

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 24 OF 2015

Vanita Shankar Mahajan

... Petitioner

vs.

Prabhakar Nivrutee Girme and ors.

... Respondents

Mr. Surel S. Shah, Advocate for the petitioner.

Mr. Abhijit Kulkarni i/by DD and Abhijit Associates, Advocate for respondent no.2.

Ms. Pallavi Dabholkar, A.P.P. for the State/respondent no.4.

Coram : Smt. R. P. SondurBaldota, J.

Date : 18th January, 2017

P.C. :

1. This petition challenges the order dated 20th August, 2014 by which the Sessions Court allowed the revision application preferred by the respondents and set aside the order of the trial Court directing framing of charge against the respondents for the offences punishable under Sections 166, 167 and 109 of Indian Penal Code ('I.P.C.', for short). The Sessions court has discharged the respondents and dismissed the complaint. The petition as filed does not implead all the original parties. It has omitted to implead original accused no.3.

2. On 28th January, 2005, the petitioner filed private complaint being Criminal Case No.35 of 2005 in the Court of Judicial Magistrate, First Class, Malshiras against four persons, alleging that the Mutation Entry in the revenue record in

respect of Gat No.388 made in the year 1987 is a false entry. According to the complaint, accused no.3 at the relevant time was a Circle Officer. He in collusion with accused nos.1, 2 and 4 allegedly made Mutation Entry in the revenue records for Gat No.388 in favour of accused no.4. The petitioner alleges that her father was an agricultural tenant in respect of the land at Gat No.382/3 and Gat No. 388. Later in the year 1978 he purchased the land at Gat No.382/3 by a registered Sale Deed and started cultivating the same as the owner. The necessary Mutation Entries in his name were carried out. The father of the petitioner was employed with accused no.1, who is the brother of a Director of Saswad Mali Sugar Factory. Accused no.2 at the relevant time was the Managing Director of Saswad Mali Sugar Factory. The father of the petitioner suffered paralytic attack in the year 1985 and became bed-ridden. Taking advantage of the situation accused no.1 allegedly used a non-existent power of attorney of the father of the petitioner and with the influence of accused no.2 and accused no.3 falsely mutated the relevant record in favour of accused no.4 to enter his name as the tenant in respect of Gat No.388.

3. The father of the petitioner expired on 29th May, 2004. Thereafter when the petitioner sought to bring his heirs on the revenue record in respect of Gat No.388 she learnt of the Mutation Entry in favour of accused no.4. She then made enquiries in the office of the Tahasildar, but was told that the record concerning the year 1987 was not available and therefore no documents could be furnished to her. Her further investigation revealed the documents establishing commission of the offence by the respondents.

4. The statement of the applicant in verification of the complaint was recorded on 20th January, 2005. Perusal of the complaint as well as the statement in verification shows that the allegations made therein against the accused are absolutely vague and do not satisfy the ingredients constituting the offences punishable under Section 166, 167 and 109 of I.P.C.. The sole statement in the complaint as regards commission of the offences by the accused is that she found the documents establishing commission of the offences. These documents have neither been described in the complaint nor in the statement in verification. Their copies are also not produced at any point of time by the petitioner. On such vague complaint and equally vague statement in verification, there could not have been any charge framed. Despite the fact, by the order dated 17th July, 2012 the learned Magistrate directed that charge for the offence punishable under Section 166, 167 of I.P.C. be framed against respondent no.3 and the charge for the offence punishable under Section 109 of I.P.C. be framed against respondents no.1,2 and 4. The charge under Section 109 of I.P.C. against respondent no.3 was dropped in view of the documents produced by him saying that, at the relevant time he was not the Circle Officer of Akulj Saza. Being aggrieved by the orders, the accused preferred Criminal Revision Application No.12 of 2012 and 13 of 2012 in the Sessions Court, which were allowed by the order impugned in the petition.

5. Mr. Shah, the learned advocate for the petitioner relying upon the decision of Apex Court in ***Rukmini Narvekar vs. Vijaya Satardekar and ors reported in (2008) 14 Supreme Court Cases 1*** submits that neither the trial Court

nor the Sessions Court could have relied upon the defence material for considering whether charge could be framed against the accused and that the only material that could be considered was the material on record. Since the two orders are based on the material produced by accused no.3, the same cannot be sustained in law.

6. There can be no dispute as regards the proposition of law that at the time of taking cognizance or framing of charge, the material produced by the accused can not be considered. However, in the facts and circumstances of the present case even on ignoring the documents produced by accused no.3 there can be no charge framed against the accused for the reason that the complaint and the verification statement are absolutely vague and do set out the facts constituting the ingredients of the offences. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]