

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2822 OF 2016

Mr. Jaydeep Pukhraj Jain

.... Petitioner

Versus

Mr. Sadhu Mahadev Pathare & Ors.

.... Respondents

Priyal G. Sarda for Petitioner.

Ms. Neeta Jain, APP for Respondent No.5/State.

CORAM : RAVINDRA V. GHUGE J.
DATE : MARCH 15, 2017.

P.C.

. The Petitioner is aggrieved by the judgment and order dated 6/5/2016 delivered by the learned Sessions Court at Pune, by which Criminal Revision Application No. 45 of 2016 has been allowed and the order dated 16/1/2016 in Regular Criminal Case No. 26 of 2016, taking cognizance of the offences under Sections 420, 468, 504 r/w 34 and 120 B of Indian Penal Code and under Section 84 of the Indian Registration Act and Section 59 of the Bombay Stamp Act, has been quashed and set-aside to the extent of Respondent nos. 3 and 4.

2. The learned Counsel for the Petitioner has strenuously criticized the impugned judgment. I have gone through the Paper Book.

3. In RCC No. 26 of 2016 filed before the learned Judicial Magistrate First Class, Pune, the Petitioner had lodged commission of offences punishable under Sections 415, 418, 420, 423, 465, 467, 468, 504, 506 read with Section 120 B of the Indian Penal Code and Section 84 of the Indian Registration Act and Section 59 of the Bombay Stamp Act. By the order dated 16/1/2016, the trial court had issued process against the Accused. The said order reads as under :

“ Perused complaint, verification and documents on record. On perusal of dates of documents prima facie offence is made out against accused for offence punishable u/s 420, 468, 504, 506 r/w 34 and 120 B of I.P.C. and Section 84 of Indian Registration Act and 59 of Bombay Stamp Act, hence issue process against accused.”

4. A cursory glance at the order dated 16/1/2016 would indicate that the trial court had hardly applied its mind. It is trite law that while issuing process, it is not enough that the trial court would only mention that it has perused the complaint, verification, documents and has concluded that process needs to be issued. The least that is expected is that the trial court should indicate from the order the documents it has perused, what are the averments in the complaint and then draw conclusions as to why it is convinced that process needs to be issued.

5. The Petitioner has contended that the instrument was not duly stamped under Section 159 of the Bombay Stamp Act. The accused has not paid proper stamp duty because the land was shown

to be an agricultural land, though according to the Petitioner it fell within the residential zone. As the Revenue Authorities have not taken action and mutation entries were made, the Petitioner contends that the original Respondents need to be tried under the various provisions of the Indian Penal Code.

6. The Revisional Court has taken into account that the father of the Petitioner who could have raised an objection during his life time, has not made any complaint about the said aspect. It is only after his passing away and the Petitioner having stepped into his shoes, that his entire complaint is with regard to non-payment of stamp duty or less stamp duty.

7. The Revisional Court has also taken into account that the complaint, verification and documents produced on record clearly indicate that it is a dispute of a civil nature. The Petitioner's father, who had got the Agreement of Sale, had never raised any dispute about the said document. Noting that the matter gives rise to civil consequences and keeping in view that a civil dispute between the parties is still pending with regard to the Power of Attorney which the Petitioner claims to have inherited, the Revisional Court has rightly concluded that the process needs to be quashed as against the Revision Applicants who are Respondent Nos. 3 and 4 in this proceedings.

8. Considering the law laid down by the Hon'ble Supreme

Court in the matter of *Syed Yakoob V/s K.S.Radhakrishnan & Others, AIR 1964 SC 477* and in the matter of *Surya Dev Rai V/s Ram Chander Rai & Ors. AIR 2003 SC 3044*, I do not find that the impugned judgment could be termed as being perverse or erroneous. The Petition is devoid of merits and hence dismissed.

(RAVINDRA V. GHUGE, J.)