

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.121 OF 2008

Shri Surendra Tukaram Mane,
Age-50 years, Occu:Service,
R/o: Near Padmashali Dharmashala,
Tuljapur, Dist-Osmanabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Tuljapur, Dist-Osmanabad,
- 2) Smita Balasaheb
@ Suresh Kashinath Ghogare,
Age-30 years, Occu:Household,
R/o:Vishwas Nagar,
Tuljapur, Dist-Osmanabad.

...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.122 OF 2008

Shri Dinkar Sakharam Nagare,
Age-58 years, Occu:Pensioner,
R/o: Vidyanagar, Tambari Area,
Osmanabad, Dist-Osmanabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Tuljapur, Dist-Osmanabad,
- 2) Smita Balasaheb
@ Suresh Kashinath Ghogare,
Age-30 years, Occu:Household,
R/o:Vishwas Nagar,
Tuljapur, Dist-Osmanabad.

...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.123 OF 2008

Shri Dhondiba Hiraji Rathod,
Age-50 years, Occu:Service,
R/o:c/o- Tahsil Office, Bhum,
Osmanabad, Dist-Osmanabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Tuljapur, Dist-Osmanabad,
- 2) Smita Balasaheb
@ Suresh Kashinath Ghogare,
Age-30 years, Occu:Household,
R/o:Vishwas Nagar,
Tuljapur, Dist-Osmanabad.

...RESPONDENTS

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Mr.Mukul Kulkarni Advocate for Petitioners in
all the Petitions.

Ms.S.S. Raut, A.P.P. for Respondent No.1.

Ms.Sneha Rathod Advocate for Respondent
No.2 (**Absent**).

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 22ND FEBRUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 1ST MARCH, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. All these three Petitions are filed praying therein to quash and set aside the Private Complaint bearing Criminal Misc. Application No.08 of 2008 filed before the Judicial Magistrate First Class, Tuljapur as well as M. Case No.03 of 2008 registered with Tuljapur Police Station against the Petitioners. Therefore, all these Petitions are heard together and being disposed of by this common Judgment and Order.

2. The brief facts giving rise to these Petitions, are as under:

A) The Petitioner in Criminal Writ Petition

No.121 of 2008 is working as a Talathi in Tahsil Office at Tuljapur since June, 1998. The Petitioner in Criminal Writ Petition No.122 of 2008 was then working as a Circle Officer at Tuljapur since 1996 till 10th December, 2001 and he has retired from service from 31st January, 2008. The Petitioner in Criminal Writ Petition No.123 of 2008 was then working as a Tahsildar at Tuljapur since January 1998 till 2003.

B) It is submitted that the offence alleged against the present Petitioners is that the Government Officers have colluded with other person and has issued ration card and birth certificate falsely.

C) It is the case of present Respondent No.2 that she was wife of one Suresh @ Balasaheb Ghogare. Said Suresh died of the heart attack at Tuljapur. One Manju Gundu @ Shankar Vibhute, who is impleaded as accused No.1 in the private

complaint, started using the name of late husband of Respondent No.2. According to Respondent No.2, accused No.1 Manju is married to one Shankar Vibhute in the year 1987 and from the said wedlock accused No.1 Manju is having two daughters and one son. It is alleged by Respondent No.2 that said accused No.1 Manju had obtained a false birth certificate of her daughter on 2nd August, 2001 wherein the name of father is shown as Suresh Ghogare. It is further allegation of Respondent No.2 that accused No.1 Manju had also obtained a bogus Ration Card bearing No.0066214 which was issued on 23rd August, 2001. In the said private complaint Respondent No.2 had further alleged that she is expecting some compensation from the Land Acquisition Authorities which is payable for the land of Respondent No.2 which is acquired, however accused No.1 Manju is creating false documents in order to siphon of the said amount. The private complaint came to be filed before the learned Magistrate on 5th January, 2008, wherein accused

No.1 is Manju Gundu @ Shankar Vibhute and the present Petitioners are accused Nos.2, 3 and 4.

D) It is submitted that private complaint was presented by Respondent No.2 before the Judicial Magistrate First Class at Tuljapur on 5th January, 2008. The Magistrate issued direction to register the said complaint as Criminal Misc. Application No.8 of 2008. The Magistrate on the same day i.e. 5th January, 2008 had directed the police station to register the complaint and to submit the report under Section 156(3) of the Code of Criminal Procedure.

E) As per the order issued by the Magistrate, the police authorities have registered crime as M. Case No.3 of 2008 under Sections 468, 464, 465, 463, 420 read with 34 of the Indian Penal Code.

F) It is submitted that accused No.1 Manju

had made an application for Ration Card to the concerned authorities in the year 2001. The application was supported by the Birth Certificate issued by the Chief Officer of Tuljapur Municipal Council and it was also certified by the Councillor from the concerned Ward. Accordingly spot inquiry was made, including the photographs of accused No.1 and her husband Suresh Ghogare were verified. Thus, after following the complete procedure it appears that the Ration Card was allotted to accused No.1 on 23rd August, 2001. It is made clear on the Ration Card itself that the said Card can not be used as evidence as the purpose of the said Card is for allotment of commodities only.

G) It is submitted that birth certificate dated 2nd August, 2001, is issued under the signature of the Chief Officer of the Municipal Council, Tuljapur. The Chief Officer is not impleaded as an accused person in the present

proceedings and only those officers who, in discharge of their official duty had acted upon the said birth certificate along with the other evidence, are impleaded as accused persons, without any reason whatsoever. Hence these Writ Petitions are filed.

3. Learned counsel appearing for the Petitioners, referring to the grounds taken in the Petitions, submits that even if the entire allegations in the private complaint are read as it is, the alleged offences are not disclosed. All the Petitioners have performed their official duties and no offence is committed by them. It is submitted that, it is highly improbable to accept that for getting the amount of compensation for land acquisition in the year 2008, the ration card and birth certificate were issued in the year 2001. It is submitted that continuation of the proceedings would be abuse of process of law and therefore it is prayed that the proceedings of

Criminal Misc Application No.8 of 2008 pending before Judicial Magistrate First Class, Tuljapur and M. Case No.3 of 2008 registered with Tuljapur police station may be quashed and set aside.

4. On the other hand, learned A.P.P. appearing for the State has submitted that all these Petitioners were Government servants and in collusion with accused No.1 Manju, all the Petitioners have issued bogus ration card in the name of Manju Suresh Ghogare though name of her husband is Shankar Vibhute. All the Petitioners have prepared false documents and without following the procedure, bogus ration card was issued to accused No.1. Relying upon the allegations in the private complaint, learned A.P.P. submits that there is sufficient material collected by the Investigating Officer which would show the involvement of the Petitioners and therefore the Petitions may be rejected.

5. The counsel appearing for Respondent No.2, though called out, was not present at the time of hearing of the Petitions.

6. We have given careful consideration to the submissions of learned counsel appearing for the Petitioners and learned A.P.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, allegations in the private complaint, its accompaniments and original police papers which were made available by the learned A.P.P.

7. Upon careful perusal of the allegations in the private complaint, the complainant Smita Suresh Ghogare has alleged that she is wife of late Suresh Kashinath Ghogare. Accused No.1 - Manju Gundu @ Shankar Vibhute is not at all concerned with husband of the complainant. Accused No.1 Manju is already married with Gundu @ Shankar

Vibhute and out of the said wedlock she had two daughters and one son. It is alleged by the complainant that when accused No.1 Manju came to know that husband of the complainant expired, in order to grab the immovable and movable property standing in the name of deceased husband of the complainant, accused No.1 Manju started to create false documents. Along with the other allegations, it is alleged that accused No.1 Manju submitted false documents before Petitioner No.1 for obtaining ration card and it is alleged that Petitioner Nos.2 and 3 helped Petitioner No.1 for issuing false ration card in the name of accused No.1 Manju.

8. Admittedly, accused No.1 Manju is not before us. The explanation offered by the Petitioners is that accused No.1 Manju had made an application for Ration Card to the concerned authorities in the year 2001. The said application was supported by the Birth Certificate issued by

the Chief Officer of Tuljapur Municipal Councillor and it was also certified by the Councillor from the concerned ward. It is further contended on behalf of the Petitioner that, accordingly spot inquiry was made, photographs of accused No.1 and her husband were verified and after following the complete procedure the Ration Card was issued to accused No.1. It appears that the Petitioners have acted in their official capacity and after verifying the documents produced by accused No.1, which were issued by the competent authority like Chief Officer of Municipal Council, Tuljapur, issued ration card in favour of accused No.1 Manju. Therefore, it cannot be said that the Petitioners have committed any offence.

9. We find considerable force in the argument advanced by learned counsel appearing for the Petitioners that the Chief Officer of the Municipal Council, Tuljapur, who issued the birth certificate, on the basis of which Petitioners

issued ration card, is not impleaded as accused in the complaint and the Petitioners who are the Government employees, who in discharge of their duty had acted upon the said birth certificate are impleaded as accused.

10. The only allegation against the Petitioners is that relying upon false documents, they have issued ration card in favour of accused No.1 Manju. As observed earlier, after satisfying themselves that requisite documents were placed on record in support of request of issuance of ration card, the Petitioners, in discharge of their official duties, issued ration card in favour of accused No.1 Manju. Therefore no offence can be attributed to the Petitioners.

11. It is pertinent to note that complaint was filed long back i.e. in the year 2008, making general allegations against all the Petitioners that Petitioner Nos.1 to 3 in collusion with each

other, relying upon false documents, issued ration card to accused No.1. The said allegations appears to be ill-founded. In that view of the matter, in our considered view, continuation of further proceedings against the Petitioners based upon private complaint and further investigation of the offence registered with Tuljapur police station, would be an abuse of process of law, the chances of conviction would be bleak and the same would be an exercise in futility. Hence, we pass following order:

O R D E R

I) Criminal Writ Petition Nos.121 of 2008, 122 of 2008 and 123 of 2008 are allowed.

II) The Private Complaint bearing Criminal Misc. Application No.08 of 2008 filed before the Judicial Magistrate

First Class, Tuljapur as well as the M. Case No.03 of 2008 registered with Tuljapur Police Station, are quashed and set aside, to the extent of present Petitioners only.

III) Rule made absolute in above terms. All the Writ Petitions are disposed of, accordingly.

IV) It is made clear that the other co-accused will not be entitled to derive any benefit from this order.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]