

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

CRIMINAL WRIT PETITION NO.1603 OF 2017

Sahebrao s/o Kisanrao Kharat **... Petitioner**
Age 61 yers, Occu: Rtd. Navy
Officer, R/o Plot No. 83
Sundar Nagar, Padegaon,
Aurangabad

VERSUS

1. The State of Maharashtra,
Through Police Station,
Badnapur, Tq. Badnapur,
Dist. Jalna.

2. Wamanrao s/o Chokaji Kharat **... Respondents**
Age 79 years, Occu:Pensioner
R/o Pradnya Nagar, Laxmi
Colony, Chawani, Aurangabad.

Mr. S.R. Shirsath h/for Mr. S. N. Pagare, Advocate
for the petitioner,
Mr. G. O. Wattamwar, APP for the State.
Mr. V. B. Salve, Advocate for respondent No.2.

CORAM : K. L. WADANE, J.

DATE : 27th February, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. Heard Mr. S.R. Shirsath the learned counsel for the petitioner, Mr. G. O. Wattamwar, learned APP

for the State and Mr. V. B. Salve, learned counsel for respondent No.2.

3. The petitioner has challenged judgment and order dated 27th October, 2017 passed in Cri. Revision Application No. 43/2017 by the learned Sessions Judge, Jalna and also seeking to quash and set aside the order dated 23rd June, 2014 passed by the learned Judicial Magistrate, F.C. Badnapur below Exh.6 in Misc. Application No. 22/2011 which is now registered as RCC No. 46/2015, directing to issue process against the petitioner.

4. Learned counsel for the petitioner points out that the mutation entries taken in the name of present respondent No.2 were set aside by way of allowing Mutation Entry No.294 and therefore, there was no mutation entry in the name of respondent No.2. The learned counsel further submits that after death of father of the petitioner, another mutation entry bearing No.1259 was taken by the revenue authority. But this material aspect has not been mentioned by the respondent No.2 original complainant in the complaint.

5. According to the learned counsel for the

petitioner, the dispute between the parties is of civil in nature and revenue authority has rightly recorded the name of the present petitioner to the disputed landed property.

6. As against this, it is argued by the learned counsel for the respondent that initially, the matter was referred under section 156 for investigation and the Investigating Officer submitted "B" summary report. However, the learned Judicial Magistrate F.C. has not accepted the said report. The original complainant respondent no.2 has filed protest application, upon which, the complainant was called for verification and his verified statement was recorded on 21.03.2014. The learned counsel appearing for the respondent submits that the learned Magistrate is not debarred from taking cognizance even after filing of report by the police in the nature of "B" summary. The learned counsel further argued that the report submitted by the police authority has not been accepted by the learned Judicial Magistrate F.C. and relying upon the verified statement of the complainant, process is issued against the petitioner.

7. The learned counsel for the petitioner has relied

upon the observations Allahabad High Court in the case of **Ashok & ors.Vs. State of U.P. and ors, reported in 1994 CRI.L.J.2132**, wherein it is observed that the Magistrate has power to take cognizance under section 190(1)(b) on the police report, irrespective of the opinion of the Investigating Officer that prima facie no case is made out, if on perusal of the police papers and statements of witnesses recorded under section 161 Cr.P.C., he is satisfied that there is sufficient material to make out a prima facie case against the accused but straightway he cannot take cognizance on the basis of the protest petition duly supported by the affidavit of the witness, without following the procedure prescribed under Chapter XV for a complaint case.

8. In the present matter, it is not a case of the petitioner that the learned Judicial Magistrate, F.C. has taken cognizance without following due procedure. On the contrary, it is seen from the record that the learned Magistrate has not accepted the "B" Summary report submitted by the Investigating Officer and therefore, he passed an order on 14.02.2013 and thereby called upon the original complainant for

verification and after the verified statement of the complainant being recorded on 21.03.2014, process has been issued against the petitioner. Therefore, even considering the observations of the case cited above on behalf of the petitioner, it is crystal clear that even if contrary report of police against complainant, the complainant can independently make out case to issue process and accordingly, in the present case, the complainant has successfully established that there is sufficient ground to proceed against the petitioner.

9. I have gone through the order passed by the learned Judicial Magistrate F.C. as well as the learned Sessions Judge, I do not find any reason to interfere with the orders in exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution. There is no substance in the criminal writ petition, therefore it is liable to be dismissed and accordingly it is dismissed.

10. Rule discharged. No costs.

(K. L. WADANE, J.)

JPC