

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

Criminal Application No.977 of 2007

* Madhukar s/o Lakshmanrao Shegdar,
Age 51 years,
Occupation : Government Service,
R/o Tuljapur, Taluka Tuljapur,
District Osmanabad. **.. Applicant.**

Versus

- 1) The State of Maharashtra,
Through Police Station Tuljapur,
Taluka Tuljapur,
District Osmanabad.
- 2) Sudhir Kisanrao Shembekar,
Age 42 years,
Occupation: Agriculture,
R/o Barul, Taluka Tuljapur,
District Osmanabad. **.. Respondents.**

Shri. K.K. Kulkarni, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

Shri. D.R. Bhadekar, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 12 JUNE 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of the order of investigation made in a private complaint filed by respondent No.2-Sudhir before the Judicial Magistrate, First Class, Tuljapur, the F.I.R. registered on the basis of the order and the entire proceeding filed by the first informant. The F.I.R. is given No.44/2007 in Tuljapur Police Station. Both the sides are heard.

2) The crime is registered on the basis of private complaint of respondent No.2 referred to the police station for offences punishable under sections 167, 465, 34 of Indian Penal Code. The first informant is owner of one agricultural land and the applicant was working as Surveyor in the office of Taluka Inspector of Land Record, Tuljapur ("T.I.L.R.") at the relevant time. Some portion of land Gat No.9 was sold by the first informant to accused Nos.2 and 3 and the remaining portion was in his possession and he was personally cultivating that portion of the land. There was some dispute over the possession

and so the first informant had advised the purchasers to get measured the land. On the basis of the application, The applicant had come to the land on 14-5-2005 for measurement. He did measure the land but he did not fix the boundary marks and he had informed that he would return on 17-5-2005 for fixing the boundary marks. It is contention of the first informant that nobody turned up for fixing the boundary marks after that and then one notice was issued for confirmation of the boundary marks by the T.I.L.R. office.

3) It is the contention of the first informant that when he went through the record he realised that false record of map and measurement was prepared by the present applicant. It is his contention that he immediately gave complaint to the superior officer of the present applicant and requested for handing over the record. It is his contention that on 27-5-2005 the superior officers went through the record and found that the measurement was faulty and the permanent boundary marks fixed during general survey were not considered by the T.I.L.R. at the time of measurement of the land and this record

prepared by the T.I.L.R. - applicant was cancelled. It is contended that there is record to show that the present applicant had joined hands with the purchasers and so he has committed offences of aforesaid nature.

4) The learned counsel for the applicant submitted that even if it is presumed that some mistake is committed by the present applicant, he cannot be prosecuted for the aforesaid offences and sanction as required by section 197 of the Code of Criminal Procedure ought to have been obtained before registration of the crime. The learned counsel has placed reliance on some observations made by the Apex Court in the case of **AIR 2016 SC 3251 (Surinderjit Singh Mand v. State of Punjab)**. In that matter provisions of sections 197 and 319 of the Code of Criminal Procedure were considered. However, the facts were different. The facts of that case show that son of the complainant was arrested well before showing the formal arrest and it was held that such act cannot be called as the act done while discharging official duty. The learned counsel for the applicant drew attention of this Court to the observations made at paragraph 22 of the case cited

supra. Those observations are with regard to the provisions of section 19 of the Prevention of Corruption Act. Facts and circumstances of each and every case are always different. The learned counsel for the applicant placed reliance on the observations made by the Apex Court in other cases like (1) **2006(2) Mh.L.J. (Cri.) 272 (Subhash v. State of Maharashtra)**; (2) **(2015) 1 SCC 513 (Rajib Ranjan v. R. Vijaykumar)**; and (3), **2005 Cri.L.J. 2190 (S.C.) (K. Kalimuthu v. State)**. In the case of Subhash this Court and in the case of K. Kalimuthu the Apex Court discussed the provisions of section 197 Cr.P.C. In the said case the Apex Court has held that provision of section 197 Cr.P.C. need not necessarily be considered as soon as the complaint is lodged and it can be considered at subsequent stage. The Bombay High Court in the case of Subhash was considering different facts and some construction was pulled down while discharging official duty by Engineer of a local body. In the present matter there are allegations of creation of false record *mala fide*ly to see that accused Nos.2 and 3 make a gain due to this false record. This record is allegedly cancelled by the superior officers. The facts of the present case are

different. Such incidents are increasing day by day. Such things cannot be ignored simply by saying that the officer was discharging the official duty. Such conduct not only helps the party like accused Nos.2 and 3 but it creates much litigation. Due to these circumstances this Court holds that thorough investigation is necessary and it cannot be said at this stage that sanction was necessary for registration of the crime. In the result, the proceeding stands dismissed. Rule stands discharged. Interim relief stands vacated.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1