

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

Criminal Application No.3945 of 2013

* Sahebrav S/o Tulashiram Debade,
Age 55 years,
Occupation: Service (Teacher)
R/o Hanuman Gadh Nanded. .. **Applicant.**

Versus

- 1) The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2) Police Inspector,
Police Station, Shivaji Nagar,
District Nanded.
- 3) Investigating Officer
(M Case No.78/2012)
Police Station, Shivaji Nagar,
District Nanded.
- 4) Shankarsing s/o Gopalsing Gadiwale,
Age 50 years,
Occupation: Business,
R/o Hanuman Gadh, Nanded,
District Nanded. .. **Respondents.**

Shri. Kiran D. Jadhav, Advocate, for applicant.

Smt. P.V. Diggikar, Additional Public Prosecutor, for
respondent Nos.1 to 3.

Mrs. C.S. Deshmukh, Advocate, holding for Shri. P.P.
Dawalkar, Advocate, for respondent No.4.

With

Criminal Application No.4833 of 2013

* Harmeetsingh @ Laddusingh S/o Mahajan
Age 76 years,
Occupation: Business
R/o. HariNiwas Badpura,
Nanded. **.. Applicant.**

Versus

- 1) The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2) Police Inspector,
Police Station, Shivaji Nagar,
District Nanded.
- 3) Investigating Officer
(M Case No.78/2012)
Police Station, Shivaji Nagar,
District Nanded.
- 4) Shankarsing s/o Gopalsing Gadiwale,
Age 50 years,
Occupation: Business,
R/o Hanuman Gadh, Nanded,
District Nanded. **.. Respondents.**

Shri. Kiran D. Jadhav, Advocate, for applicant.

Smt. P.V. Diggikar, Additional Public Prosecutor, for
respondent Nos.1 to 3.

Mrs. C.S. Deshmukh, Advocate, holding for Shri. P.P.
Dawalkar, Advocate, for respondent No.4.

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

Judgment reserved on : 03 August 2018

Judgment pronounced on : 21 August 2018

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

1) Both these proceedings are filed under section 482 of the Code of Criminal Procedure for the relief of quashing of the proceeding of M. Case No.223/2012 which was pending in the Court of the Judicial Magistrate First Class Nanded and also the order made in that proceeding under section 156(3) of the Code of Criminal Procedure to police to make investigation. F.I.R. bearing No.78/2013 was registered on the basis of order made by the Judicial Magistrate in the concerned police station. Learned Additional Public Prosecutor produced papers of investigation and the learned APP submits that there is sufficient material to make out *prima facie* case for offences punishable under sections 420, 468, 471, 34 etc. of the Indian Penal Code. The learned Additional Public Prosecutor submitted that more investigation is necessary but due to stay granted by this Court to the proceedings

more material could not be collected. Both sides are heard.

2) The submissions made and the record show that there is dispute between respondent No.4 - Shankarsingh Gadiwale (complainant) on one side and the applicants of the present two proceedings on the other. It is the case of the complainant that he is owner of land Survey No.5 situated at Asdullabad and false record is prepared by the applicants to show that some portion of Survey No.5 is part and parcel of Survey No.4/A and that portion is given Plot No.96 in the lay out plan prepared by the accused. It is contended that the applicant, Harmitsingh, purchaser from Sahebrao Debade knows that such false record is prepared and in spite of that and even after knowing that there is objection of the complainant's side he has purchased some portion of plot No.96 from Sahebrao Debade and present accused and by using the sale deed, he tried to forcibly take possession of the portion which is part of Survey No.5. It is contended that family of Debade had joined hands with revenue authorities or they have deceived the revenue authorities

and they have got prepared development plan in which the portion of Survey No.5 is shown as part of Survey No.4/A.

3) It is the case of the complainant that Debade family is not even owner of Survey No.4/A but the development plan was prepared by them and it can be said that the revenue authorities had joined hands with Debade family. It is contended that Survey No.4/A belongs to one Sardar Dilipsing Jahagirdar. It is contended that one Sundarsing was the owner of Survey No.4/A and Dilipsing had purchased this property from Sundarsing. It is contended that some record of civil litigation was prepared by Debade family and by using that record entry in the revenue record and city survey record was made.

4) It is the case of the complainant that in RCS No.83/2002, in which Sahebrao Dabade was the defendant and purchaser from Dilipsing was the plaintiff Debade family had admitted that Dilipsing was the owner of the property which was purchased by the plaintiff of that suit from Dilipsing and on that basis the decree was given in

the name of the plaintiff in RCS No.83/2002. It is contended that prior to that suit one suit bearing No.972/1989 was filed by Tulasiram Debade in respect of the same subject matter but the said suit was also dismissed. It is contended that in spite of this record of decision of Civil Court, subsequently false record was created to show that Debade family is the owner of portion of Survey No.4/A, which is plot No.96 and which is given property No.9689 in city survey record. It is contended that by making false entry in the revenue record and city survey record Sahebrao Debade has sold property to applicant - Harmitsingh.

5) The submissions made and the record show that Dilipsing had purchased Survey No.4/A from one Sundersing under registered sale deed in the year 1966. Possession of the property was also given to Dilipsing. Tulashiram, father of Sahebrao was shown as ordinary tenant in the property for few years but prior to 1966. After sale of the property in favour of Dilipsing, Tulashiram filed a proceeding under section 98 of the Hyderabad Tenancy and Agricultural Lands Act and in

that he contended that he was in possession as tenant till 1979-80 and he was dispossessed by Dilipsing in the year 1980. It is already mentioned that RCS No.83/2002 was filed against Sahebrao Debade by Ankushrao Kadam, an educational institution and in that suit the ownership rights of Dilipsing were admitted by Sahebrao. Name of Tulashiram was there in the revenue record as the person in possession as ordinary tenant till 1962-63. But his name was subsequently deleted from other rights column and also from crop cultivation column. A proceeding was filed under section 98 of the Hyderabad Tenancy and Agricultural Lands Act and it was decided on 23-11-1987. In that proceeding direction was given against Dilipsing to deliver the possession of the entire area of Survey No.4/A to Tulashiram. This decision was challenged in Writ Petition No.68/1988 and interim relief like stay was granted against the decision of the Maharashtra Revenue Tribunal. Rule was granted in the writ petition on 9-6-1988. The writ petition came to be dismissed on 2-12-2002 as legal representatives of Tulashiram were not brought on the record in the writ petition. No other record is produced in respect of the proceeding which was filed

under section 98 of the Tenancy Act. There is no record even to show that by using the order of the M.R.T. dated 23-11-1987 either Tulashiram or Sahebrao had obtained possession from Dilipsing or Ankushrao Kadam. It is already observed that in the previous suit ownership of Dilipsing was admitted by Sahebrao Debade.

6) The aforesaid record and the submissions show that Tulashiram or Sahebrao were never owners of Survey No.4/A though one proceeding was started by them under section 98 of the Tenancy Act. The papers collected by police and produced by the applicants show that there is no record of development. If the property was not owned by Sahebrao or his father Tulashiram, there was no question of approval of layout plan in their favour.

7) In addition to aforesaid circumstances, there is contention of the complainant in both the matters that Plot No.96 is not part of Survey No.4/A but it is part of Survey No.5. There are circumstances supporting this contention and investigation needs to be made on that line also. In the year 2005 on the basis of the compromise

decree given in RCS No.83/2002 which was between the aforesaid parties name of legal representative of Tulashiram was first time entered in the revenue record. It can be said that as ownership of the purchaser Dilipsing was admitted in respect of some portion, that decree was used to show that remaining portion belongs to Tulashiram and his legal representative Sahebrao. This was not true as Tulashiram or Sahebrao were never the owners of Survey No.4/A. No title was transferred to Tulashiram or Sahebrao under any decree or order which could have been made under the Tenancy Act. Mutation No.6778 made in favour of Sahebrao is thus suspicious and it gives support to the contention of the complainant that revenue authority had joined hands with Sahebrao. It appears that more record of litigation was created by Sahebrao by filing suit against legal representatives of so called power of attorney of Tulashiram. Said suit was also disposed of by way of compromise and in that it was shown that plot No.96 was belonging to Sahebrao. Thus the court record was created behind back of owner and that record is being used to show the title. All record was created behind the back of the complainant. Thus as per

the record, Dilipsing had purchased entire area of Survey No.4/A from original owner and out of that portion he had sold 1H 45R to one educational institution. The proceeding filed bearing RCS No.83/2002 was decided though by compromise in favour of the educational institution and title of Dilipsing was admitted by Sahebrao in that suit. Thus Dilipsing's title under sale deed executed by Sundarsing in respect of Survey No.4/A was admitted by Sahebrao in the civil proceeding. It is already observed that there is no record to show that as to when and how Sahebrao got the possession of some portion of Survey No.4/A and particularly Plot No.96. The area of developed property of Survey No.4/A shown by the complainant does not match with the area given in the 7/12 extract. This is again a circumstance supporting the case of the complainant. There is another record like copy of complaint given by Smt. Krishnabai that the complainant had made encroachment over three plots, plots from Survey No.4/A in the year 2011 and he had started collecting minor minerals, *murum* by using pokland machine. Due to this complaint inquiry was made by revenue authority and royalty in respect of minerals

collected by the complainant and also penalty amount was ordered to be collected from the complainant. There are 2 orders like order dated 28-4-2011 and order dated 27-8-2012 made by the revenue authority against the present complainant. This record shows that complainant was in possession of the property which was shown as portion from Survey No.4/A. Thus, measurement needs to be taken during investigation and that can be done at the cost of the complainant. It is already observed that Debade family never became owner of Survey No.4/A and so the record created by them behind the back of Dilipsing and also the complainant cannot be used against them and the record is apparently not correct. Further, the revenue authority is deceived or the revenue authority had joined hands with Debade family. Thus, it cannot be said that no offence at all is committed by Debade family.

8) Learned counsel for the applicants placed reliance on the following cases.

(i) **2010 AIR SCW 405 (Md. Ibrahim v. State of Bihar)**

(ii) **(2011) 13 SCC 412 (Thermax Ltd. v. K.M. Johnny)**

(iii) **AIR 1992 SC 604 (State of Haryana v. Bhajal Lal)**

(iv) **(2000) 2 SCC 636 (G. Sagar Suri v. State of U.P.).**

In these cases it is held by the Apex Court that when the dispute is of civil nature it is not desirable to take cognizance of matter by criminal court. There cannot be dispute over the propositions made in these cases. False record was created and possibly revenue authority was deceived by Debade family for preparing the lay out plan and for getting entered the names of Debade family as owner of the property when they were not owners of the property. Thorough investigation is necessary in such matters. This Court holds that no relief can be granted in favour of the applicants. In the result, both proceedings are dismissed. Rule is discharged. Interim relief already granted is vacated.

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

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

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