

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.567 OF 2019
WITH
CRIMINAL APPLICATION NO.867 OF 2019
IN
CRIMINAL APPLICATION NO.567 OF 2019**

Ali Akbar Jafari,
Age – 57 Years, Occu. : Business,
Having Office at 203, 2nd Floor,
Akbar's Radiant Plaza,327, M.G.Road,
Pune – 411001, Maharashtra. ... **Applicant**

Versus

1. The State of Maharashtra.
2. Rajesh Khairatilal Bajaj,
Age – 57 years, Occu. : Business,
R/o. Ground Floor, United Apartment
East Street, Camp, Pune – 411001. ... **Respondents**

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Mr.M.S.Mohite i/b. Mr.Sidheshwar N. Biradar, Advocate for the Applicant.

Mr.S.V.Gavand, the Additional Public Prosecutor for the Respondent No.1/State.

Mr.Nitesh V. Bhutekar, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally
by consent of parties.

3 Order passed below Exhibit 1 of Regular Criminal Case
No.4180 of 2017 directing issuance of process against the present
applicant for the offence punishable under Section 420 of the
Indian Penal Code is challenged in the instant applicant.

4 The learned Counsel for the applicant drew my
attention to the Order dated 22/12/2016 passed by the learned
District Superintendent of Land Records, Satara and argued that in
quasi-judicial proceedings under Section 247 of the Maharashtra
Land Revenue Code, 1966, the Appellate Court had passed an
Order directing quashment of entries dated 30/09/2006 made in
the Property Card and for revival of entry dated 09/04/1964. The

said Order is confirmed in further appeal which was in fact filed by the respondent No.2 herein/original complainant and, as such, there cannot be any question of committing an offence punishable under Section 420 of the Indian Penal Code.

5 As against this, the learned Counsel appearing for the respondent No.2 herein/original complainant drew my attention to paragraphs 2 and 3 of the complaint and submitted that according to the respondent No.2 herein/original complainant, entries in the Property Card were got done by the applicant herein/original accused No.2 illegally in connivance with the District Superintendent of Land Records. It is further argued that on 24/11/2009, the applicant herein/original accused No.2 applied for taking entries in respect of the subject properties and without issuing any notice to the respondent No.2 herein/original complainant, the City Survey Officer had made entries in the Property Card. This, according to the learned Counsel for the respondent No.2 herein/original complainant amounts to offence punishable under Section 420 of the Indian Penal Code.

6 The record shows that the learned trial Magistrate had directed investigation by police by resorting to the provisions of Section 202 of the Code of Criminal Procedure. The police reported that the dispute is entirely of civil nature. However, the learned trial Magistrate observed that *prima facie* there is material to proceed against the present applicant/original accused No.2 and issued process against him for the offence punishable under Section 420 of the Indian Penal Code. However, the complaint against the original accused No.1 i.e. Shri.Sudam Jadhav, District Superintendent of Land Records came to be dismissed.

7 I have considered the submissions so made and also perused the Orders passed by the Revenue Authorities.

8 It is the case of the applicant herein/original accused No.2 that his predecessors were owners of Property bearing C.T.S.Nos.394, 395, 396 and 397 situated at Kondhwa, Pune by virtue of registered sale deed and subsequently, his name came to be mutated as heir of the registered owners. However, according

to the respondent No.2 herein/original complainant, he is the owner of the properties in question. This has resulted to several litigations under the Maharashtra Land Revenue Code. It is seen that some entries were taken in the Property Card on 30/09/2006. The Order dated 27/05/2016 passed by the City Survey Officer came to be challenged by filing an appeal under Section 247 of the Maharashtra Land Revenue Code by the applicant herein/original accused No.2 before the District Superintendent of Land Records, Satara. Though, it is urged by the learned Counsel for the respondent No.2 herein/original complainant that this Appeal bearing No.SR/168/2016 came to be decided without noticing the respondent No.2 herein/original complainant, the Order passed by the learned District Superintendent of Land Records shows that respondent No.2 herein/original complainant was very much present before the said Authority when it had heard arguments advanced on behalf of the applicant herein. Subsequently, he remained absent and, subsequently, the appeal came to be allowed by the District Superintendent of Land Records. The said Authority had quashed all entries in respect of the properties bearing

Nos.394, 395, 396 and 397 situated at Kondhwa, Pune taken on 30/09/2006 and revived entries which were taken on 19/07/1964. Similarly, the District Superintendent of Land Records had directed that entry regarding purchase of City Survey Nos.394, 395, 396 And 397 vide Sale Deed dated 22/03/1965 and 18/10/1966 be taken on the Property Card and then name of the appellant therein i.e. the applicant herein/original accused No.2 be taken as legal heir. The impugned Order of the City Survey Officer dated 27/05/2016 came to be quashed and set aside.

9 It is seen that dissatisfied with this Order dated 22/12/2016, the respondent No.2 herein/original complainant had preferred further appeal before the Deputy Director of Land Records, Pune and the said Appeal was also dismissed.

10 Thus, it is clear that name of applicant herein/original accused came to be mutated in the revenue record under the Order of the District Superintendent of Land Records, Satara while exercising appellate jurisdiction under Section 247 of the

Maharashtra Land Revenue Code and the said Order is also confirmed by the Deputy Director of Land Records, Pune by dismissing the appeal filed by the respondent No.2 herein/original complainant.

11 In this view of the matter, continuation of the complaint in respect of the same subject matter wherein averments are to the effect that name of the applicant herein/original accused No.2 came to be mutated illegally certainly amounts to abuse of process of the Court. Averments made in paragraph 3 of the complainant were to the effect that City Survey Officer has not issued any notice. If that is so, then inaction on the part of the concerned Officer cannot make the applicant herein/original accused No.2 liable for the offence punishable under Section 420 of the Indian Penal Code.

12 In other words, there are no grounds to proceed against the applicant herein/original accused No.2 for the offence punishable under Section 420 of the Indian Penal Code and

continuation of such proceedings against him shall certainly amount to abuse of process of the Court. Hence, the Order :

ORDER

- (i) The Application is allowed in terms of prayer clause (b).
- (ii) In view of disposal of the instant application, the Interim Application bearing No.867 of 2019 also stands disposed of.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed by
Raju D. Gaikwad
Date: 2020.02.15
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