

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

CRIMINAL WRIT PETITION NO.583 OF 2018

1. Narayan s/o. Laxman Kardel,
Age : 50 years, Occ. Agri.,
r/o. Shindhephala, Tq. Sillod,
Dist. Aurangabad
 2. Baburao s/o. Vitthal Waghmode,
Age : 40 years, Occ. Agri.,
r/o. Shindhephala, Tq. Sillod,
Dist. Aurangabad
 3. Ramesh s/o. Harishchandra Wagh,
Age : 50 years, Occ. Agri.,
r/o. Shindhephala, Tq. Sillod,
Dist. Aurangabad
- ..Petitioners

Vs.

The State of Maharashtra

..Respondent

Mr.A.D.Kulkarni, Advocate for petitioners
Ms.R.P.Gaur, APP for respondent

CORAM : SANGITRAO S. PATIL, J.
DATE : JUNE 19, 2018

ORAL JUDGMENT :-

Rule, made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. The petitioners have challenged the judgment and order dated 14.03.2011 passed in Criminal Revision No.177 of 2011 by the learned Additional Sessions Judge, Aurangabad, confirming the order dated 08.07.2011 passed in Regular Criminal Case No.290 of 2004 by the learned Judicial Magistrate First Class, Sillod, whereby process has been issued against the petitioners vide Section 319 of the Code of Criminal Procedure, for the offences punishable under Sections 466, 468, 471 and 420 read with Section 34 of the Indian Penal Code ("I.P.C.", for short).

3. One Krushna Maroti Kathar, Sanjay Bala Waghmode and Pushpabai Pralhad Waghmode, residents of Shindhaphala, Tq.Sillod, are facing trial for the offences punishable under Sections 464, 468, 471, 420 read with Section 34 of the I.P.C. bearing R.C.C. No.290 of 2004. It is alleged that a false and forged death certificate of Mathurabai Bala Waghmode was produced when petitioner no.1 - Narayan purchased

the land block no.169 vide sale deed dated 11.05.2004 from one Amol Pralhad Waghmode, being minor represented by his mother namely, Pushpabai (accused no.3). In the certificate, the date of death of Mathurabai was shown as 12.05.2000, while her actual date of death was 29.07.1999. The deceased Mathurabai was the grand-mother of the vendor viz.:- Amol. The said land was subsequently sold by petitioner no.1 to Rekhabai w/o. Murlidhar Waghmode vide the registered sale deed dated 20.05.2007. Petitioner nos.2 and 3 were the witnesses to the sale deed dated 11.05.2004. After the husband of Rekhabai namely, Murlidhar Waghmode came to know that the certificate that was produced when the land was purchased by petitioner no.1 was not bearing the correct date of death of Mathurabai, he complained against the persons who issued that certificate and also against Pushpabai, who sold that land on behalf of her minor son Amol to petitioner no.1. When the evidence of Murlidhar Waghmode was recorded on 01.07.2001, the learned

Magistrate observed that it is essential to issue process against the present petitioners for the above-mentioned offences. Therefore, the learned Magistrate passed the impugned order dated 08.07.2011 and directed that the process be issued against the petitioners for the above-mentioned offence vide Section 319 of the Code. This order was challenged by the petitioners before the learned Additional Sessions Judge by filing Criminal Revision Application No.177 of 2011, which came to be dismissed on 14.03.2018. The petitioners have challenged the said judgment and order before this Court.

4. The learned Counsel for the petitioners submits that the deceased Mathurabai was the grandmother of Amol, from whom petitioner no.1 had purchased the land vide the sale deed dated 11.05.2004. At that time, the mother of Amol namely, Pushpabai produced the death certificate of Mathurabai since the name of Mathurabai was in 'other

rights' column. After petitioner no.1 got himself satisfied that Mathurabai was no more, he purchased that land from Amol Waghmode. Petitioner no.1 further sold out the said land to Rekhabai w/o. Murlidhar Waghmode, vide the sale deed dated 20.05.2007. Now, the land is in possession of Rekhabai. Petitioner nos.2 and 3 were the witnesses to the sale dated 11.05.2004. He submits that as per the certificate of death that has been produced subsequently, the date of death of Mathurabai is shown as 29.07.1999. As such, she had expired much prior to execution of the sale deed dated 11.05.2004. Petitioner nos.1 to 3 cannot be attributed knowledge of the exact date of death of Mathurabai. Even otherwise, Amol s/o. Pushpabai Waghmode had clear title to the land on the date on which he sold it out to petitioner no.1, since Mathurabai was no more at that time. Therefore, it cannot be said that either Pushpabai or the present petitioners procured false death certificate of Mathurabai with intent to cheat or

defraud anybody. He submits that at the most, the date of death given in the certificate that was produced by Pushpabai can be said to be incorrect. He submits that the learned Magistrate did not consider these facts and wrongly exercised the extra-ordinary powers under Section 319 of the Code, which are to be exercised sparingly and in the exceptional circumstances. He submits that the impugned order is cryptic and non-speaking. He, therefore, prays that the impugned orders passed against the petitioners may be set aside.

5. The learned APP supports the impugned order passed by the learned Magistrate as well as the judgment and order passed by the learned Additional Sessions Judge. She submits that when Mathurabai died on 29.07.1999, the death certificate produced by Pushpabai, wherein her date of death was mentioned as 12.05.2000, cannot be said to be genuine one. It was a forged document. The petitioners are the residents of the same village wherein deceased Mathurabai was

residing. Therefore, they cannot plead ignorance about the date of death of Mathurabai. According to the learned APP, on the basis of a false death certificate of Mathurabai, petitioner no.1 got executed the sale deed from Amol, who was represented by his mother Pushpabai. Petitioner nos.2 and 3 were the witnesses to that sale deed. Therefore, process has been rightly issued the petitioners.

6. Petitioner no.1 purchased the land from Amol, who was represented by his natural guardian Pushpabai, vide the sale deed dated 11.05.2004. At the time of execution of the sale deed, the death certificate of Mathurabai was issued by the Sarpanch and Gramsevak of the village, wherein her date of death was given as 12.05.2000. However, it was subsequently transpired that her actual date of death was 29.07.1999. As seen from the 7/12 extract of the land purchased by petitioner no.1, name of Mathurabai was mentioned in the 'other rights'

column. Her death certificate was produced in order to show that she was no more and her grand-son – Amol had clear marketable title at the time of executing sale deed in favour of petitioner no.1. Even if it is accepted that the correct date of death of Mathurabai is 29.07.1999, it would be clear that she had expired prior to about five years of execution of the sale deed in favour of petitioner no.1. Even if the certificate bearing date of death of Mathurabai as 29.07.1999 had been produced, there would have been no legal impediment in transferring the land by Amol Waghmode in favour of petitioner no.1. If that be so, there is no reason to hold that the certificate bearing wrong date of death of Mathurabai was procured with some ulterior motive or with an intention to cheat somebody or to commit fraud. If the death certificate of Mathurabai had been produced though she was alive, then it could have been said that in order to deceive and defraud her for taking away her rights in the land subject matter of the

sale deed, a false and forged certificate had been produced.

7. Petitioner no.1 was the purchaser of the land. At the time of purchasing the land, he simply got it confirmed that Mathurabai was no more and there was no difficulty for him to purchase the land from Amol. Petitioner nos.2 and 3 simply attested that sale deed. The sale deed is genuine one. After Narayan purchased that land, he sold out that land to Rekhabai w/o. Murlidhar Waghmode on 20.05.2007 under a registered document. Rekhabai got possession of that land. She is enjoying the fruits of that land. In the circumstances, only because there is wrong date of death of Mathurabai in the certificate that was produced on behalf of Amol, it cannot be said that there was any intention to cheat or commit fraud on the part of the petitioners.

8. The powers under Section 319 of the Code are extra-ordinary. They are required to be used

sparingly and in very exceptional circumstances. In the present case, there is absolutely no reason to attribute knowledge about date of death of Mathurabai to the petitioners and hold that they produced false and forged certificate with intent to cheat anybody. The learned Magistrate did not apply mind to the facts of the case and wrongly issued process against the petitioners. The impugned order passed by the learned Magistrate is cryptic and non-speaking. There are no reasons recorded by the learned Magistrate for issuing process against the petitioners. The learned Additional Sessions Judge also did not consider the facts of the case correctly and properly and wrongly confirmed the impugned order passed by the learned Magistrate. The judgment and order passed by the learned Additional Sessions Judge are liable to be set aside. Directing the petitioners to face trial, in the circumstances of the case, would be nothing but abuse of process of Court. The petitioners are liable to be discharged

of the above-mentioned offences. In the result, I pass the following order :-

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 08.07.2011 passed below (Exh.1) by the learned Judicial Magistrate First Class, Sillod in Regular Criminal Case No.290 of 2004 and the judgment and order dated 14.03.2018 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No.177 of 2011 are quashed and set aside.
- (iii) The petitioners are discharged of the offences punishable under Sections 464, 468, 471, 420 read with Section 34 of the Indian Penal Code. They are set at liberty.
- (iv) Rule is accordingly made absolute. Writ Petition is accordingly disposed of.

[SANGITRAO S. PATIL, J.]