

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3775 OF 2018

Altaf Ilahi Khan s/o Ahmed Khan,
age 76 Years occupation pensioner,
resident of Nizam colony, Nanded.

... APPLICANT

VERSUS

1) The State of Maharashtra,
through Vazirabad Police Station,
District Nanded.

2) Abdul Shakoor Khan s/o Abdul Rauf Khan,
age 36 Years occupation service in Railway,
resident of Near Madhai Masjid,
Nanded.

... RESPONDENTS

...
Mrs. A.N. Ansari, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1 / State.

Mr. Pratap V. Jadhavar, Advocate for Respondent No.2

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**CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

DATE : 18th January, 2021.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The proceeding application is filed for relief of quashing of charge-sheet filed in Crime No.359 of 2018, which was registered with Vazirabad Police Station, District Nanded, for the offences punishable under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code. The report was given by Respondent No.2.

3 The dispute is in respect of the property, which was belonging to one Smt. Zohra Begum. Zohra Begum was real sister of the Applicant. Respondent No.2 is son of brother of husband of Zohra Begum. Partition had taken place of the property amongst the husband of Zohra Begum and his two brothers like Khwaja and Abdul Rauf. In the partition, 1 Acre 14 Guntha land had come to the share of Abdul Rauf and to the share of Zohra Begum as per the contentions made by the informant. Abdul Rauf died about 60 years prior to the date of FIR and FIR was given on 24th November, 2018. On record, Zohra Begum was shown as owner of aforesaid portion from land Gat No.164/A.

4 It is the contention of informant that Zohra Begum died in 1985 and she had no issue. It is contended that the present Applicant applied to revenue authority to enter the property, which was standing in the name of Zohra Begum in his name. It is contended that he made false representation to the revenue authority that he was the only legal heir to Zohra Begum and accordingly, mutation was made in the property in his name and he was shown as successor of Zohra Begum. It is contended that the property would have devolved upon the brothers of deceased Abdul Shakoor Khan, husband of Zohra Begum and so Applicant could not have contended that he was successor of Zohra Begum.

5 The submissions made and record show that Zohra Begum had executed registered sale-deed in favour of the present Applicant in the year 1975 for valuable consideration and then his name was mutated in the revenue record on the basis of sale-deed. The submissions made and the say of the revenue authority show that the name of Zohra Begum was continued on the revenue record as one of the owners of Gat No.164/A though her share was separated after the sale-deed and separate number was given to the said portion. The record and the say of the revenue authority show that

when Zohra Begum was not having any portion in Gat No.164/A, the application of the aforesaid nature was given in the year 1986, after the death of Zohra Begum and he got mutation to show that he was successor of Zohra Begum. It is the contention of revenue authority that this mutation could not have been made as Zohra Begum had no portion in Gat No.164/A and she had sold her portion under the sale-deed and so, the revenue authority is taking steps for cancellation of the new mutation, which was made in the year 1986 in favour of the Applicant.

6 The submissions made and the record show that the present Applicant has filed civil suit to claim the portion, which was shown in the name of Zohra Begum in the year 1986 and he is claiming that portion also as successor of Zohra Begum. It can be said that in view of the aforesaid circumstances, he may not succeed to get that portion. What is required to be considered in the present matter is the representation of the present Applicant to the revenue authority that he was successor of Zohra Begum. In view of the provisions of the Mahomedan Law, it can be said that this contention of the Applicant was not false. The Mahomedan Law shows that after the death of a person, first the sharers get their shares in fixed proportion and then residuaries get remaining portion as shown in the

table of residuaries and in order of succession. That is as per Sunni Law, which is applicable in the present matter. If there are no residuaries also then only the property will devolve upon the distant kindred. The informant is a successor of brother of husband of Zohra Begum. The property was given to Zohra Begum and then she gave the property to her brother under registered sale-deed. If the Applicant was under impression that Zohra Begum had some portion even after selling the property to him as shown in the revenue record and due to that impression he had made application to the revenue authority, it cannot be said that he had intention to deceive the revenue authority or any person. This contention that he was successor of Zohra Begum was not false and further in revenue record some portion was shown as belonging to Zohra Begum.

7 The Civil Court will decide the dispute between the parties but there are aforesaid circumstances and due to those circumstances, it cannot be said that the present Applicant made false representation or cheated somebody and caused damage to the informant. This Court holds that the Civil Court needs to decide the dispute and it will be abuse of process of law if the present Applicant is asked to face the trial for aforesaid offences. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (E).
- III. Rule made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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