

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

Criminal Application No. 06344 of 2016

District : Beed

Jitendra s/o. Satayawan Potbhare,
Age : 45 years,
Occupation : Service,
Gramsevak, Grampanchayat,
Jogaiwadi, Taluka Ambajogai,
District Beed.

.. Applicant.

versus

1. The State of Maharashtra,
Through Police Station,
Ambajogai, Urban & Rural.
2. Balasaheb s/o. Mahadu Ovhal
Age : 41 years,
Occupation : Teacher,
R/o. Naigaon,
Taluka Kalamb,
District Osmanabad.

.. Non-applicants
(No.02 -
Original
complainant)

- ③ Chunnilal s/o. Dhansingh Patil,
Age : 45 years,
Occupation : Chairman,
Radha Sahkari Grahanirman
Sanstha, R/o. Jogaiwadi,
Taluka Ambajogai, Dist. Beed.
- ④ Sahebrao s/o. Bhika Patil,
Age : 47 years,
Occupation : Contractor,
R/o. Survey No.25,
Plot No.6/10, Peth Road,
Bhagyalaxmi Apartment,
Mehardham, Nashik,
Taluka & Dist. Nashik.

.. Contd.

5. Rahul s/o. Yogiraj Patil,
Age : 30 years,
Occupation : Business,
R/o. Before Bafna Jewelers,
Rajiv Gandhi Bhawan,
3rd Floor, Nashik,
Taluka & Dist. Nashik.
6. Riyaz s/o. Abbasbhai Tamboli,
Age : 37 years,
Occupation : Service,
R/o. Prashant Nagar,
Ambajogai, Taluka Ambajogai,
District Beed.
7. Shukriya w/o. Malik Tamboli,
Age : 33 years,
Occupation : Service,
R/o. Prashant Nagar,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
8. Bibishan s/o. Jivanrao
Somwanshi,
Age : 40 years,
Occupation : Service,
R/o. Dhanura,
Taluka Ambajogai,
Dist. Beed.
9. P.L. Gangthade,
Age : 48 years,
Occupation : Service,
Assistant Registrar,
Ambajogai,
Now R/o. Latur,
Taluka & Dist. Latur.
10. Mr. G.K. Pardeshi,
Age : 50 years,
Occupation : Service,
Assistant Registrar,
Co-operative Society,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.

.. Contd.

11. Nilesh s/o. Manohar Jadhav, } .. Non-applicant
Age : 30 years, } nos.03 to 11
Occupation : Business, } deleted.
R/o. Jalgaon,
Taluka & Dist. Jalgaon.

.....

Mr. G.D. Kale, Advocate, holding for
Mr. Mahadeo V. Nagargoje, Advocate, for the
applicant.

Mr. A.A. Jagatkar, Additional Public Prosecutor,
for non-applicant no.01.

Mr. Suhas B. Ghute, Advocate, for non-applicant
no.02.

Non-applicant nos.03 to 11 deleted as per
court's order dated 13.02.2017.

.....

With

Criminal Application No. 06345 of 2016

District : Beed

Jitendra s/o. Satayawan Potbhare, }
Age : 45 years, }
Occupation : Service, } .. Applicant.
Gramsevak, Grampanchayat,
Jogaiwadi, Taluka Ambajogai,
District Beed.

versus

1. The State of Maharashtra,
Through Police Station,
Ambajogai, Urban & Rural.

... Contd.

2. Atmaram s/o. Manik Bansode,
Age : 40 years,
Occupation : Teacher,
R/o. Kendre Colony, Behind
New Santosh Palace,
Aadnak Niwas, Ambajogai,
Taluka Ambajogai,
Dist. Beed.

.. Non-applicants.
(No.02 -
Original
complainant)

③. Chunnilal s/o. Dhansingh Patil,
Age : 45 years,
Occupation : Chairman,
Radha Sahkari Grahaniirman
Sanstha, R/o. Jogaiwadi,
Taluka Ambajogai, Dist. Beed.

④. Sahebrao s/o. Bhika Patil,
Age : 47 years,
Occupation : Contractor,
R/o. Survey No.25,
Plot No.6/10, Peth Road,
Bhagyalaxmi Apartment,
Mehardham, Nashik,
Taluka & Dist. Nashik.

⑤. Rahul s/o. Yogiraj Patil,
Age : 30 years,
Occupation : Business,
R/o. Before Bafna Jewelers,
Rajiv Gandhi Bhawan,
3rd Floor, Nashik,
Taluka & Dist. Nashik.

⑥. Vrashali d/o. Goroba Acharya
(Saw. Vrashali w/o. Balasaheb
Hirve, Age : 35 years,
Occupation : Teacher,
R/o. Santa Nagar,
Kej, now residence at
Z.P. Primary School,
Chandansawargaon,
Taluka Kej, Dist. Beed.

... Contd.

7. Laxman s/o. Tryambak Mantre,
Age : 36 years,
Occupation : Service,
R/o. Radha Nagari, Jogaiwadi,
Taluka Ambajogai, Dist. Beed.

8. Shalini w/o. Nagnath Jogdand,
Age : 37 years,
Occupation : Service,
R/o. Radha Nagari, Jogaiwadi,
Taluka Ambajogai, Dist. Beed.

9. P.L. Gangthade,
Age : 48 years,
Occupation : Service,
Assistant Registrar,
Ambajogai,
Now R/o. Latur,
Taluka & Dist. Latur.

10. G.K. Pardeshi,
Age : 50 years,
Occupation : Service,
Assistant Registrar,
Co-operative Societies,
Ambajogai, Taluka Ambajogai,
Dist. Beed.

11. Nilesh s/o. Manohar Jadhav,
Age : 30 years,
Occupation : Business,
R/o. Jalgaon,
Taluka & Dist. Jalgaon.

.. Non-applicant
nos.03 to 11
deleted.

.....

*Mr. G.D. Kale, Advocate, holding for
Mr. Mahadeo V. Nagargoje, Advocate, for the
applicant.*

*Mr. A.A. Jagatkar, Additional Public Prosecutor,
for non-applicant no.01.*

*Mr. Suhas B. Ghute, Advocate, for non-applicant
no.02.*

Non-applicant nos.03 to 11 deleted as per
court's order dated 13.02.2017.

.....

With

Criminal Application No. 06346 of 2016

District : Beed

Jitendra s/o. Satayawan Potbhare,
Age : 45 years,
Occupation : Service,
Gramsevak, Grampanchayat,
Jogaiwadi, Taluka Ambajogai,
District Beed.

.. Applicant.

versus

1. The State of Maharashtra,
Through Police Station,
Ambajogai, Urban & Rural.
2. Rajaram s/o. Baburao Todkar
Age : 42 years,
Occupation : Teacher,
R/o. Mouje Patoda (Mamdapur),
Taluka Ambajogai,
Dist. Beed.

.. Non-applicants
(No.02 -
Original
complainant)

- ③ Chunnilal s/o. Dhansingh Patil,
Age : 45 years,
Occupation : Chairman,
Radha Sahkari Grahannirman
Sanstha, R/o. Jogaiwadi,
Taluka Ambajogai, Dist. Beed.

... Contd.

4. Sahebrao s/o. Bhika Patil,
Age : 47 years,
Occupation : Contractor,
R/o. Survey No.25,
Plot No.6/10, Peth Road,
Bhagyalaxmi Apartment,
Mehardham, Nashik,
Taluka & Dist. Nashik.
5. Rahul s/o. Yogiraj Patil,
Age : 30 years,
Occupation : Business,
R/o. Before Bafna Jewelers,
Rajiv Gandhi Bhawan,
3rd Floor, Nashik,
Taluka & Dist. Nashik.
6. Bhairu s/o. Vishwanath
Singare,
Age : 31 years,
Occupation : Business,
R/o. Pratibha Nagar, Dharur,
Taluka Dharur, Dist. Beed.
7. Pravin s/o. Dhondiram Kople,
Age : 34 years,
Occupation : Business,
R/o. Housing Society,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
8. Javedkha s/o. Sharipkha
Pathan,
Age : 26 years,
Occupation : Business,
R/o. Azad Nagar, Resode,
Taluka Resode,
Dist. Washim.
9. P.L. Gangthade,
Age : 48 years,
Occupation : Service,
Assistant Registrar,
Ambajogai,
Now R/o. Latur,
Taluka & Dist. Latur.

... Contd.

10. G.K. Pardeshi,
Age : 50 years,
Occupation : Service,
Assistant Registrar,
Co-operative Societies,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
11. Nilesh s/o. Manohar Jadhav,
Age : 30 years,
Occupation : Business,
R/o. Jalgaon,
Taluka & Dist. Jalgaon.
- .. Non-applicant
nos.03 to 11
deleted.

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*Mr. G.D. Kale, Advocate, holding for
Mr. Mahadeo V. Nagargoje, Advocate, for the
applicant.*

*Mr. A.A. Jagatkar, Additional Public Prosecutor,
for non-applicant no.01.*

*Mr. Suhas B. Ghute, Advocate, for non-applicant
no.02.*

*Non-applicant nos.03 to 11 deleted as per
court's order dated 13.02.2017.*

.....

With

Criminal Application No. 06347 of 2016

District : Beed

- Jitendra s/o. Satayawan Potbhare,
Age : 45 years,
Occupation : Service,
Gramsevak, Grampanchayat,
Jogaiwadi, Taluka Ambajogai,
District Beed.
- .. Applicant.

versus

1. The State of Maharashtra,
Through Police Station,
Ambajogai, Urban & Rural.

2. Balasaheb s/o. Sahebrao
Shinde,
Age 47 years,
R/o. Apegaon,
Taluka Ambajogai,
Dist. Beed.

.. Non-applicants.
(No.02 -
Original
complainant)

③. Chunnilal s/o. Dhansingh Patil,
Age : 45 years,
Occupation : Chairman,
Radha Sahkari Grahannirman
Sanstha, R/o. Jogaiwadi,
Taluka Ambajogai, Dist. Beed.

④. Sahebrao s/o. Bhika Patil,
Age : 47 years,
Occupation : Contractor,
R/o. Survey No.25,
Plot No.6/10, Peth Road,
Bhagyalaxmi Apartment,
Mehardham, Nashik,
Taluka & Dist. Nashik.

⑤. Rahul s/o. Yogiraj Patil,
Age : 30 years,
Occupation : Business,
R/o. Before Bafna Jewelers,
Rajiv Gandhi Bhawan,
3rd Floor, Nashik,
Taluka & Dist. Nashik.

⑥. Shivaji s/o. Ganpatrao
Badade,
Age : 50 years,
Occupation : Business,
R/o. Maligalli, Latur,
Taluka & Dist. Latur.

... Contd.

7. Deepak s/o. Dnyanoba Bidgar,
Age : 24 years,
Occupation : Education,
R/o. Morphali,
Taluka Dharur,
Dist. Beed.
8. Sayyed Rashid s/o. Sayyed Abbas,
Age : 50 years,
Occupation : Contractor,
R/o. Folvars Quarter,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
9. Pravin s/o. Dhondiram Kople,
Age : 34 years,
Occupation : Business,
R/o. Housing Society,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
10. Jawedkha s/o. Sharifkha Pathan,
Age : 26 years,
Occupation : Business,
R/o. Azadnagar, Resode,
Taluka Resode,
Dist. Washim.
11. Rahul s/o. Yogiraj Patil,
Age : 32 years,
Occupation : Agriculture,
R/o. Kalali,
Taluka Amalner,
Dist. Jalgaon.
12. P.L. Gangthade,
Age : 48 years,
Occupation : Service,
Assistant Registrar,
Ambajogai,
Now R/o. Latur,
Taluka & Dist. Latur.

... Contd.

13. G.K. Pardeshi,
Age : 50 years,
Occupation : Service,
Assistant Registrar,
Co-operative Societies,
Ambajogai,
Taluka Ambajogai,
Dist. Beed.
14. Nilesh s/o. Manohar Jadhav,
Age : 30 years,
Occupation : Business,
R/o. Jalgaon,
Taluka & Dist. Jalgaon.
- .. Non-applicant
nos.03 to 14
deleted.

.....

*Mr. G.D. Kale, Advocate, holding for
Mr. Mahadeo V. Nagargoje, Advocate, for the
applicant.*

*Mr. A.A. Jagatkar, Additional Public Prosecutor,
for non-applicant no.01.*

*Mr. Suhas B. Ghute, Advocate, for non-applicant
no.02.*

*Non-applicant nos.03 to 14 deleted as per
court's order dated 13.02.2017.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30TH JULY 2018

ORAL JUDGMENT :

01. All the applications have been filed by original accused no.07 for quashment of the proceedings against him and also the order of issuance of process against him, initiated at the

behest of non-applicant no.02 herein - original complainants.

02. All the respondent no.02 in all these applications have filed similar complaint against accused persons, including the present applicant, contending that they have committed offences punishable under Sections 166, 167, 192, 420, 421, 463, 464, 468, 471 of the Indian Penal Code and Sections 81 & 82 of the Registration Act, 1908. All the complainants have alleged that the original accused no.01 was the President of one Radhanagari Co-operative Housing Society, Jogaiwadi, Taluka Ambajogai, District Beed. The said Society was registered on 21.12.2006. Accused no.02 is the builder. Accused no.03 is the President of Yogeshwari Housing Society. Accused no.04 is the purchaser. Accused nos.05 and 06 are the witnesses on the sale deed. Accused no.07 is the Gramsevak working with Grampanchayat. Accused nos.08 and 09 are government officers. Accused no.10 is the so called Chairman of Radhanagari Co-operative Housing Society, Jogaiwadi. There were, in all, 27 members in the Society. Object of the Society was to build houses by taking land from the government and make it available to the employees of Government and Zilla Parishad employees. Complainants were granted a plot in the Society. Even loan was sanctioned from the government. The said plot was mortgaged to the government somewhere in 2006 by executing a document.

03. It is contended by all the complainants that though the house and the land was mortgaged to the government and the accused persons had the knowledge that such land cannot be transferred or sold, yet, no entry was taken in the government record by accused nos.07 to 09 in respect of the mortgage deed. It is alleged that all the accused nos.07 to 09 had conspired with accused nos.01 to 06. Accused nos.01 to 06 had executed a sale deed in favour of accused no.04 in respect of the plot / house belonging to the complainant on 05.09.2013, 16.09.2013, 27.12.2013 and 27.09.2013, respectively. According to the complainants, all the accused persons have forged documents and thereby cheated the complainant as well as the government. According to the complainants, they had made complaints from time to time with the Sub-Registrar's office at Ambajogai. However, no action was taken and, therefore, the complaint was filed. Initially, it appears that the complainants had prayed for investigation under Section 156(3) of the Code of Criminal Procedure, 1973.

04. It appears that the learned Magistrate did not take action under Section 156(3) of the Cr.P.C. However, verification was recorded and also the statement of witness who was present was also recorded. Taking into consideration the contents of the complaint and the verification as well as the documents, process has been issued against accused

nos.01 to 10 under Sections 166, 167, 192, 420, 463, 464, 468, 471 of the Indian Penal Code and Sections 81 & 82 of the Registration Act, 1908. However, the complaint has been dismissed as regards Section 421 of the IPC.

05. The applicant has submitted that he is the Gramsevak, that means, a government employee and the complainants have stated that he has not done his official duty. Under such circumstance, when the complainants intend to say that the government employee has committed offence, then the prior sanction ought to have been obtained. The learned Magistrate did not consider that the sanction has not been obtained and ought to have refrained itself from taking cognizance of the offence against the applicant. The second point that has been vehemently argued is that he was not serving as Gramsevak when the alleged mortgage deed was executed. As per the certificate issued by Zilla Parishad, Beed, dated 19.06.2018, one Shri Vyankat Gangadhar Salunke was serving as Gramsevak, Grampanchayat office, Jogaiwadi, between 2005-06. Thereafter, one Gorakhnath Mallikarjun Dalve was serving as Gramsevak of the same Grampanchayat between 2008-09 to 2009-10. Thereafter, Block Development Officer, Panchayat Samiti, Ambajogai, has given a certificate on 21.06.2018, stating that the present applicant was serving as Gramsevak with the said Grampanchayat office from 12.11.2012. Therefore, at the time of

alleged offence, he was not the Gramsevak. Therefore, proceedings against him are not maintainable.

06. Per contra, it has been argued on behalf of the original complainant, that the learned Magistrate has properly considered the contents of the complaint and the verification as well as the evidence under Section 200 of the Cr.P.C. before issued process against the present applicant. It was specifically alleged that though it was the duty of the Gramsevak to take entry in the Grampanchayat record in respect of the mortgage deed, which was, in fact, in favour of the government, no such entry has been taken. This has been done intentionally. Taking disadvantage of the said fact, a sale deed came to be executed on the respective dates in the complaint. Therefore, not taking an entry or preparing false documents cannot be the part of the job of any government employee and, therefore, prior sanction was not necessary. The order of issuing process has been passed after application of mind and, therefore, it should not be set aside.

07. The contents of the complaint would disclose that the mortgage deed was executed on 02.06.2006 and, therefore, if it is to be interpreted even at this *prima facie* stage, it can be said that from the day of execution of mortgage deed, the cause of action started for getting the mutation done in the

government record on the basis of the said mortgage deed. It appears that till the date of filing complaint, the complainant has not approached the government office on his own to get the name mutated in the government record. No doubt, it is absolutely not necessary for the purchaser to approach the government offices, after the registered document is entered, to go in the office and then apply for mutation to be made in his name. As per the rules, copy of such registration instrument would go to the relevant government offices and those offices should record the names or take entry on the basis of such document in the registers which are maintained by those officers. However, taking into consideration facts of the case, when the mortgage deed was got executed in 2006, the cause of action for getting the mutation done on the basis of mortgage deed started on the date of execution of the document. Admittedly, the present applicant was not the officer working with the Grampanchayat on that day. He came in picture in 2012. Under such circumstance, we cannot without any further *prima facie* evidence attribute common intention with the other accused persons.

08. The contents of the complaint would also make it clear that which documents are stated to have been forged has not been stated. If it is the sale deed that was got executed in favour of accused no.04, then present applicant is admittedly not a

party to that document. Further evidence has not come that he was present at the time of executing the said document in 2013. Role of the present applicant is also not further clarified. Therefore, on the basis of vague allegations, other Sections such as, Sections 420, 463, 464, 468 and 471 of the IPC cannot be attracted in respect of the present applicant.

09. As regards, not taking entry, though under law obliged to take it, it can be said to be the part of the duty of the applicant to take entry. It was the integral part of his job and, therefore, for that purpose, sanction to prosecute was the point involved and, therefore, the learned Magistrate ought to have referred that point before issuing process against the present applicant. The impugned order is totally silent on that point. In other words, it can be said that without considering the point of sanction, the learned Magistrate was estopped from taking cognizance of the alleged offence against the present applicant. Perusal of the impugned order shows that there was absolutely no application of mind on that point by the learned Magistrate and, therefore, such order cannot be allowed to be sustained.

10. As aforesaid, in view of the certificate dated 21.06.2018, the present applicant started his work as Gramsevak since 12.11.2012. The disputed document is stated to be executed in 2013. Therefore, only apart from the allegations and

supporting statements made in the verification, it cannot be stated that there was any kind of negligence on the part of the present applicant. It is stated in the verification, that the present applicant had the knowledge about mortgage with the government, still he has entered the name of accused no.04 on the basis of sale deed in the P.T.R. There was no *prima facie* evidence to show that the accused no.07 i.e. present applicant had the knowledge about the mortgage deed which was executed way back in 2006 when the applicant was not serving at the said post. Therefore, it would be futile exercise to ask the applicant to face the trial and, therefore, in view of the parameters laid down by the Hon'ble Apex Court, in the case of *State of Haryana & others Vs. Ch. Bhajan Lal & others [AIR 1992 SC 604]*, grounds are made to exercise the inherent powers of this Court under Section 482 of the Cr.P.C., for quashing the complaints against the applicant.

11. Hence, I proceed to pass the following order:-

(a) The applications are hereby allowed.

(b) The impugned complaints filed by respective non-applicants no.02 herein on 17.03.2016 and the proceedings consequential thereto, i.e. R.C.C. No. 189 of 2016, R.C.C. No. 187 of 2016, R.C.C. No. 190

of 2016 and R.C.C. No. 188 of 2016, pending before Judicial Magistrate (First Class) [Court No.01], Ambajogai, District Beed, as well as orders passed by the learned Magistrate on 21.04.2016, below Exhibit 01, to the extent of the present applicant, are hereby quashed and set aside.

(Smt. Vibha Kankanwadi)
JUDGE

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