IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 755 OF 2003

Fatimabee w/o Mohamad Hussain Shaikh,
Age: 52 years, Occ. Household and
Agri. R/o Village Lohara (Bk.),
Tq. Omerga, Dist. Osmanabad. .. Appellant
(Original complainant)

Versus

1. The State of Maharashtra.

2. Sikander Jainoddin Shaikh,
Age: 65 years, Occ. Agri.
R/o: Village Lohara (bk),
Tq. Omerga, Dist. Osmanabad.
(Appeal abates as against respondent No.2
as per Hon'ble Court's order dated
17-06-2016)

3. Mainoddin Sikander Shaikh,
Age: 37 years, Occ. & R/o.
as above.

4. Shivaji Kashinath Babhale,
Age: 47 years, Occ. Service,
Talathi Sazza Lohara, Ta. Omerga,
Dist. Osmanabad at present,
R/o Salgara, Tq. Tuljapur,
Dist. Osamabad. .. Respondents
(Accused Nos. 2 to 4 are
original accused)

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Mrs. A.N. Ansari, Advocate for appellant
Mr. A.A. Jagatkar, APP for respondent No. 1 – State.
Appeal is abated against respondent No. 2
Mr. S.K. Doke, Advocate holding for Mr. E.S. Murge, advocate for respondent No. 3.
Mr. A.S. Bayas, Advocate for respondent No. 4

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CORAM : K.K. SONAWANE, J.

DATE : 5th FEBRUARY, 2018.

JUDGMENT :-

1. This appeal takes exception to the impugned judgment and order

of acquittal of the respondents - original accused by the learned Judicial Magistrate, First Class, Omerga, District Osmanabad in Regular Criminal Case No. 11 of 1993, instituted for penal action under sections 465 and 468 read with section 34 of the Indian Penal Code (for short, "IPC"). The appellant-original complainant has preferred a private complaint under section 200 of the Code of Criminal Procedure (for short "Cr.P.C.") before the learned Magistrate against the respondents-original accused for the allegations of cheating and forgery of revenue record.

2. It has been alleged that the agricultural land survey Nos. 126/6 and 127/1 located at village Lohara, Ta. Omerga was the ancestral property belonging to the complainant. The respondent - Wazaribee Sikander Shaikh was claiming her share in the property, therefore, she had filed a Regular Civil Suit No. 77 of 1977 against the complainant and others. After hearing both sides, the suit came to be decreed partly. But, original plaintiff i.e. Wazirabee did not satisfy with the decree partly passed by the Civil Court. Therefore, she approached to the appellate forum and filed Regular Civil Appeal No. 111 of 1990. But, the proceeding of appeal filed by Wazirabee came to be dismissed. The complainant also preferred Regular Civil Appeal No. 112 of 1990 agitating the validity of impugned judgment and decree passed by the Civil Court in Regular Civil Suit No. 77 of 1977. Pending the appeal, interim relief to maintain *status-quo* was passed by the learned appellate Court. According to complainant, in view of interim relief to maintain *status-quo*, the decree passed in Regular Civil Suit No. 77 of 1977 could not be executed against the complainant for partition of

contentious agricultural lands. However, the complainant cast allegations that the respondent-accused in connivance with each other deleted her name from the cultivation column of 7/12 extract for contentious agricultural land and instead name of the complainant, the entry "dispute" (Takrar) was taken in 7/12 extract. It has been alleged that the name of complainant was mutated in revenue record since long. But, due to mischief played on the part of respondent-accused, her name came to be deleted from 7/12 extract with purported motivation to cause loss and damages to the complainant. The complainant approached to the higher revenue authority and brought to their notice about the mischief played by the respondent-accused. After due inquiry, the District Collector issued directions to rectify the error and name of complainant was again recorded in 7/12 extract. According to complainant, mischief of deleting her name from revenue record was committed with malafide intention to harass and cause loss to the complainant. She filed complaints against respondent - accused to the police personnel, but they did not take cognizance, and eventually, complainant knocked the door of Court of learned Magistrate and preferred the present private complaint under section 200 of Cr.P.C.

3. The learned Magistrate after considering the circumstances on record, was pleased to issue process against so-called respondents-accused for penal action under sections 465 and 468 read with section 34 of the IPC. The respondents - accused caused their appearance in the proceedings. Pending the proceedings accused- Wazirabee was reported to be dead. Hence, the criminal proceedings pending against

her came to be abated. The learned Magistrate recorded evidence of complainant and her husband before framing of charge against rest of the accused. The Learned Magistrate appreciated the evidence adduced on record and preferred to proceed further to put the accused for trial. The learned Magistrate framed the charges for allegations of cheating and forgery under sections 465 and 468 of the IPC. The respondents/accused denied the charges and claimed for trial. The complainant and her witnesses were cross- examined on behalf of respondent-accused. The learned Magistrate also recorded statements of accused prescribed under section 313 of the Cr.P.C. After considering entire oral and circumstantial evidence on record, the learned Magistrate arrived at the conclusion that the alleged accused can not be held guilty for the charges pitted against them. The learned Magistrate observed that the evidence on record was not sufficient to prove the charges of cheating and forgery of revenue record against the accused. There was no prosecution sanction against the accused Talathi, who was the Government Servant in this case. In the result, the learned Magistrate ventured to absolve all the accused from the charges levelled against them and passed the impugned judgment and order of acquittal, which is the subject-matter for scrutiny in this appeal.

4. The learned counsel for the appellant-original complainant vehemently submits that the impugned judgment and order of acquittal passed by the learned trial Court is erroneous, illegal and contrary to the facts and circumstances of the case. The learned Magistrate did not consider the circumstance that there was no application filed to the

Talathi for taking entry as "dispute" (Takrar) in 7/12 extract for the year 1991-1992. The respondents/accused in connivance with each other caused loss and damage to the complainant with purported motive and deleted the name of complainant from revenue record by cheating and forgery. The alleged act was not committed by the concerned Talathi, while discharging his official duty, but he played mischief in his private capacity. Therefore, there is no necessity for prosecution sanction as required under section 197 of the Cr.P.C. He relied on the judicial precedent in the case of ***Manohar Nath Kaul Vs. State of Jammu and Kashmir*** reported in ***AIR 1983 Supreme Court, 610***. The learned counsel further gave much more emphasis on the circumstance that there was an departmental enquiry conducted by the Circle Inspector at the behest of District Collector. In the enquiry, the concerned Talathi was held guilty and his annual increments were withheld including warning to him by way of punishment. These circumstances indicate that the mischief committed by accused- Talathi was intentional, deliberate and in his private capacity. The rest of the accused abetted the concerned Talathi to commit the crime. Hence, they all are guilty for the charges under sections 465 and 468 read with section 34 of the IPC. According to learned counsel, finding of acquittal given by the learned Magistrate is erroneous, perverse and against the well settled principles of law. Therefore, he requested to quash and set aside the impugned judgment of acquittal and respondents-accused be convicted for the charges pitted against them.

5. The learned prosecutor for respondent No. 1-State as well as

learned counsel appearing for rest of the respondents-accused raised objections to the submissions propounded on behalf of appellant-original complainant and canvassed that the dispute put-forth in the present proceeding was of civil in nature, therefore, criminal proceedings cannot be entertained for the allegation nurtured against respondent-accused. There were charges of cheating and forgery against Government servant i.e. Talathi. He deleted the name of complainant from the revenue record in connivance with other accused. The alleged act committed by him was in his official capacity, and consequently, prior sanction is essential for initiation of penal proceedings against him.

6. Having given anxious consideration to the arguments advanced on behalf of both sides, I do not find any perversity, error or illegality in the findings of acquittal of respondents-accused expressed by the learned Magistrate in this case. Admittedly, the evidence of complainant - Fatemabee and her husband Mohd. Hussain Shaikh is available on record for consideration. The complainant cast allegations that the contentious lands survey No. 126/6 and 127/1 were her ancestral properties. Since year 1970, her name was mutated in the revenue record as owner and possessor of the contentious suit lands. But, in the year 1991-1992, the name of the complainant was deleted from cultivation column and respondent Shivaji, the talathi concerned of the village took the entry as "dispute" (Takrar) in it. It has been alleged that the entry as "dispute" (Takrar) recorded in 7/12 extract was in connivance with each other by the respondents-accused with purported motivation to cause loss and damage to the complainant.

7. The main allegation in the present case is of making false document of revenue record by the accused with intent to cause loss and damage to the complainant. It has been alleged that the respondents-accused has committed an offence of forgery in furtherance of their common intention to cheat the complainant. The offence of forgery is defined in sections 463 and 464 of the IPC. It has been contemplated that fraudulent making or alternation of a writing to the prejudice to another man's right is a forgery. In order to constitute an offence under the sections, the document or part of the document must be false and must have been made dishonestly or fraudulently within the meaning of words used in section 464 of IPC and it must have been made within one of the intents specified in section 463 of IPC.

8. In the matter in hand, it is not put into controversy that the agricultural lands Survey No. 126/6 and 127/1 located at Lohara was the ancestral property belonging to the complainant. There was litigation for partition and separate possession of aforesaid agricultural lands filed on behalf of sisters of the complainant. It is an admitted fact that after appreciation of merits, the suit vide Regular Civil Suit No. 77 of 1977 came to be partly decreed by the learned Civil Court. The partition of contentious suit land was allowed in between the complainant and her sister. Being dissatisfied with the decree partly passed by the Civil Court for partition of lands, both the plaintiff and defendant i.e. the complainant and her sister Wazirabee approached to the appellate forum to redress their grievances. However, the appeal filed by original plaintiff Wazirabee vide Regular Civil Appeal No. 111 of

1990 was dismissed whereas the proceeding of appeal filed on behalf of complainant vide Regular Civil Appeal No. 112 of 1990 came to be admitted the interim relief to maintain *status-quo* was granted in the proceeding of appeal. According to complainant, in the meanwhile accused in furtherance of their common intention committed mischief of forgery and by deleting the name of complainant from revenue record being cultivator of the contentious suit lands, caused the entry as "dispute" (Takrar) in 7/12 extract. Therefore, complainant preferred the present complaint. All these facts are not put into controversy of both sides.

9. In order to bring home guilt of the accused, complainant stepped into the witness box and examined herself on oath at Exhibit-73. She has also adduced evidence of her husband – Mohammad Hussain Mohammad Ibrahim Shaikh at Exhibit-88 to fortify her contention. Now, it is open for the High Court on an appeal against acquittal to review entire evidence and to come to it's own conclusion keeping in mind well established principle of presumption of innocence of the accused. The intense scrutiny of entire evidence of complainant and her husband adduced on record reflects that there was no application filed on behalf of rest of the accused to the concerned Talathi i.e. accused No. 4 Shivaji Babhale for the alleged entry of "dispute" (Takrar) in cultivation column of 7/12 extract of contentious suit lands. However, no any document pertains to revenue record allegedly fake or fabricated on behalf of accused is produced on record for appreciation. In view of nature of subject-matter, admittedly, the dispute was pertains to the mutation entry as "dispute"

(Takrar) taken in the revenue record by the concerned village Talathi for the year 1991-1992.

10. At this juncture, it is worth to mention that the section 148 of the Maharashtra Land Revenue Code mandates to maintain record of right in every village with specific particulars as described in it. Therefore, it is incumbent on the part of concerned village Talathi to maintain the record of rights of the contentious suit land. As referred supra, there were litigations going on in between the family members of the complainant for partition and possession of the contentious suit lands. The circumstance on record demonstrates that the interim relief of status-quo granted by District Court was not brought to the notice of concerned village Talathi. In the year 1991-1992 considering the court litigations, the concerned Talathi took the entry as "dispute" (Takrar) in the cultivation column of 7/12 extract of suit land. Obviously, the mutation entry taken in the 7/12 extract would not create any legal right in favour of complainant nor any other person concerned to the suit properties. The Hon'ble Apex Court in catena of cases time and again elucidated that the revenue record is not a document of title and cannot confer any legal right whatsoever but they are mere revenue entries meant for fiscal purpose.

11. In the background of court litigation, in case of any mutation in the form of "dispute" (Takrar) in cultivation column is taken by the concerned Talathi in revenue record, it does not mean that the impugned entry/mutation was fraudulent or taken dishonestly with intent to cause loss and damage to the complainant. As referred

supra, it has brought on record that there was no intimation of interim relief granted in favour of complaint to concerned village Talathi i.e. accused No. 4 Shivaji Babhale. Hence, making a false document without any intention referred to under section 463 of the IPC would not constitute an offence. The law prescribes that unless there is an element of fraud, the making of a false document does not amount to forgery. In the instant case, it is hard to believe that the concerned Talathi has played mischief with fraudulent intention by taking entry in the revenue record.

12. Moreover, the act of mutation entry as "dispute" (Takrar) in the cultivation column of 7/12 extract would be an action under the Maharashtra Land Revenue Code. In case, the complainant has any grievance in respect of the entry of "dispute" (Takrar) in revenue record, the alternate remedy was available to her to redress grievances. The nature of allegations demonstrates that the alleged act would give rise to the civil dispute and not dispute of criminal in nature. In such circumstances, it would be hazardous to fasten guilt on the respondents - accused for the charges levelled against them.

13. In addition to aforesaid circumstances, there is no doubt that the concerned Talathi i.e. respondent No. 4-Shivaji Babhale, took the entry in the cultivation column as "dispute" (Takrar), while discharging his official duty. The act to maintain revenue record as envisaged under section 148 of the Maharashtra Land Revenue Code, was so integrally connected with duties to be followed by the concerned village Talathi. Therefore, the prosecution sanction as required under section 197 of

the Cr.P.C. is essential in this case. It cannot be said that the alleged act was committed by the concerned Talathi in his private capacity. The complainant brought on record that after alleged entry in cultivation column of 7/12 extract as "dispute" (Takrar) he approached to the higher revenue authority. There was departmental enquiry initiated against concerned Talathi and he was held guilty for the same. It is evident from these facts that the alleged act of forgery by taking fake entry in 7/12 extract was committed by the concerned Talathi during the course of his official duty. Hence, sanction to prosecute the concerned Talathi is necessary in this case. In absence of such prosecution sanction the concerned Trial Court has no jurisdiction to proceed further against the accused.

14. The judicial precedent relied on behalf of appellant in Manohar Nath Kaul's case referred (*supra*) would not advance to the case of complainant. The textual facts of the aforesaid judicial precedent and quality of evidence are totally distinguishable and not akin to the facts and circumstances of the present case. In the aforesaid Manohar Nath Kaul's case, the accused was Regional Officer in the Directorate of Field Publicity of the Government of India. He had submitted the bills including the air fare and received the payment for the same. He had obtained the air tickets in lieu of exchange orders and same was debitable to the account of the Directorate. As per rules the appellant/accused was required to exclude the same from the bills for travelling allowance. But the accused committed mischief and availed the monetary benefits by fraudulent means. In the matter in hand, the accused i.e. the concerned Talathi while discharging his office duty took

the disputed entry in the 7/12 extract to maintain the revenue record as per provisions of Maharashtra Land Revenue Code. Therefore, umbrella of protection under section 197 of Cr.P.C. is very well available to accused No. 4 for any sort of criminal action as alleged by complainant. Undisputedly, he took the alleged entry while acting or purporting to act in discharge of his official duty.

15. In view of aforesaid discussion, there is no merit in the appeal. The evidence on record is not sufficient to make out the alleged offence against respondents-accused. The learned trial Court appreciated the facts and circumstances of the matter in its proper perspective. The view taken by learned trial Court is possible and plausible view to be taken on the basis of evidence available on record. There is no perversity appeared in the conclusion of acquittal drawn by the learned trial Court. There are no good ground available to warrant any interference in it. There is no error or infirmity in the findings of acquittal expressed by learned trial Judge. Therefore, no any interference is warranted at the behest of appellant. Hence, the appeal deserves to be dismissed. In sequel, the appeal stands dismissed. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

MTK.
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