

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 798 OF 2013

Babruwan s/o Dhondiba Kasabe,
Age: 57 years, Occ. Service as Circle Officer,
R/o : Moha, Tq. Kallam, Dist. Osmanabad.

... **PETITIONER**
(Orig. Accused No.3)

VERSUS

1. The State of Maharashtra,
Through the Police Officer,
Paranda Police Station, Paranda,
Tq. Paranda, Dist. Osmanabad.
2. Ramdas s/o Anna Pawar,
Age: 32 years, Occu.: Business,
R/o : Wangi (Kd), Tq. Bhoom,
Dist. Osmanabad.

... **RESPONDENTS**

WITH

CRIMINAL APPLICATION NO. 5594 OF 2013

IN

CRIMINAL WRIT PETITION NO. 798 OF 2013

Babruwan s/o Dhondiba Kasabe,
Age: 57 years, Occ. Service as Circle Officer,
R/o : Moha, Tq. Kallam, Dist. Osmanabad.

... **APPLICANT**
(Orig. Accused No.3)

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Through the Police Officer,
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2. Ramdas s/o Anna Pawar,
Age: 32 years, Occu.: Business,
R/o : Wangi (Kd), Tq. Bhoom,
Dist. Osmanabad.

3. The Collector,
Osmanabad, Dist. Osmanabad.

... **RESPONDENTS**

...

Mr. N. V. Gaware, Advocate for Petitioner / Applicant.

Mr. R. V. Dasalkar, APP for Respondent / State.

Mr. K. R. Doke, Advocate for Respondent No.2.

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

DATE : 31st October, 2018.

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

. The petition is filed for relief of quashing of FIR No.116 of 2013, registered with Paranda Police Station, Taluka Paranda, District Osmanabad, for the offences punishable under Sections 166, 167, 465, 467, 471 etc. read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 The present Petitioner was appointed as Talathi, but in February 2009, he was working as Circle Officer of Washi. In July

2012, he came to be posted at Mankeshwar Mandal (Circle, Tahsil Bhoom, District Osmanabad) as Circle Officer.

4 FIR is given by Respondent No.2 against the present Petitioner and others and allegations are made that the first informant had purchased land Gat No.314 admeasuring 1 Hectare 16 Ares alongwith well situated in the land and electric motor installed on the well from Sharad Kolhe under registered sale-deed dated 13th September, 2011 and in respect of that land, false record is created by the present Petitioner. Allegations are made that even when application was moved for mutation and mutation No.1166 was made in favour of the first informant, but after making of complaint in respect of the mutation by one Pandurang Masalkar, this mutation was cancelled and new mutation was made in favour of said Masalkar bearing mutation No.1231. It is contended that when there was no registered document of exchange between Pandurang Masalkar and Sharad Kolhe in respect of land Gat No.314, this land is shown to be given under exchange to Masalkar and the land bearing Gat No.312 is shown to be given to Kolhe. It is contended that when such mutation was refused in the past, Circle Officer could not have

sanctioned such mutation.

5 Today, as per the instructions given by this Court, a copy of sale-deed dated 13th September, 2011 executed in favour of first informant by Sharad Kolhe came to be produced. It shows that Sharad was owner of land Gat No.314 and from that Gat number, land was sold to the first informant. Admittedly, in 7/12 extract also, there was entry of the name of Sharad Kolhe. There is such record produced. It is the contention of the Petitioner that there was exchange of lands between the aforesaid two persons viz Kolhe and Masalkar and as that was done in the past, such mutation was sanctioned. This submission is not at all acceptable. As per the provisions of the Transfer of Properties Act, document ought to have been executed by making payment of stamp duty and then document ought to have been registered. Unless such transaction was there, title could not have been transferred in favour of main Accused, Masalkar. It appears that in the past, such attempt was made but the officer at that time had refused to recognize such exchange. Further, when there is registered sale-deed in favour of first informant of aforesaid nature, the authority ought to have been gone with

presumption that the title was transferred by Kolhe in favour of first informant. It can be said that mischievously mutation was made in favour of main Accused when it was not possible to make such mutation. In view of these circumstances, this Court holds that loss is caused to the first informant due to action of the Petitioner and he had no such jurisdiction. Thus, it cannot be presumed that he acted within the powers and so, this Court holds that no relief can be granted to the Petitioner. In the result, the following order is passed:

ORDER

- I. The petition stands dismissed.
- II. Interim relief, if any, is vacated.
- III. Rule is discharged.
- IV. Pending application stands disposed of.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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