

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 2300 OF 2005

1. Mallikarjna Rambhau Mahajan,
Age 75 years, Occu. Agriculture,
R/o. Majalgaon, Tq. Majalgaon,
Dist. Beed.
2. Chandrakant Ishwarappa Mahajan,
Age 37 years, Occu. Trade,
R/o. As above.
3. Umakant Ishwarappa Mahajan,
Age 34 years, Occu. Trade and
Agriculture, R/o. As above.
4. Nilkantheshwar Ishwarappa Mahajan,
Age 28 years, Occu. Trade,
R/o. As above.
5. Arjun Ishwarappa Mahajan,
Age 25 years, Occu. Trade,
R/o. As above.

....Applicants.

Versus

1. The State of Maharashtra
Through Majalgaon Police Station.
2. Ramsukh Gopulal Jethaliya,
Age 59 years, Occu. Advocate,
R/o. 'Dnyandeep' in front of
New Bus Stand, Majalgaon,
Tq. Majalgaon, Dist. Beed.
3. Nisar Ahmed Abdul Rehaman,
Age 58 years, Occu. Service,
R/o. Ashok Nagar, Majalgaon.
4. Baburao Motiram Rathod,
Age 53 years, Occu. Service,
R/o. Krushnai Nagar, Georai,
Tq. Georai, Dist. Beed.

....Respondents.

Mr. Rajendra S. Deshmukh, Advocate for applicant Nos. 2 to 4.

Mr. S.J. Salgare, APP for respondent No. 1/State.

Mr. Joydeep Chatterji, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JUNE 04, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) for quashing of police case bearing Criminal Case No. 154/2005, which is pending in the Court of Judicial Magistrate, First Class, (J.M.F.C.) Majalgaon and which is filed in C.R. No. 259/2004 of Majalgaon Police Station. The case is filed for offences punishable under sections 420, 465, 468, 471, 34 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short). Both the sides are heard.

2) A private complaint was filed by present respondent No. 2 - Ramsukh Jethaliya for aforesaid offences in the Court of J.M.F.C., Majalgaon and in that matter, order was made under section 156 (3) of Criminal Procedure Code and after making investigation, chargesheet is filed by police against the present applicants. In the complaint, allegations were made by the original complainant that false record of measurement of land was created by the accused persons and that record was produced in the Court of Civil Judge,

Senior Division, Beed in the matter filed by one of the accused in respect of the same land. The complainant realised that false record is prepared. He first moved the authorities to make inquiry and correct the record. The Collector, Beed directed inquiry and inquiry was made by Tahsildar, Majalgaon. Tahsildar made report after making inquiry that after joining hands with some staff members of T.I.L.R. office Majalgaon, accused No. 1 had prepared false record of map with the intention to grab the property which was already acquired by the Government. In the inquiry, show cause notice was also issued to the present applicants and they were given opportunity to explain the things. After receipt of the report of Tahsildar, steps were taken to correct the record and record was also corrected accordingly. Inquiry revealed that manipulation was done in the map by the applicants by joining hands with the staff of T.I.L.R. office and so, the record was forged one. Submissions made show that departmental inquiry was made against the staff and penalty was also imposed on them for their misconduct.

3) The main contention of the applicants is that in the suit which was filed by the accused, applicants, application was made under provision of section 340 of Cr.P.C. by the original complainant for taking action against the applicants in respect of the same map, but the application was rejected by Magistrate and so, the crime

could not have been registered and the Magistrate could not have taken cognizance of the matter.

4) The submissions made and the record show that the application filed under section 340 of Cr.P.C. was rejected by the Civil Court only on the ground that it was premature and the evidence in respect of the map was not yet given. Thus, the ground that application filed under section 340 of Cr.P.C. was rejected is not a valid ground to challenge the prosecution.

5) The record of the present matter includes the report prepared by Tahsildar which is to the aforesaid effect. The report shows that some portion, which was acquired by the Government for rehabilitation and which was actually allotted to beneficiaries was shown outside of the portion which was acquired by the Government in the disputed map. There is the record showing that the T.I.L.R. who had made measurement in the year 2001 at the time of acquisition had reported that there was some manipulation done in the record of measurement and so, the map which was produced by the applicants in Civil Court was not correct map and it could not have been used for any purpose. Office of T.I.L.R. made it clear that the said map was not correct and then corrected map was taken on record by T.I.L.R. office. The superior measurement was also tried,

but nobody was there to pay the fees and so, for ascertaining the boundaries of the portion which remained with the applicants, the measurement was made again and the boundary marks were fixed. The decision in that regard was taken and it was informed to the applicants. The submissions made do not show that this decision of the authority was challenged by the applicants.

6) The aforesaid material is sufficient to make out *prima facie* case against the applicants. The ground raised by the applicants which is already mentioned cannot be a ground for quashing of a criminal proceeding. The Trial Court needs to appreciate the material and the defence, if any, the applicants want to take in that regard on factual aspects. Thus, the relief claimed cannot be granted by this Court. In the result, the application stands dismissed. Interim relief is vacated. Rule stands discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/