

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1605 OF 2018

Rajendra s/o. Piraji Bagade
Age 54 years, Occu. Service,
R/o. Plot No. 32, New Sahakar
Nagar, Aurangabad.

....Petitioner.

Versus

1. The State of Maharashtra
(At the instance of Satara
Police Station)
2. Rajaram Chokhaji Pagore,
Age 74 years, Occu. Agril.,
R/o. Nakshatrawadi, Aurangabad.

....Respondents.

Mr. R.S. Deshmukh h/f. Mr. A.K. Bhosale, Advocate for petitioner.
Mr. M.M. Nerlikar, APP for respondent No. 1/State.
Mr. P.S. Paranjape, Advocate for respondent No. 2.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 12/12/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Amendment is to be carried out in respect of quashing of
F.I.R. in prayer clause.
- 2) Rule. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

3) The proceeding is filed for relief of quashing of order made by the learned Special Judge, Aurangabad in Criminal Misc. Application No. 119/2018 by which direction was given to police to make investigation under section 156 (3) of Criminal Procedure Code. During arguments, it was submitted that the F.I.R. registered on the basis of the direction also needs to be quashed and set aside. The proceeding was filed by respondent No. 2 and the crime is registered for the offences punishable under section 3 (1)(iv)(v) corresponding to new section 3 (1)(f)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and also for the offences punishable under sections 465 and 468 of Indian Penal Code.

4) The present petitioner was working as Talathi of Nakshatrawadi, Tahsil and District Aurangabad. Allegations are made against him that he joined hands with other accused and made mutation No. 2734 in respect of land Gat No. 78 of Nakashtrawadi to show that the land of the first informant and his four brothers is transferred. It is contended that this land was given as Inam land and as there was re-grant of the land, there was condition of granting permission of Collector before transfer of land, but that was not done and so, there could not have been transfer of land and mutation could not have been made. It is contended that in

mutation No. 2734 there is mention of letter of Tahsil Office dated 16.1.2012, but the information collected shows that no such letter was issued by Tahsil Office. It is contended that there is mention of Civil Suit No. 887/2008 and decision of suit dated 30.9.2010 in the mutation, but the first informant and his brothers were not party to that suit and so, there was no basis for effecting mutation No. 2734 and by creation of false record against him and his brothers, who belong to scheduled caste, the aforesaid offences are committed.

5) This Court has carefully gone through the revenue record and other record like copies of sale deed, copy of consent deed etc. Copy of sale deed dated 4.6.2014 shows that Vithal Chokhaj Pagore, brother of first informant sold land admeasuring 3 Acre 25 Gunta from aforesaid land Gat No. 78 in favour of M/s. Rushi Diary Private Limited. In this document, first informant Rajaram Pagore and his brother Shantilal and Ashok had signed as consenting parties. The revenue record like 7/12 extract shows that at the relevant time, there was only name of Vithal Chokhaji Pagore in revenue record as the owner of this portion. There is copy of consent deed executed by Sahebrao Pagore, remaining brother of Rajaram to show that he had no objection to that transfer. This document is dated 7.6.2004.

6) A copy of decision in Civil Suit No. 634/2010, which was

filed by Vikas Sahebrao Pagore shows that son of one brother of first informant had filed suit for declaration that aforesaid sale deed dated 4.6.2004 and subsequent sale deeds executed by purchasers of sale deed dated 4.6.2004 are not binding on the plaintiff's share and he had contended that he was entitled to get his share separated. In that suit, the first informant, Vithal the vendor and other two brothers had filed joint written statement. They had contended that though property was Inam land and at the time of sale it was not partitioned, the plaintiff was minor at that time and the land is already sold by the five brothers who were owners of the land and so, the plaintiff is not entitled to get any share in the said property. It was contended by the purchasers that it was a legal transaction and in the sale deed itself it was specifically mentioned that it was made for legal necessity. The Trial Court had framed issue on the point of legality of the sale deed and finding is given that the plaintiff failed to prove that the sale deed was illegal. Finding is given that sale deed was not void and it was binding on the plaintiff. This suit was decided on 12.6.2015. It appears that said plaintiff filed first appeal against the aforesaid decision and the said proceeding is still pending.

7) The applicant has produced copy of order made by Collector under the provisions of Inam Abolition Act, 1958. The said

proceeding was filed by purchaser and the order shows that by imposing penalty, the Collector has regularized the aforesaid transaction. This order was made on 14.6.2016 and there is nothing on the record show that this order was challenged by anybody.

8) It is true that due to aforesaid circumstances, the mutation could have been made only after grant of permission by Collector under the provisions of Inam Abolition Act and the aforesaid record could have been mentioned as basis for the mutation, but instead of mentioning that record as basis, other record was mentioned as basis for mutation. This Court holds that that circumstance cannot create any offence. On the contrary, it can be said that even after selling of entire property from Gat No. 78 which was owned by Vithal and his brothers, they took steps to see that the property was partitioned and it was entered in their name. Copy of such mutation No. 2086 is produced on the record and it was sanctioned on 17.8.2010. It can be said that this record was falsely created and the first informant and his brother had indulged in criminal activity. In view of the aforesaid record and circumstances, this Court holds that the other contentions of the first informant cannot be considered and it will be abuse of process of law if the present applicant is asked to face the trial for aforesaid offences. In the result, the petition is allowed. Relief is granted in

terms of prayer clause 'B' and relief of quashing of FIR is also granted. Rule is made absolute in aforesaid terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/