

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.1741 OF 2017**

Vasant Bhausahab Deshmukh **... Petitioner**
Age 53 years, Occu: Agri.
R/o Kukada, Taluka Newasa,
District Ahmednagar

VERSUS

1. The State of Maharashtra,
Through Police Station
Officer, Newasa Police Station
District Ahmednagar.

2. Shivaji s/o Deorao Deshmukh
Age 78 years, Occu: Agri.
R/o Kokana Taluka Newasa
District Ahmednagar

... Respondents

Mr. N. V. Gaware, Advocate for the petitioner
Mr. B. A. Shinde, APP for respondent No.1 State
Mr. Z. M. Pathan, Advocate for respondent No.2

CORAM : K. L. WADANE, J.

RESERVED ON : 5th April, 2018

PRONOUNCED ON : 9th April, 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal at the admission stage.

2. Petitioner has challenged the order dated 30.11.2017 passed by the Judicial Magistrate First

Class Newasa below Exh.53 in RTC No. 134 of 2013 and in the alternative, prayed to quash and set aside the private Complaint i.e. RTC No. 134/2013 filed by respondent No.2 before the Judicial Magistrate, First Class, Newasa.

3. Brief facts of the case may be stated as follows:

- (1) The dispute between the petitioner and respondent No.2 revolves round Mutation Entry No. 9869 with regard to heir-ship of deceased Bhausaheb Deshmukh and regarding recording of names of legal heirs of deceased Bhausaheb Deshmukh in the year 1999.
- (2) It is alleged by respondent No.2 in the complaint that when enquiry regarding mutation entry No. 9868 was going on before the Revenue Court, the petitioner preferred a false application-cum-affidavit showing names of only four legal heirs of deceased Bhausaheb Deshmukh, excluding names of three daughters of Bhausaheb Deshmukh, complainant and witness Nos. 1 and 2. According to respondent No.2, forged documents were produced in the proceeding and thereby the petitioner has

committed offence under sections 420, 465, 468 and 471 of the Indian Penal Code.

- (3) On perusal of the record, it appears that deceased Bhaurao Deshmukh was owner of Gat No. 24 admeasuring 8 H 20 R situated at Newasa Khurd. The petitioner has applied for the mutation entry for which respondent No.2 had taken objection. Therefore the case was treated as *Takrar Case* and it was referred to Tahsildar and consequently, Mutation Entry No. 9868 is effected.
- (4) Respondent No.2 presented appeal before the sub Divisional Officer and that proceeding was contested up-to High Court. Subsequently, respondent No.2 filed RCS No. 433/2012 before the Civil Judge Junior Division, Newasa for partition and separate possession and also lodged criminal case bearing RTC No.134/2013 before the JMFC, Newasa.
- (5) After presentation of the complaint, initially, the learned Magistrate has passed order of enquiry under section 202 of the Criminal Procedure Code. After receipt of report of the enquiry from the

concerned officer, the learned Magistrate had issued process against the petitioners for the offence punishable under under sections 420, 465, 468 and 471 I.P.C. vide order dated 06.05.2013. Against the order of issue process, the petitioner filed writ Criminal Application No. 1758/2014 before this court and it was withdrawn to avail alternate remedy. Thereafter, petitioner filed criminal revision along-with application for condonation of delay, which was rejected by the learned Additional Sessions Judge, Newasa. The petitioner thereafter filed application for discharge Exh. 45 in RTC 134/2013, which was subsequently not pressed. Thereafter, petitioner preferred application Exh. 53 for discharge, which came to be rejected by the learned Magistrate on 30.11.2017. The same is the subject matter of the present writ petition.

4. I have heard Mr. N. V. Gaware, learned counsel for the petitioner, Mr. Z. M. Pathan, learned counsel for respondent No.2 and Mr. B. A. Shinde, learned APP for respondent No.1 State.

5. During the course of argument, Mr. Gaware, learned counsel for the petitioner has concentrated his argument on the points, firstly the jurisdiction of this Court under section 482 of Cr.P.C., secondly, dispute between the parties is of civil nature and thirdly, there is express bar created in view of provisions of section 195 Cr.P.C. As against this, Mr. Pathan, learned counsel for respondent No.2 has argued that as per allegations in the complaint, the petitioner has prepared false and fabricated documents i.e. an application-cum-affidavit and it was tendered before the revenue officer for mutating his name to the land Gat No. 24. So, according to the learned counsel for respondent No.2. forgery was committed prior to such document is tendered before the revenue court, therefore, there is no bar created under section 195 Cr.P.C. Learned counsel Mr. Pathan further argued that there is alternative remedy available under the provisions of section 397 Cr.P.C. and therefore this petition cannot be entertained.

6. To consider the aspect, whether there is bar created under section 195 Cr.P.C. or not, Mr. Pathan, the learned counsel for respondent No.2 has relied on

the observations in the case of **Raybhan Hanwanta Bhadnge & others.Vs.State of Maharashtra & Another.** reported in 2009 MLR(Cri)1423, wherein, in para 9, it is observed that:

"9. It would be clear from the aforementioned observations that once a Magistrate takes cognizance and directs issuance of process, it would imply that the magistrate was of the opinion that there were grounds for proceeding further and that it would follow that he was satisfied at the stage of issuing process that the complaint was not groundless. Consequently, unless some material was tendered before him to show that the charge was groundless, it would be impermissible to have him to come to contrary conclusion, merely because an application was made. In this case, it is not shown that any such material was tendered or produced before the Magistrate to enable the Magistrate to come to a contrary conclusion."

7. Mr. Pathan, the learned counsel also relied upon the observations in the case of **K.Vengadachalam Vs.K.C.Palanisamy and others. Reported in 2005 ALL MR(Cri) 3143 (S.C.)**, wherein, in para 3, the Hon'ble Apex Court has observed that protection engrafted u/s. 195(1)(b)(ii) of the Code of Criminal Procedure would be attracted only when the offences enumerated in the

said provision have been committed with respect to a document after it had been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*. The learned counsel further relied on same observation in the case of George Bhaktan Vs. Rabindra Lele & ors, reported in 2014 ALL SCR 3860. Lastly, Mr.Pathan relied upon the observations in the case of **Ramanand S/o Shrikishan Sharma Vs.Kailasnath S/o Ramraj Tripathi & another. Reported in 2007 ALL MR(Cri)169**, wherein, in para 8, it is observed that:

"8. From the above ruling it is clear that if the offence was committed pertaining to document prior to its production in court and when it was not in custody of the court, the bar under section 195(1)(b) (ii) of the Cr.P.C. does not arise and complainant is at liberty to file complaint and take action as per law. In view of this legal position and the facts of the present case, it would be in the interest of justice that both the cases should be heard and disposed of simultaneously to avoid any conflict of decisions."

8. Mr. Pathan, the learned counsel for respondent No.2 further argued that the application filed by the petitioner at Exh.53 for discharge was premature as the evidence of the complainant is yet to be

completed. Therefore, the learned trial Court has rightly rejected the same.

9. To deal with the aspects argued on behalf of both the sides, it is material to mention that inherent jurisdiction of this court under section 482 Cr.P.C. is to prevent abuse of process of law and therefore, if circumstances are brought on record to show such abuse of process, then even after availability of alternate remedy, the petition can be entertained; there is no express bar to exercise jurisdiction under section 482 Cr.P.C.

10. In support of his contention, Mr. Pathan, the learned counsel for respondent No.2 has relied on the judgment delivered by the Apex Court in Civil Appeal No. 1281/2018. As against this, Mr. Gaware, the learned counsel for the petitioner has relied upon the observations in the following case laws:

(1) Prabhu Chawla Vs.State of Rajasthan and Another reported in 2016 DGLS(SC) 934 (Supreme Court):

"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under

Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

(2) Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and Another, reported in 2008 DGLS(SC)1695(Supreme Court):

11. Taking into consideration the facts and circumstances of those cases, the learned Judge has observed in V.K.Jain and Saket Gore (supra) that it would be appropriate for the parties to

file revision application against the order of issuance of process. There is nothing mentioned and/or even observed that there is total bar to file petition under section 482 of Criminal Procedure Code and/or petition under Article 227 of the Constitution of India.

(3) Vijay and Another Vs.State of Maharashtra and Another reported in 2016 DGLS(SC) 1415 :

"9.In view of the above settled law, mere availability of alternative remedy cannot be a ground to dis-entitle the relief under Section 482 Cr.P.C. And apart from this, we feel that the learned Judge without appreciating any of the factual and legal position, in a mechanical way, passed the impugned order,which warrants interference by this Court. Accordingly, the order of the High Court is set aside and the matter is remanded to the High Court for reconsideration in the light of the settled legal position."

(4) G.Sagar Suri & Another Vs. State of U.P. & others reported in 2000 DGLS(SC)201, Supreme Court:

"7 It was submitted by Mr. Lalit, learned counsel for the second respondent, that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge

and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, High Court Cannot exercise its jurisdiction under [Section 482](#) of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors., [1998] 5 SCC 749 and Ashok Chaturvedi & Ors. v. Shitul H. Chanchani & Anr., [1998] 7 SCC 698, wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under [Section 482](#) of the Code or [Article 227](#) of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

11. On perusal of the observations in the above cited ceases, it is crystal clear that insptie of having alternate remedy, this court has jurisdiction to entertain the petition, which is filed under the provisions of Section 482 Cr.P.c.

12. The next question arose about the competency of the complaint instituted by respondent No.2. The place

of offence and date of offence has to be taken into consideration, which is mentioned in the complaint itself. The learned counsel for respondent No.2 has argued that there are no allegations against the petitioner that he has forged documents when it was in the custody of the revenue court i.e. Office of Tahsildar. To know the nature of the allegations in reference to the alleged offence, its dates and places are very material. Therefore, it is necessary to refer the allegation in the complaint itself. In para 4 of the complaint it is alleged that accused Nos. 1,2 and 3 i.e. petitioner and his two brothers have prepared affidavit in the name of petitioner and presented it before the revenue court and on the basis of false affidavit, Mutation Entry No. 9868 was taken.

13. In the title clause, the date and place of offence is also mentioned as 21st December, 2010 and 27th February, 2012 in the office of Tahsildar, Newasa and office of Talathi, Newasa, respectively. The allegations in the complaint that the petitioner has purposefully avoided to show the names of other representatives of deceased Bhausaheb Deshmukh and has only mentioned the name of his four sons in order to

mutate their names in the property left by deceased Bhausahab Deshmukh. Therefore, apparently, it seems that that alleged application-cum-affidavit tendered in the judicial proceedings. Further contents of the application are very material, which reads as under:

"तसेच आरोपी नं. १ ते ३ यांनी सदर बनावट आणि खोटे प्रतिज्ञापत्र महसुल अधिका-यांकडे दाखल करून पब्लीक रेकॉर्डमध्ये आणि रजिस्टर मध्ये देखील खोटी माहिती देवून फोर्जरी केलेली आहे "

14. From the aforesaid denouement, it is crystal clear that respondent NO.2 has alleged that petitioner and his other two brothers have made forgery in respect of the public record and the register maintained by the revenue Court in its custody, for which, the revenue Court or the subordinate officer is supposed to file complaint in respect of alleged forgery. It is necessary to reproduce the relevant provisions of section 195, which reads as follows:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub-

clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

15. On bare perusal of the aforesaid provision, Court is not empowered to take cognizances of the offence when it is alleged to have been committed forgery in respect of the documents produced or given in the evidence in any Court. Herein, in the present case, the allegations are not only that the petitioner had tendered fabricated documents but also further

allegations that the petitioner and his brothers have given false information and thereby forged the public record and register maintained by the office of the Tahsildar. Therefore, clear cut allegations are that the petitioner and his brothers have committed forgery of the documents, which are in the custody of the court. When the petitioner submitted application Exh. 53 for discharge, this material aspect was not canvassed, therefore, the learned Magistrate had not taken into consideration the legal provisions and the allegations against the petitioner with reference to forgery pertaining to the documents in the custody of the court.

16. Mr. Pathan the learned counsel for respondent No.2 has argued that order passed by the learned trial court is legally correct, since the evidence of the respondent is incomplete and after completion of his evidence before charge, the application for discharge can be filed. The application submitted by petitioner was at premature stage and therefore it is rightly rejected. However, in the present case, basically, respondent no.2 is not empowered to file complaint in view of the bar created under the provisions of section

195 Cr.P.C. If the complaint presented by respondent no.2 is not competent in the eye of law, then it cannot be continued and even if it is continued, it will be an abuse of process of law and to prevent such abuse, the Court can very well exercise extra ordinary jurisdiction under section 482 Cr.P.C.

17. In view of the above the complaint submitted by respondent No.2 was without any authority. Respondent No.2 has no locus standi to present the complaint and therefore, the complaint submitted by respondent No.2 is liable to be quashed and set aside.

18. In view of the above, order dated 30.11.2017 passed by the Judicial Magistrate First Class Newasa below Exh.53 in RTC No. 134 of 2013 and proceedings of RTC No. 134/2013 filed by respondent No.2 before the Judicial Magistrate, First Class, Newasa are quashed and set aside.

19. Rule is made absolute accordingly. No costs.

(K. L. WADANE, J.)

JPC