

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1114 OF 2016

Shri Ankush Aanadrao Keripale ...	Petitioner
Vs.	
Shankar Baburao Keripale & Ors. ...	Respondents

Mr.Umesh R. Mankapure, Advocate for the petitioner.
Mr. Amitkumar D. Sale for respondent No.1.
Ms.Neeta Jain, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 4th April, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner, being aggrieved by the order dated 13.1.2016 passed by the Addl. Sessions Judge, Sangli, in Criminal Revision No.44 of 2015, thereby discharging the proposed accused on the charges punishable under Sections 417, 418, 465, 468, 471 read with Section 34 of the Indian Penal Code, has approached this Court.

3. The facts of the case in a nutshell are as follows :-

The petitioner herein filed the complaint before the Chief Judicial Magistrate at Sangli, on 11.9.2013 against the respondent alleging therein that the property at City Survey Nos. 1859, 1860, 1861 and 1862

within the jurisdiction of the Grampanchayat Property Nos. 381/1, 381/2, 381/3, 381/4 and 381/5 is the joint family property. It is the property of the grandfather of complainant i.e. Shanker Babaji Keripale. Shanker had died intestate. He had died when he was a member of the joint family. That the name of the elder son Neelkanth was on the Record of Rights. The legal heirs of Shanker are – his wife Chandrabai, sons namely (1) Nilkanth, (2) Baburao, (3) Anandrao, (4) Ramchandra, (5) Suresh, (6) Ashok and one daughter i.e. Kalavati. It is submitted that in fact, it was incumbent upon the head of the family to distribute equal proportions of the property of Shanker. Shanker had died on 15.9.1960. In the year 1986, there was a city survey. Nilkanth had expired. That Shantabai wife of Baburao had filed an affidavit before the Taluka Executive Magistrate on 2.6.1999 indicating Ramchandra and Suresh as the only sons of Shanker. The names of other 3 sons were not mentioned. Instead, the grandsons of Shanker were shown as legal heirs from Serial Nos. 1 to 4.

4. That on 5.6.1989, an application was filed by Smt. Shanabai wife of Baburao and the legal heirs were again shown as 3 grandsons and 2 sons thereby excluding the names of other legal heirs. On the basis of the application and the affidavit, mutation entries were taken in the Record of Rights on 21.6.1999. According to the complainant, the deponent of the

affidavit had suppressed material facts and thereby deprived other legal heirs from their legal right and hence according to the complainant, they had cheated the complainant and others and had also committed an offence punishable under Sections 467, 471, etc.

5. The learned Magistrate upon perusing the complaint, had passed an order of issuance of process against the proposed accused by an order dated 14/1/2015.

6. The accused, being aggrieved by the said order, had filed Criminal Revision No.44 of 2015 which was dismissed.

7. The learned Sessions Judge has assigned justifiable reasons for allowing the Revision. The learned Sessions Judge has considered that the recitals of the said affidavit dated 2.6.1999. The names of the accused are shown as legal heirs along with the grandsons. However, the Revisional Court has committed an error by holding that the names of the sons are also shown and therefore, there is no suppression of facts. In fact, it was the contention of the complainant that the affidavit should have included the names of all legal heirs and there was no reason as to why the names of other 3 sons were not mentioned. The learned Sessions Judge has observed that it cannot be said that the affidavit was fabricated or is a false document. There was nothing on record to indicate as to whether the parties

have filed any civil suit for partition and possession.

8. It is pertinent to note that the affidavits are sworn some time in the year 1999 and the complaint is filed in the year 2013. It cannot be said that for more than one decade, the complainant had no knowledge of the names shown in the Record of Rights proceedings. There is no plausible explanation for the inordinate delay in filing the complaint.

9. The learned counsel for the respondent rightly submits that the civil proceeding has been given a criminal cloak only to be used as pressure tactics. A civil remedy was available to challenge the mutation entries. However, without taking recourse to civil remedies, the complainant has approached the Criminal Court. Prima facie, no case is made out under Sections 467 and 471 of the IPC.

10. Hence, the Writ Petition being sans merits, stands dismissed. Rule is discharged.

11. In the eventuality that the parties approach the Civil Court, the observations made hereinabove shall not influence the Civil Court as they are restricted to a writ petition filed under Article 227 of the Constitution of India.

(SMT. SADHANA S.JADHAV, J.)