

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

CRIMINAL WRIT PETITION NO.1569 OF 2018

- 1] Shyamrao S/o Kishanrao Khandelote
Age 41 years, Occ : Service
R/o Talegaon, at present
Venkatesh Nagar, Umri
Tq.Umri. Dist.Nanded.
- 2] Mohan S/o Anandrao Waghmare
Age 36 years, Occ-Labour
R/o Pawadewadi Road,Nanded .. PETITIONERS

VERSUS

The State of Maharashtra
Through its Umri Police Station
Tq. Umri, Dist.Nanded. .. RESPONDENT

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Mr.Mohanish V. Thorat, Advocate for petitioners
Mr.S.P.Deshmukh, APP for respondent State.

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**CORAM : MANGESH S. PATIL,J.
DATE : 08/01/2019**

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. The learned APP waives service for respondent. By consent of both the sides, the matter is heard finally at the stage of admission.

- 2] Informant Ananda Kishanrao Khandelote filed a complaint alleging that the petitioners herein had indulged in forgery and

fabricated a bogus consent letter and got the property mutated in the name of petitioner no.1, who later on sold the property to the petitioner no.2. Thus the mutation entries were procured by indulging in forgery and the forged documents were used for cheating. The learned Magistrate directed the complaint to be investigated under Section 156(3) of the Cr.P.C. Pursuant thereto a charge sheet was filed. The learned Magistrate framed the charge for the offences punishable under Sections 420,465,468 and 471 read with Section 34 of the IPC.

3] The petitioners submitted Application Exh.66 before the Magistrate and contended that the offence of cheating was not made out. No opportunity of being heard was extended to them before framing the charge. A serious prejudice would be caused to them if the trial was proceeded. The learned Magistrate by the order dated 5/7/2018 rejected the Application (Exh.66). The petitioners challenged that order by preferring Criminal Revision Application No.16/2018 in the Court of Sessions, Bhokar, Dist.Nanded. The learned Additional Sessions Judge by the impugned order dismissed the Revision. Hence this Writ Petition.

4] The learned advocate for the petitioners vehemently submitted that a charge can be added or altered in view of the provisions of Section 216 of the Cr.P.C. at any stage. The learned Magistrate had not applied his mind while framing the charge and opportunity of hearing ought to have been extended to the petitioners. Request was only to delete the charge of cheating

for the offence punishable under Section 420 of the Cr.P.C. The Magistrate had failed to demonstrate how the ingredients for constituting that charge were made out. The learned Magistrate had not appreciated the matter in issue and had illegally rejected the request, which has resulted in miscarriage of justice. The learned advocate would point out that even learned Additional Sessions Judge had missed the point and has not appreciated the fact that the ingredients for constituting the offence of cheating could not be made out and no charge ought to have been framed under that Section. The petitioners are being unnecessarily made to face that charge and the Writ Petition may be allowed and the orders passed by the Magistrate and the learned Additional Sessions Judge may be quashed and set aside and their Application (Exh.66) may be allowed.

5] The learned APP opposes the Writ Petition. He submits that as pointed out by the learned Magistrate and the learned Additional Sessions Judge an opportunity of being heard was extended to the petitioners before framing charge. The plea was recorded. They pleaded not guilty and the trial proceeded. It is at that stage when the witnesses were present before the Magistrate that the Application (Exh.66) was moved with an ulterior motive to protract the trial. The application was not *bona fide* and was rightly rejected by the learned Magistrate and the order was correctly confirmed by the learned Additional Sessions Judge.

6] I have carefully gone through the orders of the two Courts

below. Going by the allegations, it is apparent that it is alleged that by indulging in forgery property was got mutated in the name of the petitioner no.1 which indeed is sufficient to reveal necessary ingredients for constituting offence of cheating. By their such conduct they had dishonestly induced the Revenue Officers in mutating the property in the name of the applicant no.1 and further had induced the Public Officer in registering the sale deed whereby the petitioner no.1 transferred the property in the name of the petitioner no.2. Therefore, it cannot be said that the ingredients for constituting the offence of cheating could not be made out from the complaint.

7] Apart from the above state of affairs, it is quite apparent that it is only after hearing both the sides that the charge was framed and the plea of the petitioners was recorded. It is thereafter that the matter was kept for hearing and when the witnesses had turned up, they had moved this Application (Exh.66). Apart from the fact that no fault can be found in framing the charge under Section 420 of the Cr.P.C. on merits, even the charge was framed only after extending opportunity to the petitioners and their plea was recorded. It is thus quite clear that it was certainly a dilatory tactic and was rightly looked at by the learned Magistrate. There was no apparent illegality, perversity or arbitrariness which could have enabled the revisional Court to have intervene under Section 397 of the Cr.P.C. I find no illegality committed by the learned Additional Sessions Judge in dismissing the Revision.

8] The Writ Petition is dismissed.

9] The Rule is discharged.

(MANGESH S. PATIL,J.)

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