

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

CRIMINAL APPLICATION NO. 6891 OF 2016

Sitaram S/o Biraji Ramandwal,
Age: 53 Yrs, Occ: Service,
R/o Flat No. 4, Saicharan Apartment,
Shakuntalnagar, Shahanoorwadi,
At. Post Dist. Aurangabad

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
M.I.D.C. CIDCO Police Station,
At post District : Aurangabad
2. Shubhas S/o Pandurang Dahihande,
Age: 47 years, Occ. Business,
R/o Dahihande Galli,
Chikalthana, Aurangabad

..RESPONDENTS

Mr A.N. Kakade, Advocate for applicant;
Mr V.S. Badhak, A.P.P. for respondent no.1;
Mr S.G. Chapalgaonkar, Advocate for respondent no.2;

**WITH
CRIMINAL APPLICATION NO. 6427 OF 2016**

Uday S/o Sudhakarrrao Kulkarni,
Age: 46 years, Occ: Service,
R/o House No. A-107, G-96,
Sector N-12, HUCO,
At. Post Dist. Aurangabad

..APPLICANT

VERSUS

1. Shubhas S/o Pandurang Dahihande
Age: 47 years, Occ. Business
R/o Dahihande Galli,
Chikalthana,
At Post Dist. Aurangabad

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2. The State of Maharashtra
Through Police Inspector,
M.I.D.C. CIDCO Police Station,
At post District : Aurangabad

..RESPONDENTS

Mr A.N. Kakade, Advocate for applicant;
Mr S.G. Chapalgaonkar, Advocate for respondent no.1;
Mr V.S. Badhak, A.P.P. for respondent no.2

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 17th June, 2019

ORAL ORDER :

Both the applicants have approached this Court with a prayer of quashing the complaint bearing Criminal M. A. 2468 of 2014, dated 20th December, 2014, arising out of Crime No.I-243 of 2014, registered with M.I.D.C. Cidco Police Station, Aurangabad for the offences punishable under Sections 420, 467, 468 & 471 of the Indian Penal Code and as such, the applications are tagged together and accordingly heard and decided together with the consent of the parties.

2. Both the applicants are the revenue officers i.e. applicant Sitaram Biraji Ramandwal in Criminal Application No.6891 of 2016 was holding post of Circle Officer, whereas applicant Uday Sudhakar Rao Kulkarni in Criminal Application No.6427 of 2016 was holding the post of Talathi at Chikalthana, Aurangabad. The complaint lodged at the instance of respondent – Subhash Pandurang

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Dahihande. In the complaint submitted at the instance of respondent Subhash to the M.I.D.C. Police Station on 23rd December, 2014, it is stated that respondent Subhash had initiated a civil proceeding against the persons, namely, Uma Prabhakar Kulkarni, Sanjivani Vijay Lathkar, Sadhana Laxmikant Joshi, Sopanrao Ramrao Suryawanshi and Kamalbai Prabhulalji Doshi. Learned Jt. Civil Judge Junior Division, Aurangabad, by judgment and order dated 16th September, 2002 decreed the suit. There is also reference to the revenue proceeding. The dispute was in respect of land situated in Gut No.641 and Gut No.642 at village Chikalthana, Tq. and Dist. Aurangabad. As per the contents of the complaint, father of respondent Subhash Dahihande was holding land admeasuring 3 Acres 15 R in Gut No.641 and 2 R land in Gut No.642 at village Chikalthana. Out of the said land one acre land from Gut No.641 was transferred to one Kesharbai Kisan Dahihande which was subsequently sold to Kamalabai Prabhulalji Doshi and subsequently the same was purchased by Mandhakini Panhale. It is then stated that in subsequent transaction, father of respondent Subhash Dahihande sold remaining land in Gut No.641 and Gut No.642 to Uma Prabhakar Kulkarni, Sanjivani Vijay Lathkar, Sadhana Laxmikant Joshi, Sopanrao Ramrao Suryawanshi. As stated above, respondent Subhash initiated Regular Civil Suit No.1691 of 2000 for partition and the same came to be decreed by the judgment and order and Mutation Entry No.6025 was recorded. One

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Mandakini Panhale challenged the said entry before the Sub-Divisional Magistrate. The Sub-divisional Magistrate dismissed the proceeding and appeal was preferred before the Additional Collector, Aurangabad. The appeal came to be allowed and the Mutation Entry No.6025 came to be cancelled. Respondent Subhash, being aggrieved by the order of the Sub-Divisional Magistrate preferred revision before the Divisional Commissioner. The revision was allowed and Mutation Entry No.6025 came to be confirmed. Mandakini challenged the order passed by the Divisional Commissioner before this Court in Civil Writ Petition No.7513 of 2011. The said writ petition was disposed of in view of the compromise between Mandakini and respondent Subhash, wherein the judgment and order passed by the Additional Collector, Aurangabad came to be uphold and ultimately Mutation Entry No.6025 came to be cancelled. Subsequently, the complaint bearing Criminal M.A. 2468 of 2014 was submitted on 20th November 2014 before the learned 10th Judicial Magistrate First Class under Section 156(3) of the Code of Criminal Procedure, seeking direction to register offence against the applicants and four other persons under Sections 420, 467, 468 and 471 of the Indian Penal Code.

3. Mr Kakade, learned Counsel appearing on behalf of the applicants vehemently submitted that the applicants, who are the revenue officers were discharging their duties and were following the

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order of their superior as well as the order of this Court. He submitted that applicant Sitaram Ramandwal was holding the post of Circle Officer from 24th June, 2014 to 2nd April, 2016. He then submitted that the allegations in respect of the forgery are of the period when the applicant Sitaram was transferred and he had no role to play in his official capacity in any of the proceeding after his transfer. Mr Kakade then invited our attention to the various documents placed on record, i.e. a copy of 7/12 extract, entry in the revenue record, a copy of extract of Ferfar Register and also invited our attention to the order passed by learned Single Judge of this Court, dated 3rd April, 2019 on Civil Application No.8405 of 2014 in Review Application (st.)No.21083 of 2014 in Writ Petition No.7513 of 2011. He then submitted that respondent Subhash who had filed Writ Petition No.7513 of 2011 himself sought for withdrawal of the Civil Application in view of the compromise arrived at between the parties. Our attention was also invited to the order of the learned Single Judge of this Court, dated 4th July, 2014, passed in Writ Petition No.7513 of 2011 with Civil Application No.5784 of 2014. It is submitted by Mr Kakade that the statement was made before this Court that respondent Subhash himself had withdrawn the proceeding in view of compromise between the parties. Mr Kakade then submitted that taking into consideration the sequence of events, the orders passed by the Revenue Authorities, the orders passed by the Civil Court and order passed by

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learned Single Judge of this Court in Writ Petition No.7513 of 2011, it clearly reveals that the applicants were discharging their official duties and had no personal interest in the parties or in the proceeding and they are falsely implicated in the criminal case. Mr Kakade then by placing heavy reliance on the oftenly quoted judgment of the Honourable the Apex Court in the matter of **State of Haryana & ors. Vs. Ch. Bhajan Lal**, reported in **AIR 1992 SC 604**, submitted that taking the contents of the complaint on the face of it, no criminal liability can be fastened against these applicants and the continuation of the proceeding lodged against these applicants only a bald allegation and would be nothing but an abuse of process of law.

4. Learned APP and Mr Chapalgaonkar, learned Counsel appearing on behalf of respondent Subhash Dahihande made an attempt to submit before this Court that the applicants were working as revenue officials at the relevant time and with an ulterior motive i.e. for some personal gains, they have acted and have entered the entries in revenue record, thereby in connivance with other private parties.

5. On hearing learned Counsel appearing on behalf of the respective parties and on going through the material placed on record, we find considerable merit in the submission of Mr Kakade, learned Counsel for the applicants. In our opinion, the material placed on

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record is wholly inadequate to make out a case against the applicants for commission of offence as alleged in the complaint. In the copy of the extract of Ferfar Register, an entry is recorded on 7th February, 2004. It clearly refers to an order passed by the Civil Court in Regular Civil suit No.1691 of 2000, dated 16th September, 2002. In the remark column, it is stated that the entry is recorded in view of the order passed by the Civil Court. Then there is a copy of the extract dated 14th July, 2014 and again in the remark column, a reference is made to the order of the learned Single Judge of this Court, dated 4th July, 2014, passed in Writ Petition No.7513 of 2011. There is also a reference to the orders of the revenue authorities in revenue appeal. A copy of initial entry, Entry No.1054 is also placed on record and the reference is made to purchase of the land under a sale deed. Then there are copy of 7/12 extract referring to Mandakini Pralhad Panhale, Uma Prabhakar Kulkarni, Sanjivani Vijay Lathkar, Sadhana Laxmikant Joshi, and Sopanrao Ramrao Suryawanshi, who all are joint occupier and cultivators and there is also a reference of name of respondent Subhash Dahihande and an area in his share. A copy of extract is also placed on record, wherein the entries are recorded in respect of interim orders passed in the revenue proceeding.

6. It may not be out of place to state here that though respondent Subhash Dahihande had submitted the application to the Tahsildar,

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dated 6th September, 2014, making allegations against the applicants and submitting therein that there was no consent of respondent Subhash Dahihande for any compromise, respondent Subhash Dahihande, who had filed review application as well as civil application in Writ Petition No.7513 of 2011 sought for withdrawal of the civil application with a liberty to take appropriate civil proceeding. We have also gone through the order passed by the Revenue Authorities.

7. On perusal of the material placed before this Court we are unable to find any material to support the allegations of respondent Subhash Dahihande that the applicants had any personal intention in recording the entries in revenue record. On the contrary, every entry recorded reference to order either passed by the competent revenue authorities or passed by the Civil Court or by this Court. There is considerable merit in the submissions of Mr Kakade, learned Counsel for the applicants. The prerequisite for fastening the criminal liability against these applicants would have been the intention on mens rea, but there is absolutely no material to show that either the applicants were acting for any personal gain or were having any grudge against respondent Subhash. Mr Kakade, learned Counsel for the applicants is also justified in placing reliance on the oftenly quoted judgment of the Honourable the Apex Court in the matter of State of Haryana & Ors. Vs. Ch.Bhajan Lal (supra).

8. Considering all of the aforesaid aspects, we are of the opinion that learned Counsel for the applicants has made out a case for allowing the applications. Accordingly, the following order is passed :

The applications are allowed.

We make it further clear that the Crime No. I-243/2014, registered at M.I.D.C. Cidco Police Station, Aurangabad, is quashed and set aside only against the applicants who are before this Court in Criminal Application No.6891 of 2016 and Criminal Application No.6427 of 2016.

We further make it clear that our observations are restricted only to the grievance raised in respect of lodgment of the criminal cases. These observations may not be used as a material for deciding the proceedings initiated by the parties either before the civil Court or the Revenue Authorities.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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