

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

CRIMINAL WRIT PETITION NO.511 OF 2021

DATTATRAY LAXMAN GAVANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Solanke Shikrashna B.
APP for Respondents/State: Mr. PN. Kutti
...

CORAM : MANGESH S. PATIL, J.

DATE : 29.07.2021

PER COURT :

The original complainant is invoking the power of this Court under Article 227 of the Constitution of India for impugning the judgment and order passed by the learned Additional Sessions Judge in Criminal Revision No.56/2019 thereby quashing and setting aside the order passed by the learned Magistrate on his complaint directing a process to be issued against the respondents for the offences punishable under Section 420, 468, 323, 504, 506 of the Indian Penal Code, and instead, dismissing the complaint under Section 203 of the Code of Criminal Procedure.

2. I have heard the learned advocate for the petitioner. He submits that the learned Magistrate had duly applied his mind while directing the process to be issued. The order was neither perverse or arbitrary so that it could have been interfered with in revisional power under Section 397 of the Code of Criminal Procedure. The learned advocate would submit that some of the respondents have executed couple of sale deeds in favour of the other respondents by giving wrong description of the properties and on the basis of such illegal sale deeds the respondents who

have purchased the properties are trying to encroach over the petitioner's property. It is therefore a clear case of cheating and forgery. Since the matter was at a preliminary stage, an opportunity ought to have been extended to the petitioner to substantiate his allegations and the complaint ought not to have been dismissed at the threshold.

3. I have considered the submissions of the learned advocate for the petitioner and perused the impugned order as also original complaint and the order passed by the Magistrate. As has been aptly put by the learned advocate for the petitioner, the petitioner seems to be aggrieved by the fact that the respondents, may be, perhaps, acting hand in gloves, have brought into existence couple of sale deeds on the basis of which the purchasers are trying to encroach over his property. To enable them to do so they have also indulged in giving wrong description of the properties under sale. Needless to state that these allegations would certainly give rise to some civil dispute in as much as the petitioner can very well demonstrate such wrong description and point out illegality in the sale deeds. Independently he can protect his possession as well even if he intends to ignore this sale deed.

4. The fact remains that accepting these allegations at their face value, the offences of cheating and forgery cannot be made out. It cannot be said that the petitioner has been deceived much less dishonestly, and still less, making him deliver something to somebody. Similarly it cannot be said that merely by giving wrong description in the sale deed a case of forgery can be made out. This is what has been precisely observed by the learned Additional Sessions Judge while allowing the revision.

5. Further it is equally important to note that already some of the respondents have instituted a civil suit way back in the year 2017 wherein the petitioner is a party touching the same dispute. It is always open for him

even to raise this dispute in that suit as is correctly noticed and remarked by the learned Additional Sessions Judge.

6. Though it is not expected of a Magistrate while entertaining a private complaint and passing an order for issuance of process that he should resort to some elaborate exercise and pass some detailed order and it is to be presumed that he must have applied his mind, the present matter clearly demonstrates as to how the learned Magistrate had failed to apply his mind to all the relevant facts and circumstances on the backdrop of the allegations.

7. All these aspects have been duly considered by the learned Additional Sessions Judge who has reached a reasonable conclusion. In my considered view there is no illegality or perversity in the impugned order which would entitle this Court to cause any interference under Article 227 of the Constitution of India.

8. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)