. Due to financial constraints, the complainant refused to fulfill the demand. The report dated 17.06.2013 forwarded by accused No. 1 to accused No.2 was prepared with deliberate intention to cause loss to the complainant. False statement was made that complainant holds private land of 02 Hectors 68 R, although the complainant is landless person. Accused No.2 acted in connivance with Accused No. 1 and deliberately submitted false report on 22.01.2013 to District Collector Beed. As per report, the person holding private land is not entitled for regularization of encroachment. Hence, although the complainant was landless, he was declared disqualified for regularization prior to that accused No. 2 had issued notice dated 23.02.2012 to complainant and refused to regularize his encroachment. The complainant had provided all relevant documents to accused No.2.

3. The verification statement of the complainant was recorded by the Trial Court on 02.02.2015 and the process was issued for the offences under Section 166, 167, 463, 464, 471 read with 34 of the Indian Penal Code vide order dated 26th May, 2015. However, the complaint for the offences Under Sections 466, 468, 470 r.w. 34 of the Indian Penal Code was dismissed.

4. The petitioner challenged the aforesaid order of issuing process before the Court of Sessions at Ambajogai by preferring Criminal Revision Petition No. 26 of 2015. The said revision application was rejected by order dated 11th July, 2016. Hence, the petitioner has approached this Court challenging the proceedings and the aforesaid orders.

5. The case of the petitioner is that, he was appointed as Talathi on 24th June 1991. He was posted at village Chanai, Tq. Ambajogai from 29th July 2002 to 16th December, 2004. Thereafter, he was transferred to various places. He was also posted as Talathi of

village Chanai from 15th June 2011 to 8th July 2013. He was promoted as Circle Officer on 17th June, 2013. The petitioner was also holding additional charge of Talathi of village Chanai from 17th June 2013 to 8th July 2013 in addition to the charge of Circle Officer.

6. The learned counsel for the petitioner submitted that false and frivolous complaint has been filed by respondent No.1-complainant . The learned Magistrate has mechanically issued the process. The Government had allotted 1 H 89 R land in favour of Dadarao Tukaram More- father of Respondent No.1. The petitioner is relying upon the 7/12 extract showing the name of the father of Respondent No.1 in that regard. It is submitted that after the demise of father of the Respondent, his name was entered in the Record of Rights vide Mutation Entry No. 1718, which was sanctioned on 5th June 2008. The reliance is placed on Mutation Entry, which is annexed to the petition as Exhibit 'D'. It is further submitted that the complainant/respondent No.1 transferred the said land in favour of his brother Balbhim Dadarao More and entry in that regard was made vide Mutation Entry No. 1840 dated 5th February, 2009. The

copy of the Mutation Entry is annexed to the petition as Exhibit 'E'. It is submitted that the complainant had tried to deceive the Government by transferring the land, which was allotted to him with a view to grab more land from the Government. Respondent No.1 had produced village Form I- E along with his complaint in which his name is shown at Sr. No.5 and the date of entry is 3rd September, 1981. The name of the complainant is again added at Sr. No. 18 and the date of entry is shown as 25.07.1983. The dates are scored off, which entry have been signed by the then Talathi at the relevant time. It is therefore, submitted that the complainant has tried to fabricate the record and resorted to the illegal activities. It is submitted that the petitioner was not employed with the Government when entry in record of rights in the name of complainant was taken. The allegations that false report is submitted to the Collector to deprive him from getting land, is devoid of merits. The Patta/land was already allotted to the father of the complainant and thereafter to the complainant, after demise of his father. It is submitted that the complainant has challenged the order of the Collector, rejecting his claim by preferring Writ Petition No. 7969 of 2013. This Court

dismissed the said petition by order dated 8th April 2015 and it was directed that the Tahsildar shall take necessary steps to present the information to the Police for investigating issue of fabrication of the official record. The Tahsildar then informed the Police authorities pointing out the directions issued by this Court vide letter dated 14th May 2015 and the Police were intimated to take appropriate action with regard to fabrication of the documents relied upon by the complainant. The Police however, had written a letter dated 19.06.2015 to the Taluka Executive Magistrate/Tahsildar, Ambajgaon and had asked him to enquire into the said aspect of the matter at his level and to file a complaint, and in case the complaint is filed, the Police would co-operate and assist in the enquiry. It is therefore, submitted that the complaint filed by Respondent No.1 is false and it would be abuse of process of law to continue such prosecution against the petitioner. It is submitted that the learned Sessions Judge has committed an error while rejecting the revision application. In the said order, it was observed that the documents relied upon by the petitioner were not produced before the trial Court at the time of issuance of process. The Sessions Court has failed to

understand that at the stage of issuance of process, the accused has no right of audience to address the Court of Magistrate and the question of producing any documents does not arise. It is submitted that the case for issuance of process is not made out and the said order deserves to be quashed and set-aside. It is submitted that considering the documents on record, it is clear that the complainant has suppressed documents. The documents further show that the complaint filed by respondent No.1 is false and frivolous and the same is lodged with intention to cause harassment to the petitioner. The learned counsel for the petitioner relied upon following decisions in support of his arguments :-

(I) *Manharibhai Muljibhai Kakadia and Another Vs.*

*Shaileshbhai Mohanbhai Patel and Others 2012 AIR SCW
5314*

(II) *Rukmini Narvekar Vs. Vijaya Satardekar and Others*

AIR 2009 Supreme Court 1013

(III) *Om Prakash and Others Vs. state of Jharkhand*

(2012) 12 Supreme Court Page No.72.

7. Respondent No.1-complainant has filed affidavit in reply

opposing the prayer in this petition. It is submitted that the complainant, has made out a *prima facie* case for issuance of process. The trial Court has relied upon the material on record and then process has been issued. The Sessions Court has confirmed the order of process. The documents relied upon by the petitioner cannot be considered at this stage and the complainant may be given opportunity to lead evidence during the trial. The complainant has contended that the order passed by the Trial Court is based on the evidence on record and in accordance with the law. It is submitted that the petitioner was a Circle Officer at the relevant time. The certificate of land-less was granted in favour of the complainant on 29th December, 2014. The Government of Maharashtra had issued resolution on 28th November, 1991 for regularization of encroachment on the Government land. The complainant had encroached upon 2 Hecter of the *Gairan* land since 1990 and the entry in that regard is taken by the concerned authority on 8th February, 2011. In the registration register, the name of the respondent is shown at Sr. No.5. There is no land standing in his name. The name of respondent is also shown at Sr.No. 18, which is false entry made to

the persons who had encroached on the land, were prosecuted and were acquitted from the said offence. The complainant had made several representations to the concerned authority. All the land records were in the possession of the accused. The petitioner filed a report on 17th June, 2013, showing that the complainant holds a land of 2 H 68 R to deprive him from obtaining the land. After the demise of father, the Mutation Entry No. 1718 stands in his name and by executing bond, the complainant transferred his share to his brother namely Datta Dadarao More on 10th January 2009. The said property has no concern with encroached land. It is therefore, submitted that the petition may be dismissed.

8. I have perused the documents on record. It is the grievance of the complainant that the certificate of he being landless was issued in his favour and despite that, false report was submitted by the accused recording that the complainant is holding the private land. The learned Magistrate issued the process for the offences punishable under Sections 166,167, 463, 464, 471, r.w. 34 of the Indian Penal

Code. Section 166 of the Indian Penal Code relates to offences against public servants disobeying the law with intent to cause injury to any person. The said penal provision is attracted against the public servant, who knowingly disobeys any direction of the law as to way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person. Section 167 of the Indian Penal Code relates to the offences of public servants framing an incorrect document with intent to cause injury. As per said penal provision any public servant, being charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowingly it to be likely that he may thereby cause injury to any person on analyzing the allegations made in the complaint. The aforesaid penal provisions are not attracted in the present complaint. There is no evidence to suggest that report submitted by the accused is false and fabricated. Submitting the report to the authorities while considering the claims made by the complainant, does not amount to

framing, preparing or translating the document or electronic record. The ingredients to constitute the said offences are absent in the complaint. The other offence for which the process has been issued is under Sections 463, 464, 471 of the Indian Penal Code. The offences relate to forgery, making false document, using as genuine a forged document or electronic record. The complaint does not justify the issuance of process for the aforesaid offences. The requisite ingredients to constitute the aforesaid offences are completely absent in the complaint. Hence, the Court ought not to have issued the process for the said offences. The complaint appears to have been filed on account of frustration and out of vendetta, on failure to obtain the land.

9. It appears that the report was submitted on the basis of record. It is pertinent to note that the claim of Respondent No.1-complainant was rejected. Respondent No.1 has challenged the decision of the Collector, rejecting the claim for allotment of the Gairan Patta. The said petition was dismissed by this Court. While dismissing the petition preferred by Respondent No.1 complainant, the Court

directed the Tahsildar to take necessary steps in respect of the allegations of fabrication of the official record and the Tahsildar was also directed to present the information to the Police with a view to cause investigation in the matter. In the said petition, the complainant had sought issuance of direction to the authorities to take decision in respect of regularization of the encroachment over the Government land bearing city Survey Nos. 742 and 745 situated at village Chanai Tq. Ambajogai. The affidavit in reply was filed on behalf of Respondent No.1 in the said petition, including the Tahsildar Ambajogai. In paragraph No. 4 of the reply, it was stated as follows :-

"4. I say and submit that, only 17 people have encroached upon the Government land survey Nos.742 and 745 but in village Form No. I-E i.e. encroachment register it is shown that 18 people made encroachment on the said survey numbers. The said village Form I-E was prepared on the basis of FIR bearing No. 194/1981. The name of the Petitioner in form No. I-E is shown at Sr. No.5 and again petitioner added his

name forged at Sr.No. 18. Hand writing of the names at Sr. Nos. 1 to 17 are same and hand writing of the name of Sr. No. 18 is different. Therefore, it can be gathered that the petitioner added his name at Sr. No. 18 to show that he is encroached upon the area admeasuring 2 H 20 R. The copy of the village form No. I-E is enclosed herewith and marked as Exhibit R-1."

10. The said order was passed on 8th April 2015. The Tahsildar, Ambajogai, then forwarded the information to the Police Inspector, Ambajogai, City Police Station, vide letter dated 14th May, 2015 in accordance with the direction issued by this Court and requested the Police to take appropriate enquiry. It appears that the aforesaid Police Station vide letter dated 19th June, 2015, intimated the Executive Magistrate/Tahsildar, Ambajogai, that the directions are issued by the High Court in relation to the enquiry being conducted with regard to the encroachment on land bearing Survey Nos. 742 and 745 wherein record is fabricated. The letter further stated that the documents and the department are under the control of the

Tahsildar and the enquiry be made at their level and in the event, the complaint is filed, the police would co-operate and would also investigate in the matter.

11. The petitioner was posted as Talathi of village Chanai from 15th June, 2011 to 08th July, 2013. He was also promoted as Circle Officer on 17th June, 2013. He was holding additional charge of Talathi of the said village from 17th June, 2013 to 8th July, 2013. The Government had allotted 1 H 89 R of land to Dadarao Tukaram More- the father of Respondent No.1 which is borne out by the 7/12 extract. After the demise of the father of Respondent No.1, name of Respondent No.1 was entered into the record of rights, which was sanctioned on 5.6.2008. Respondent No.1 transferred the land in favour of his brother- Bhalbhim Dadarao More and entry to that effect was made vide Mutation Entry No. 1840, dated 5th February, 2009. Respondent No.1 has not disputed this fact. The village Form I-E reflects the name of the respondent No.1 at Sr. No.5 and the date of entry is 3rd September, 1981 which entry was in respect of the Survey Nos. 742 and 745. The name of the complainant is also

reflected at Sr. No. 18, There appears to be overwriting in respect to date of entry. These entries were signed by the then Talathi at the relevant time. The said fact was pointed out to this Court while hearing the Writ Petition No. 7969 of 2013, which is apparent from order dated 8th April, 2015, on the basis of the said affidavit-in-reply filed in the said petition and in the light of averment made in the affidavit with regard to the suspicious entry from the Form I-E, the Tahsildar was directed to present the information to the Police.

12. The documents on record indicate that, there is no substance in the allegations made by the respondent No.1 in the complaint. It appears that the complaint was filed out of grudge on account of purported report submitted to the authorities. The learned Sessions Judge has exhibited complete non application of mind while rejecting the revision application. It is observed that the document relied upon by the petitioner ought to have been pointed out to the Magistrate. The Sessions Court has failed to appreciate that at the time of issuance of process the accused has no right of audience and the question of submitting any document at that time in the trial Court

does not arise. In paragraph 8 of the order the Sessions Court has observed that, it is true that, the very report and certificate issued by Talathi are not before the Court, but in the light of list of documents produced before the Court, it appears that there was material before trial Court to substantiate his allegations. If revision petitioner contends that, really such documents in the form of report, certificate were not produced before Magistrate and therefore impugned order is contrary to the provisions of law and facts on record then, revision petitioner himself would have produced those documents before the Court to substantiate his contentions. By not producing the documents mentioned in the list of complainant before Magistrate revision petitioner has impliedly admitted the truthfulness of documents described in the list. The observations are absolutely contrary to settled position of law.

13. *In the case of **Rukmini Narvekar Vs. Vijaya Satardekar and others (AIR 2009 S.C. 1013)** relied upon by the counsel for the petitioner it was observed by the Supreme Court that,*

*“in the proceeding under Section 482 of the Code of Criminal Procedure the Court is free to consider the material that may be produced on behalf of the accused to arrive at the decision whether the charge as framed could be maintained. In the case of **OM PRAKASH AND OTHERS** the Supreme Court has reiterated the scope of inherent jurisdiction of the High Court. It is observed that if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and the proceedings be quashed.”*

14. In the decision in the case of **Manharibhai Muljibhai Kakadia and Anr. Vs. Shaileshbhai Mohanbhai Patel and Others,** the Supreme Court has observed that,

“the legal position is well settled that in the proceeding under Section 202 of the Code the accused is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the

stage of issuance of process, the accused cannot claim any right of hearing.”

15. In the light of the afore stated law, the observations made by the Sessions Court that accused could have produced the documents before the Trial Court are completely contrary to the provision of law which depicts the total non application of mind on the part of the learned Sessions Judge. The petitioner in discharge of his duty has submitted the report to the concerned authorities, there is no element of forgery in the present case. There is no evidence to substantiate the said charge even prima facie. The complainant has alleged that, the Collector had called for report regarding regularization of encroachment from accused No. 2 and accused No.1. The Accused No. 1 gave report on 17.06.2013 to Accused No.2. Accused No. 2 had submitted report to Collector on 22.01.2013 and letter to SDO on 20.07.2013. Thus prior to report submitted by petitioner, the accused No. 2 had report to Collector on 22.01.2013. The question of acting in connivance with each other by accused does not arise. The alleged landless certificate was issued on 29.12.2017

which is subsequent to submitting said report. The allegation of bribe appears to be after thought as no complaint was lodged after the alleged demand. Allegedly demand of money was made two months prior to submitting report by accused No.1. Therefore, the proceeding deserves to be quashed and set-aside. The petitioner was a public servant and in the absence of any evidence of forgery the act of forwarding report would not constitute any offence.

16. In view of the above, the proceeding initiated against the petitioner cannot continue and by exercising inherent powers under Section 482 of the Code of Criminal procedure, the impugned complaint and order issuing process deserves to be quashed and set-aside. Hence I pass the following order

ORDER

- (i) Writ Petition No. 1082 of 2016 is allowed.
- (ii) The proceeding arising out of Regular Criminal Case No. 26 of 2015 pending before the Court of learned Judicial Magistrate, First Class, Ambajogai, District Beed as well as the order issuing process passed by the said Court below Exh. No.1

on 26th, May, 2015 and the order passed by the learned Sessions Court at Ambajogai District Beed in Criminal Revision No. 26 of 2015 on 11th July, 2016 are hereby quashed and set-aside.

[PRAKASH D.NAIK, J.]

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