

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

CRIMINAL APPLICATION NO. 648 OF 2019

- 1) Dattatraya s/o Dhondiraj Sadhu,
Age 71 years, Ccc- Agriculture,
R/o. Sadhu Galli, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 2) Satish s/o Ramchandra Ganjewar,
Age 58 years, Ccc- Business,
R/o. Bhawani Nagar, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 3) Dr. Rajesh s/o Ramrao Gutte,
Age 55 years, Ccc- Medical Practitioner,
R/o. Abhinav Nagar, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 4) Jafar Baig s/o Sikandar Baig,
Age 34 years, Ccc- Business,
R/o. Kotbazar, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 5) Avinash s/o Madhukar Kurude,
Age 39 years, Ccc- Business,
R/o. Bahadurpura, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 6) Keshav s/o Shankarrao Tekale,
Age 42 years, Ccc- Business,
R/o. Shivaji Nagar, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 7) Narhari s/o Bhojuram Bhaganagre,
Age 81 years, Ccc- Business,
R/o. Main Road, Kandhar,
Tq. Kandhar, Dist. Nanded.

- 8) Sk Khayum s/o Sk. Abdul Khadar,
Age 42 years, Ccc- Business,
R/o. Hotaipura, Kandhar,
Tq. Kandhar, Dist. Nanded.

... **APPLICANTS**
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Kandhar Police Station,
Tq. Kandhar, Dist. Nanded.
- 2) Eknath Sitaram Sadhu,
Age 60 years, Ccc- Agri,
R/o. Maharaj Galli, Kandhar,
Tq. Kandhar, Dist. Nanded.

... **RESPONDENTS**

...

Mr. Mrigesh D. Narwadkar, Advocate for Applicants.
Mr. S. B. Yawalkar, APP for Respondent No.1/State.
Mr. Gaurav L. Deshpande, Advocate for Respondent No.2.

...

WITH

CRIMINAL APPLICATION NO. 649 OF 2019

- 1) Dattatraya s/o Dhondiraj Sadhu,
Age 71 years, Ccc- Agriculture,
R/o. Sadhu Galli, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 2) Rajesh s/o Badrinath Jondhale,
Age 47 years, Ccc- Service,
R/o. Phule Nagar, Kandhar,
Tq. Kandhar, Dist. Nanded.

... **APPLICANTS**
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Kandhar Police Station,
Tq. Kandhar, Dist. Nanded.
- 2) Eknath Sitaram Sadhu,
Age 60 years, Ccc- Agri,
R/o. Maharaj Galli, Kandhar,
Tq. Kandhar, Dist. Nanded.

... RESPONDENTS

...

Mr. Mrigesh D. Narwadkar, Advocate for Applicants.
Mr. S. B. Joshi, APP for Respondent No.1/State.
Mr. Gaurav L. Deshpande, Advocate for Respondent No.2.

...

CORAM : **T. V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 10th April, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The first proceeding is filed for relief of quashing of FIR No.315 of 2018, registered with Kandhar Police Station, District Nanded, for the offences punishable under Sections 420, 468, 471,

448, 450 read with 34 of the Indian Penal Code. The second proceeding is filed for relief of quashing of FIR No.314 of 2018 registered with the same police station for the offences punishable under Sections 420, 468 and 471 read with 34 of the Indian Penal Code.

3 Applicant No.1 of the second proceeding is there as Applicant in the first proceeding also.

4 Crime at C.R. No.314 of 2018 is registered on the basis of report given by one Eknath Sadhu. He claims to be *Mathadhipati*, chief of one *Math* by name "*Sadhu Sansthan*" of Kandhar. According to him, Applicant No.1, Dattatraya Sadhu is his real uncle. Rajesh Jondhale, Applicant No.2 of the second proceeding and other Applicants of the first proceedings are tenants in the premises allegedly belonging to the aforesaid *Math* and they are paying rent to Applicant, Dattatraya.

5 It is the contention of the first informant that the properties situated at Kandhar bearing Mutation Nos.2/12, 2/13, 2/14 and 2/15 are belonging to aforesaid *Math* and they were shown in the

assessment record of the local body in the name of *Math* from the year 1955-56. It is contended that in the year 1955-56, the name of Dattatraya Sadhu was not entered in assessment record as occupant of the said property, but somehow Dattatraya got entered his name in assessment record and he is trying to control the *Math* on the basis of these entries.

6 It is contended that on property No.2/13, eight shops were constructed by previous *Mathadhipari*, Dhondiraj Sadhu and from the income of the said shops, which was to be collected by way of rent, maintenance of the *Math* was to be done. It is contended that illegally Dattatraya has given these shops by way of rent and he has collected the rent. It is contended that the first informant is *Mathadhipati*, person entitled to hold the seat as the chief of the said *Math* and previous chief had appointed Dattatraya only to take care of cleanliness of the *Math*. It is contended that Dhondiraj died on 10th January, 1977 and as per the tradition, Sitaram, son of Dhondiram had become the chief of the *Math*, but Sitaram also died on 21st March, 1993 and after the death of Sitaram, the first informant being the eldest issue of Sitaram became the chief of the *Math*.

7 It is contended that by misusing the entry given to Dattatraya by previous *Mathadhipati* to do aforesaid work, Dattatraya got entered his name in the assessment record and he has deceived the *Math* and the first informant. It is contended that after the death of Dhondiraj, the name of Sitaram was to be entered as the chief of the *Math*, but due to some circumstances, his name was not entered till his death and that circumstance is also being used mischievously by Dattatraya. It is contended that Dattatraya was to make payment of light bill, tax etc., but by entering his own name in the assessment record, he has shown that he has been making payment of charges as occupant, person controlling the *Math*. By making such allegations and by contending that FIR given to police station was not accepted, private complaint was filed and in that private complaint, the learned Judicial Magistrate First Class has given direction to make investigation under Section 156(3) of the Code of Criminal Procedure. As the different tenants are involved in the two complaints and orders were made by the Judicial Magistrate First Class, two crimes are registered.

8 The learned counsel for Applicants and the learned counsel for Respondent, first informant took this Court through the record of dispute. The APP produced papers of investigation of both the matters. The learned APP supported the first informant.

9 Copy of plaint of RCS No.2 of 2019 filed by the first informant in the Court of Civil Judge Senior Division, Kandhar is produced on record. In that suit, relief of possession of the properties bearing Mutation Nos.2/13, 2/14 and 2/15, which are part and parcel of Gat No.2 of Kandhar is claimed from Dattatraya and other Applicants of the two proceedings. Surprisingly, the relief of declaration of the right of first informant is not claimed. It is not disputed that Dattatraya has been paying tax of local body and other charges in respect of the premises of *Math* and he has been collecting rent from other Applicants of the two proceedings. With plaint produced, there are receipts of tax paid to Kandhar Nagar Parishad from the year 2002-03 onwards. With the present proceedings, there are more receipts of the local body tax from the year 1997-98. There is a record to show that initially there was the name of Dhondiraj Sadhu and after his name the name of Dattatraya Sadhu came to be

entered and probably that entry was made much after the year 1955. It is not disputed that Dattatraya is also a son of Dhondiraj like father of the first informant was son of Dhondiraj. The learned counsel for first informant wants to rely on the record like *Virasat* of *Math* was given to Sitaram, father of the first informant. The record as to how many sons were there to Dhondiraj and what was the tradition of *Math* need not be gone into in the matter like present one. The fact remains that in the assessment record, after the death of Dhondiraj, the name of Dattatraya came to be entered in assessment record and he is in control of *Math*. In view of these circumstances, it will be appropriate that the Civil Court decides the rights of the parties. Name of Dattatraya was entered in the year 1995, but the suit came to be filed by the first informant in the year 2019 and that is of aforesaid nature. It is clear that the first informant is trying to give different colour to the civil dispute.

10 The learned counsel for Respondent placed reliance on the observations made by the Apex Court in **Criminal Appeal No.255 of 2019**, (*Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra & ors.*) decided on 12th February, 2019. The Apex Court

in that matter observed that if the allegations constitute commission of some offence, it is not desirable to quash the complaint at the threshold. However, it is also made clear that the complaint should spell out the ingredients of criminal offence. In the present matter, there is record of aforesaid nature. There can be one chief of the *Math* and who is entitled to become the chief of the *Math* is the dispute and that dispute can be well decided by the Civil Court. At present, Dattatraya is in control of the things. In view of the facts and circumstances of the present matter, this Court holds that it will be abuse of process of law if the Applicants are made to face the trial of the two cases, if they are filed by police for aforesaid offences. In the result, the following order is passed:

ORDER

- I. Both the applications are allowed.
- II. Relief is granted in terms of prayer clause (B) in both the applications.
- III. Rule is made absolute in those terms.

[MANGESH S. PATIL, J.]

[T. V. NALAWADE, J.]