

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2007 OF 2019

Nishantkumar Lalji Momaya,
Age : 57 Years, Occ. Agriculture
and Business,
R/o. Ketan Loha Bandhar, Momaya Complex,
Chalisgaon Tal. Chalisgaon,
Dist. Jalgaon. ..APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Chalisgaon City Police Station,
Chalisgaon Tal. Chalisgaon,
Dist. Jalgaon
2. Bharatkumar Lalji Momaya,
Age : 63 Years, Occu. Business
R/o. Final Plot No. 217/2,
Momaya Complex, Chalisgaon,
Tal. Chalisgaon Dist. Jalgaon ..RESPONDENTS

...

Advocate for the Applicant : Mr. S. P. Brahme
A.P.P for Respondent-State : Mrs. M.M. Nerlikar
Advocate for respondent No.2 : Mr. O.B.Thoke

....

CORAM : T.V. NALWADE &
M.G.SWELIKAR, JJ.
DATE : 02-03-2020.

JUDGMENT (PER T.V. NALWADE,J) :-

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

2. Present proceeding is filed for quashing of Regular Criminal Case No 171 of 2018 presently pending in the Court of learned Judicial Magistrate (F.C.) Chalisgaon. The case is filed by the police in C.R. No.69/2011 registered with Chalisgaon City Police Station for the offences punishable under Sections 420, 467 and 471 of the Indian Penal Code. During the argument learned counsel for the petitioner submitted that after starting of the dispute the application was made by the present applicant and his two brothers including the informant to the revenue authority on 17.11.2016 and they requested to revenue authority to cancel the disputed mutation entry. Due to disputed mutation entry the present applicant was shown as owner of some marginal space.

3. After filing of the application, the revenue authority created new mutation No. 10817 and previous mutation entry bearing No. 10239 dated 14.12.2016 came to be cancelled. He submitted that as the mutation no. 10239 itself is cancelled, brothers cannot have any grievance and as they had jointly applied for the same, it can be presumed that they have no grievance that criminal offence is committed by the present applicant.

4. As against this, the learned counsel for the informant produced on record a copy of revision application filed before the District Superintendent of Land Record in which mutation number 10817 is challenged. In view of this circumstances, learned counsel for the applicant was asked as to how it can be said that the brothers had settled the dispute. Learned counsel for the applicant then on instructions submitted that his client wants to withdraw the appeal which is filed before the Dy. Director of Land Record, Nashik. It appears that the Revision which was filed before the District Superintendent of Land Record, Jalgaon was partly allowed and said decision is challenged by the present applicant before Dy. Director of Land Record Nashik. Learned counsel for the applicant submitted that his client will withdraw the said appeal and so matter will be cleared.

5. Learned counsel for the applicant submitted that there is some record in favour of the applicant and applicant may go to Civil Court for deciding rights of the parties. That is always open to the parties. As the disputed mutation entry is not in existence now and all three brothers including informant had jointly filed application for cancellation of the mutation entry,

this Court holds that it is not desirable to ask the applicant to face the trial of the case for aforesaid offence. In the result, following order :-

ORDER

- I. Application is allowed.
- II. Relief is granted in terms of prayer clause 'C'.
- III. Rule made absolute in those terms.
- IV. Civil Court to consider the matter on its own merits.

**(M.G.SWELIKAR)
JUDGE**

**[T.V. NALAWADE]
JUDGE**

YSK/