

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.107 OF 2021

(Rajesh s/o Vasant Rao Bokade Vs. State of Maharashtra thr. PSO PS Dahihanda,
District Akola)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. U.P. Dable, Advocate for Applicant.
Mr. N.R. Rode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 24th FEBRUARY, 2021.

The applicant is apprehending arrest in Crime 36/2021 registered with Police Station Dahihanda, District Akola for offences punishable under Sections 420, 466, 467, 471 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report dated 23.01.2021 lodged by Mr. Anil Goenka. The informant alleges that his deceased grand-father was the owner of field survey 22/3, present gat 34 admeasuring 4.32 HR situated in mouza Dhamna (Bd), Tahsil Akot, District Akola. The name of the deceased grand-father was duly mutated in the 7/12 extract. Since the father of the informant also expired, the informant is the owner and in possession of the agricultural field. The allegation is that the applicant, who was then working as the Talathi joined hands with co-accused and took a false entry in the 7/12

extract purporting to extinguish the ownership of the deceased grand-father of the informant and to confer the ownership on co-accused Narayan Tade under the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 ('Act').

3. I have perused the material on record which is culled out in the reply of the prosecution filed before the learned Sessions Judge who rejected the pre-arrest protection and the material which is taken into consideration by the learned Sessions Judge.

4. The material which is taken into consideration unequivocally and clinchingly implicates the applicant in the crime. It is not in dispute that the land was/is owned by the deceased grand-father of the informant. The applicant, who was working as the Talathi, purported to exercise the power under the Act, which he did not possess. It appears that the mutation entry was taken in a surreptitious and clandestine manner without making any attempt to comply with the provisions of the Maharashtra Land Revenue Code and without issuing any notice to the person who is recorded as the owner, or then to the legal heirs.

5. Pertinently, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 is not in force. The fraud is perpetrated brazenly, albeit crudely. I have perused the explanation given by the

applicant in the statement dated 17.03.2020. The said statement is apparently recorded in departmental proceedings. A stand is taken that the mutation entry in question i.e. mutation entry 793 is recorded on 05.12.2014 and therefore, the applicant has not taken the entry. *Prima facie*, the stand is blatantly false. The mutation entry 713 is recorded on 18.03.2014 when the applicant was working as the Talathi. The mutation entry bears the signature of the applicant.

6. The prosecution suspects that the fraud unearthed is likely to be one of the many instances. That apart, custodial interrogation is imperative lest the investigation is rendered directionless. Considering the brazenness with which the official record is tampered with and false entry taken, which purports to extinguish the ownership of the rightful owner, in purported exercise of power under a statute which is not in force, no case is made out for exercise of discretion.

7. The learned counsel Mr. Uday Dable is relying on an order passed by a learned Single Judge in Criminal Application 4925/2020. According to Mr. Dable it is held by the learned Single Judge that protection available to a Judicial Officer under Section 3 of the Judges (Protection) Act, 1985 is available to the Tahsildar who confirmed the mutation entry since the Registrar was acting judicially.

8. In the first instance, it is difficult to agree with the broad statement of law which is apparently made by the learned Single Judge. While in exercise of administrative duty under the Land Revenue Code, the Competent Officer may be expected to discharge duties in a judicious manner, and to a certain extent such proceedings may have the trapping of quasi judicial proceeding, it is difficult to appreciate the submission that the Revenue Officer acts as a Judge or that the protection available under Section 3 of the Judges (Protection) Act, 1985 can be extended. That apart, fraud can never be treated as an act done in discharge of duties. Further, in the facts of the present case, the applicant was a mere Talathi who had no power to extinguish ownership. Mr. Dable submits that it be recorded that the observations are *prima facie*. It is obvious that the observations are made only for the purpose of deciding the entitlement to pre-arrest protection. If an application for regular bail is moved, the same shall be considered by the learned Judge on its own merit uninfluenced by any observation made herein.

9. The application is dismissed.

JUDGE