

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1152 OF 2014

Sahebrav Tulshiram Debade,
Age : 55 years, Occu. Service (Teacher),
R/o Hanuman Gadh, Nanded.

...Petitioner

Versus

1] The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.

2] Police Inspector,
Police Station, Airport, Nanded,
Tq. & Dist. Nanded.

3] Mohan Punjaji Shinde,
Age : 27 years, Occu. : Business,
R/o Ganeshwadi, Akola Road,
Hingoli, Tq. & Dist. Hingoli.

...Respondents

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Mr. K. D. Jadhav and Mr. A. D. Ostwal, Advocates for
Petitioner.

Mr. S. J. Salgare, A. P. P. for Respondent No. 1 &
2.

Mr. S. S. Londhe, Advocate for Respondent No. 3.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 24-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Present petition has been filed by the accused persons invoking the powers of this Court under Article 226 of Constitution of India and inherent powers of this Court under Section 482 of Cr. P. C. for quashing the registration of F. I. R. vide C. R. No. 26 of 2013 with Airport Police Station, Nanded, pursuant to that charge-sheet No. 57 of 2014 filed before learned J. M. F. C., Nanded bearing R. C. C. No. 435 of 2014 for the offences punishable under Sections 420, 447, 467, 468, 471 read with 34 of I. P. C.

03. The petitioner has contended that he is a Teacher in primary school. An offence came to be lodged against him upon the report given by present respondent No. 3. It was stated in the F. I. R. that respondent No. 3 had purchased plot Nos. 19, 20 and 46 situated at Asdullabad, Vishwanath Nagar, Tq. & Dist. Nanded vide sale deed dated 13.4.2012 from Shrikant Patil Hangargekar (GPA holder). When respondent No. 3 went to the plots on 17.2.2013 he found some construction material, teen shed. On the enquiry he came to know that the material belongs

to the present petitioner. He asked the petitioner to remove the same. However, the petitioner behaved arrogantly with him and gave threats. It is also alleged in the said F. I. R. that present petitioner has forged documents in respect of plot Nos. 19, 20 and 46. Half portion of plot No. 19 is stated to be given to one Anusuyabai Dasare and another half to one Panchfulabai Pingarwad and plot No. 20 has been given to Suryavanshi and in plot No. 46 he has erected teen shed. By forging those documents the petitioner has encroached upon the same.

04. The petitioner says that he is in fact the owner and possessor of CTS No. 9689 situated at Vishwanathnagar, Asdullabad, Tq. & Dist. Nanded. It is his ancestral property. He intended to develop the said property and therefore, demarcated, got the layout sanctioned and he was selling the plots. He had executed a general power of attorney in favour of Shrikant Patil Hangargekar to deal with the plots owned by him. However, his power of attorney holder was not performing well. He defrauded and misappropriated the amount. Therefore, the petitioner canceled the said power of attorney on 11.11.2011. The said document was executed between him and the power of attorney holder and it is a registered document. Since

the power of attorney was revoked the petitioner had given a public notice also so that public should abstain from transacting with Shrikant Hangargekar. The said GPA holder Shrikant Hangargekar had no authority to execute alleged sale deed of plot No. 19, 20 and 46 in favour of the informant-present respondent No. 3. The said document has not created any kind of right in favour of informant. Therefore, the F. I. R. lodged against the petitioner and the charge-sheet deserves to be quashed and set aside. In fact, the Police authority ought not to have registered the report and after investigation ought to have come to the conclusion that no offence has been committed by the petitioner. Further, the learned Magistrate failed in taking cognizance of the said offence, in spite of all the said documents on record. He, therefore prayed for quashing the entire proceedings.

05. Heard learned Advocate Mr. Ostwal for petitioner, learned A. P. P. Mr. S. J. Salgare and learned Advocate Mr. S. S. Londhe for respondent No. 3. Perused the copy of the charge-sheet and the Police papers also. All of them have argued in support of their respective contentions.

06. Respondent No. 3 / informant was claiming

ownership on the basis of sale deed dated 13.4.2012. Perusal of the Police papers show that there was a civil Suit bearing R. C. S. No. 693 of 2005 between the present petitioner and said Mr. Shrikant Vishwanath Patil and Rajeshwar Vishwanath Patil. It appears that there was a compromise between the parties and certain plots which were inclusive of the plots in question in this case were decided to be given to said Shrikant Patil by way of registered power of attorney. Important point to be noted is that in the said compromise deed it is absolutely not mentioned that any consideration was paid by the defendants i.e. Hangargekars to the plaintiff. It was only by virtue of power of attorney. It is stated that the rights were given to sell. The said power of attorney was then appears to be executed on 16.12.2005. It has been specifically mentioned that the present petitioner has given authority to Shrikant Hangargekar to enter into sale deed in respect of those plots. However, further it appears that on 11.11.2011 the said power of attorney came to be canceled. It is a registered document and Shrikant is party to that document. There is no specific mention of plot No. 19 and 20 in the cancellation document. However, there is specific mention of plot No. 46. Perusal of the sale deed executed by said Shrikant in

favour of informant would show that it is executed on 13.4.2012. That means after the cancellation of the power of attorney, though, it is specifically stated in the sale deed that it has been executed by virtue of said power of attorney only.

07. Learned Advocate appearing for the petitioner relied on the decision in **Suraj Lamp and Industries Private Limited V/s The State of Haryana and Anr., (2012) 1 Supreme Court Cases 656**) wherein it has been held that, "A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the granter authorizes the grantee to do the acts specified therein, on behalf of granter, which when executed will be binding on the granter as if done by him. It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee".

08. Thus, it is to be noted that the informant is claiming interest or title by virtue of the sale deed which was executed by said Shrikant Patil Hangargekar on the basis of power of attorney by virtue of sale deed

dated 13.4.2012. However, by 11.11.2011 the said power of attorney was already canceled. The question is whether informant could have got any title or interest over the disputed property. It appears that the dispute between the parties is civil in nature and therefore, the case is made out to exercise the discretion in favour of the petitioner to quash and set aside the entire proceedings. There was no direct dealing between informant and applicant so as to attract offence of cheating. No case is made out for taking any action under criminal provisions. It would be a futile exercise to ask him to stand the trial with such kind of facts. Therefore, inherent powers are required to be exercised in this case.

09. Hence, following order;

ORDER

(i)The petition is allowed.

(ii)Relief is granted in terms of prayer clause
"B".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-