

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

CRIMINAL WRIT PETITION NO. 94 OF 2017

Daga S/o Sakatsinhg Girase
Age:- 60 years, Occu:- Agriculture
R/o Po. Kuve Tq Shirpur Dist Dhule

... PETITIONER
(ORIG. COMPLAINANT)

VERSUS

- 1] Narayan S/o Sakatsing Girase
Age:- 68 Years, Occu:- Agriculture
- 2] Rokadsing @ Bhaiyya Narayansing Girase
Age:- 31 years, Occu:- Agriculture
- 3] Dada S/o Narayansing Girase
Age:- 29 years, Occu:- Agriculture
All R/o Salave Tq. Sindkheda Dist Dhule. **RESPONDENTS**
(ORIG ACCUSED NO 1 TO 3)
- 4] The State of Maharashtra. **... RESPONDENT**

...
Mr. Vikrant P Raje, Advocate for Petitioner.

Mrs. S. T. Kazi, Advocate for Respondent Nos. 1 to 3.

Mr. K. S. Patil, APP for Respondent No.4 / State.

...

CORAM : T. V. NALAWADE, J.

DATE : 25th June, 2019.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The present proceeding is filed for relief of quashing and setting aside the order made by the learned Judicial Magistrate First Class, Sindkheda, District Dhule in Criminal M.A. No.24 of 2016 and also the decision of the Criminal Revision No.33 of 2016, which was pending in the Court of learned Additional Sessions Judge, Dhule. Said proceeding was filed before the learned Judicial Magistrate First Class by the present Petitioner and prayer was made for making order of investigation under Section 156(3) of the Code of Criminal Procedure for investigating the offence committed by present Respondent Nos.1 to 3. It appears that Respondent No.1 is the real brother of Petitioner and Respondent Nos.2 and 3 are sons of Respondent No.1.

3 A copy of said proceeding is on record. It is the contention of Petitioner that the offences punishable under Sections

420, 467, 468, 471, 34 etc. of the Indian Penal Code are committed by the Accused persons. Dispute is in respect of land Gat No.288 situated at Sindkheda. It is the contention of the Petitioner that this land is ancestral property of Petitioner and Respondent No.1 and in revenue record also, there is entry of the names of Petitioner and Respondent No.1 as owners and they are possessing their separate shares. It is contended that he had not taken any loan on the land and he has not given any consent to Respondent No.1 to take loan. It is contended that when he collected 7/12 extract on 9th December, 2015, he realized that Respondent No.1 had taken loan of Rs.1,50,000/- by producing 7/12 extract of Gat No.288. It is contended that after making inquiry, he realized that Respondent No.1 had manipulated 7/12 extract to show that the name of Petitioner was deleted from revenue record to show that only Respondent No.1 was the owner of the property. It is contended that by doing this mischief, the aforesaid offences are committed by Respondent No.1.

4 In support of the aforesaid allegations, there is 7/12 extract showing that the names of both present Petitioner and Respondent No.1 were entered in the revenue record. The area of

the land is shown as 4 Hectare 49 Ares. This document also shows that the name of Daga was circled and Mutation No.94 was shown as mutation under which name of Daga was deleted. This 7/12 extract was delivered on 5th June, 2006 by Talathi. Other 7/12 extract dated 1st February, 2016 shows that the names are still there, but Mutation Nos.94 and 109 are shown and in that record there is a charge shown of Central Bank of India of Rs.1,50,000/-. The names of both Petitioner and Respondent No.1 are there and in cultivation column it is shown that the owner is cultivating the entire land. A copy of mortgage document executed in favour of the bank is on record and it shows that on 16th June, 2006, Respondent No.1 (Narayan) executed the mortgage document in favour of the bank. The photocopy shows that initially there was name of Petitioner (Daga) also, but his name was scored and land was mortgaged for aforesaid loan in the year 2006.

5 The learned Judicial Magistrate First Class has refused to make order of investigation by giving following reasons:

“4) No doubt offence is cognizable, but entire contents of application discloses the offence of

cheating in between applicant and accused to which applicant has a remedy to file the civil suit rather than to file the criminal complaint. Considering the relation between the applicant and accused, nature of offence and available remedy to applicant, I do not found any substance to direct the investigation under section 156(3) of The Code of Criminal Procedure.”

6 The aforesaid record and submissions show that there is clear probability that Respondent No.1 (Narayan) first collected 7/12 extract from Talathi and then circled the name of present Petitioner (Daga) to show that his name was properly deleted and then by using that record, he obtained loan from the bank. The land could not have been mortgaged only by Narayan in view of the aforesaid circumstances, but by creating apparently false record, the land is mortgaged. This is nothing but offence of forgery of Government record and also the offence of cheating. When the learned Judicial Magistrate First Class had formed aforesaid opinion, in ordinary course he ought to have made further order like order of investigation under Section 156(3) of the Code of Criminal Procedure, but such order is not made. Unfortunately, the Sessions Judge observed that

the present Petitioner cannot be called as aggrieved person. This observation is surprising as the land is jointly owned by Petitioner and Respondent No.1 and there are aforesaid circumstances like creating false record and deceiving the bank. Both these offences are cognizable offences and so the learned Additional Sessions Judge could not have observed that the present Petitioner is not an aggrieved party. In view of these circumstances, this Court holds that the learned Judicial Magistrate First Class and the learned Judge of Sessions Court have committed grave error in not making the order of investigation. In view of these circumstances, this Court holds that the orders made by the learned Judicial Magistrate First Class and the learned Additional Sessions Judge cannot sustain in law. However, it needs to be observed that during the investigation care needs to be taken to ascertain as to whether Respondent Nos.2 and 3 (sons of Respondent No.1) had really any party to play in the said transaction as apparently mortgage document was executed by only Respondent No.1. Only after ascertaining the role played by Respondent Nos.2 and 3, action needs to be taken against them and not prior to that. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The orders made by the learned Judicial Magistrate First Class, Sindkheda and the learned Additional Sessions Judge, Dhule are hereby set aside.
- III. The application filed for making investigation under Section 156(3) of the Code of Criminal Procedure is hereby allowed.
- IV. Direction is hereby given to the concerned police station to make investigation as provided under Section 156(3) of the Code of Criminal Procedure.
- V. Rule is made absolute in those terms.

[T. V. NALAWADE, J.]