

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

944 CRIMINAL WRIT PETITION NO.188 OF 2019

Umanath Rambhau Dharade
Age 60 years, Occ-Retired
R/o Shivajinagar, Dhumalwadi,
At, PO-Akole, Tal-Akole
Dist.Ahmednagar

.. PETITIONER

VERSUS

1]Rukmini Dada Dhanawade
Age 53 years, Occu-Agriculture
& Household, R/o Kaparewadi
Tal-Karjat, Dist.Ahmednagar.

2]The State of Maharashtra
through Superintendent of Police
Ahmednagar.

.. RESPONDENTS

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Advocate Mr.V.Y.Bhide for the petitioner
Advocate Mr.Ramraje A. Deshmukh h/f Shambhuraje V. Deshmukh for
respondent no.1
APP. Smt.R.P.Gaur for respondent no.2.

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**WITH
CRIMINAL APPLICATION NO.502 OF 2019**

1]Vaishali Vikram Wangde
Age 55 years, Occ-Agril.,

2]Vikram Govind Wangde
Age 65 years, Occ-Agril.,

Both R/o. Kaparewadi, Tq.Karjat,
Dist.Ahmednagar.

.. APPLICANTS
[ORIG.ACCUSED 3 AND 4)

VERSUS

1]Rukmini Dada Dhanwade
Age 53 years, Occ.Agri., and Housewife
R/o Kaparewadi, Tq. Karjat
Dist.Ahmednagar

2]U.R.Dharade
Age 60, Occ-Service
R/o Shivajinagar, Dhumalwadi,
Akola, Tal-Akola
Dist.Ahmednagar

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Advocate Mr.Vivek V. Tarde for the applicants
Advocate Mr.R.A.Deshmukh h/f S.V.Deshmukh for Respondent no.1.
Advocate Mr.V.Y.Bhide for Respondent no.2.

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CORAM : MANGESH S. PATIL, J.
DATE : 04.03.2021

ORAL JUDGMENT :-

Heard.

2] Rule. Rule is made returnable forthwith. With consent of both sides, the matter heard finally at the stage of admission.

3] These are the proceedings taken up by the accused nos.2 to 4 in a private complaint pending on the file of the learned Magistrate, Karjat being aggrieved and dissatisfied by the order passed by the learned

Magistrate refusing to discharge them.

4] The allegations in the complaint are to the effect that one Laxman was the original owner of the land Gat No.56/2. He was survived by 2 sons and 3 daughters. The respondent complainant purchased the property from the 3 daughters under a registered sale deed dated 8/6/2000. However, by indulging in forgery and fabrication, a Relinquishment Deed purportedly executed by these 3 daughters was brought into existence and on that basis Mutation Entry No.425 was illegally brought into existence. The daughters disputed the genuineness of the Relinquishment Deed and the Tahsildar cancelled it. One of the sons Ramdas approached the Sub Divisional Officer being aggrieved and dissatisfied by the cancellation of Mutation Entry No.425. The learned S.D.O. restored the Entry and directed the daughters to resort to civil and criminal recourse seeking appropriate relief as regards genuineness of the Relinquishment Deed. He thereby set aside the order of the Tahsildar cancelling the Mutation Entry.

5] After having heard both the sides, it transpires that the concerned Talathi was arrayed as Accused No.1. The present petitioner in Writ Petition No.188/2019 was arrayed as Accused No.2. Subsequently the applicants in Criminal Application No.502/2019 were also arrayed as Accused Nos.3 and 4 perhaps by resorting to the provisions of Section 319 of the Cr.PC. They are the purchasers from Ramdas.

6] It is pertinent to note that Accused No.1 Talathi had approached this Court by filing Criminal Application No.2387/2007. After hearing both the sides by the judgment and order dated 21/12/2016, this Court quashed the complaint *qua* the Accused No.1 Talathi on two counts. Firstly, on the ground that the complaint was barred by limitation. Secondly, on the ground that there was no previous sanction under Section 197 of the Cr.P.C. to prosecute the Accused no.1, by observing that the alleged act which constitutes the offence having been committed in discharge of his official duties.

7] It is in view of such peculiar facts and circumstances, I put a query to the learned Advocate for the original complainant respondent as to why for the self same reasons basically when this Court has already concluded that the complaint itself was barred by limitation and as to why even it cannot be dismissed *qua* the other accused. Similarly, for the self same reasons why even the complaint to the extent of petitioner Circle Officer cannot be quashed for want of sanction under Section 197 of the Cr.P.C.

8] The learned Advocate for the respondent complainant would endeavour to point out as to how the applicants have indulged in criminal act and their case stands on a different footing than that of Accused No.1 Talathi.

9] I am afraid, the merits of the matter need not be gone into. Since

this Court has already held that the complaint itself was barred by limitation by virtue of provisions of Section 468 (2) (c) of the Cr.P.C., the same would hold good *qua* the other accused as well. If the complaint is barred by limitation it would stand barred by limitation even against the other accused.

10] Similarly, taking into account the role attributable to the petitioner who is Accused No.2 i.e. Circle Officer, he is also alleged to have certified the Mutation Entry in discharge of his official duties. Consequently, for the self same reasons when this Court has found that the complaint was not maintainable for want of sanction under Section 197 of the Cr.P.C. as against the accused No.1 Talathi even the case of petitioner Circle Officer Accused No.2 would stand on the same footing.

11] Since the order passed by this Court *qua* the Accused No.1 has reached finality long back, it would be sheer abuse of the process of law to allow further proceeding to go on.

12] The Writ Petition and the Application are allowed. The proceeding before the Magistrate is quashed and set aside.

13] The Rule is made absolute.

[MANGESH S. PATIL, J.]