

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

CRIMINAL APPLICATION NO. 3390 OF 2012

Vinod s/o Vitthalrao Gudamwar,
Age 37 years, Occ. Service,
R/o. Bhokar Tq. Bhokar, Dist.
Nanded.

... **Applicant**
(Ori. Accused No. 2)

VERSUS

1. The State of Maharashtra.
2. Hirabai Shesharao Jarikote,
Age 62 years, Occ. Agriculture,
R/o. Rajapur, Tq. Dharmabad,
Dist. Nanded.

... **Respondents**
(Respondent No. 2 is
original informant)

...

Advocate for Applicant : Mr. R.J. Nirmal.
APP for respondent No. 1/State : Mr. M. M. Nerlikar

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

DATE : 2nd AUGUST, 2018

JUDGMENT (PER K.L. WADANE, J.) :

1. Rule. Rule made returnable forthwith. With the consent of the parties, this application is taken up for final disposal.

2. The applicant who at the relevant time was working as a Tahsildar, challenged the complaint instituted by the respondent No. 2 OMCA No. 20/2012 and first information report No. 51/2012 dated 05.07.2012 registered against the applicant for the offences punishable under section 451, 452, 353, 506(2), 420, 471 read with section 34 of the Indian Penal Code.

3. The respondent No. 2 herein filed a private complaint with allegations that he was owner in possession of land Gat No. 199 admeasuring 1-H 42-R, out of which 90-R land was sold to one Madhavrao Jarikote, therefore 52-R land was expected to remain in the name of respondent No. 2. However, the applicant in collusion with other accused persons made a false record and recorded the entire area in the name of Madhavrao Jarikote. Madhavrao Jarikote died on 03.07.2009 and his son namely Kushal (accused No. 1) applied for mutation in the capacity of legal heir of deceased Madhavrao. The complainant had taken the objection for certificate of mutation entry. The concerned Talathi prepared report and sent to the Tahsildar. So there was dispute between the parties about the mutation in the name of accused No. 1 Khushal and that subject is pending before the Collector for its adjudication. Meantime, the applicant delivered a judgment on

13.01.2012 regarding certification of mutation entry No. 107 in favour of the accused No. 1 Khushal.

4. We have heard the arguments of Mr. Nirmal, learned counsel for applicant, Mr. Nerlikar, learned APP for the respondent/State.

5. Learned counsel for applicant submits that at the relevant time the applicant was serving as a Tahsildar and he was dealing with the matters as per the Maharashtra Land Revenue Code. So, according to learned counsel for the applicant the proceedings adjudicated by the applicant was judicial proceeding and the applicant was acting as a 'Judge' within the definition of Section 2 of the Judges (Protection) Act, 1985. Therefore, he has relied upon the observation of Division Bench of this Court in Criminal Application No. 4234/2007 with Criminal Application No. 6849/2016.

6. The copy of the judgment delivered by the applicant is placed on record. It pertains to the certification of mutation entry No. 107. From the judgment it reveals that before delivering the decision the applicant has issued notices to both the parties. He had heard the objection of both sides and came to the conclusion that recording of area in the name of Madhavrao was done in the process of consolidation of

the lands after the year 1974 when the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, came into force and he further observed that the revenue entries made on the basis of consolidation scheme cannot be altered or set aside by the Revenue Court. It is not necessary to comment upon this aspect. This Court is only concerned whether the applicant is a 'Judge' as per the definition of section 2 of the Judges (Protection) Act, 1985, and the proceedings before him was a judicial proceeding or not.

7. As already holds by this Court in the aforesaid cases (Criminal Application No. 4234 of 2007 with Criminal Application No. 6849 of 2016), the proceedings under the provisions of Maharashtra Land Revenue Code pending before the applicant was a judicial proceeding required inquiry into the matter. The revenue officer before whom said proceeding is pending requires application of mind and to give judgment as per the provisions of Maharashtra Land Revenue Code. Therefore, the applicant is a 'Judge' within the meaning of Section 2 of the Judges (Protection) Act, 1985. Therefore, the case of the applicant is squarely falls and covered as per the decision rendered by this Court in the matter referred above.

8. In view of the above, the application is allowed. Relief is granted in terms of prayer clause 'B' to the extent of present applicant only. Rule made absolute in those terms.

9. Criminal Application is disposed of.

(K. L. WADANE, J.)

(T.V.NALAWADE, J.)

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