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

CRIMINAL APPLICATION (ABA) NO. 471 OF 2021

Dnyaneshwar Gunwantrao Paraskar
..vs..
State of Maharashtra, thr. P.S.O.

AND

CRIMINAL APPLICATION (ABA) NO. 557 OF 2021

Sheetal d/o Gunwantrao Atal
..vs..
State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Criminal Application No.471/2021.
Shri P.S. Patil, Advocate for applicant.
Shri M.J. Khan, A.P.P. Advocate for non-applicant/State.
Shri J.B. Gandhi, Advocate – Assisting Prosecution.
Criminal Application No.557/2021.
Shri R.D. Karode, Advocate for applicant.
Shri M.J. Khan, A.P.P. Advocate for non-applicant/State.
Shri U.J. Deshpande, Advocate – Assisting Prosecution.

CORAM : VINAY JOSHI, J.
DATED : 12/10/2021

Both applications are arising out of Crime No.748 of 2021 registered with Old City Police Station, District Akola for the offence punishable under Sections 463, 467, 471, 420 read with 34 of the Indian Penal Code. In anticipation of arrest in said crime, both applicants seek for pre-arrest protection.

2. The crime was registered at the instance of report lodged by the Rajeshwar Paraskar. Applicant Dnyaneshwar Paraskar is elder brother of Rajeshwar Paraskar whilst applicant Sheetal Atal is concerned

Talathi. It is the informant’s contention that certain piece of land bearing Gat no. 104 was owned by his grandfather namely Kashiram Paraskar. In the year 1976, Kashiram Paraskar has executed a gift-deed in his favour for land ad-measuring 7H 94R on which he became absolute owner. The informant alleges that applicant Dnyaneshwar Paraskar who is his real brother, has misrepresented revenue authorities by stating that Rajeshwar and Dnyaneshwar are one and the same. By making said false representation, applied to Revenue Officers for correction of revenue entry to the disputed land. Particularly, he applied for deleting the name of Rajeshwar and to enter his name - Dnyaneshwar to the revenue record of said land. On the basis of said false representation, applicant Dnyaneshwar by joining hands with Talathi i.e. another applicant Sheetal Atal got mutated his name to the piece of land measuring 7H 94R out of Gat no. 104.

3. No-sooner, applicant succeeded in making correction to the revenue record, immediately transferred said land in the name of his wife. It is alleged that for the purpose of making correction, applicant Dnyaneshwar has fabricated a gift-deed of his grandfather Kashiram and also filed false affidavit. Precisely, it is grievance that though informant-Rajeshwar acquired ownership of land ad-measuring 7H 94R on the strength of gift-deed, however, Dnyaneshwar Paraskar by preparing forged gift-deed

in his name, by misrepresenting that Rajeshwar and Dnyaneshwar are one and the same, carried mutation in his name, therefore, the report.

4. Heard both sides exhaustively. It reveals that initially land bearing Gat no.104 was admeasuring 16H 16R. Out of said land portion ad-measuring 8H 22R was jointly purchased by Dnyaneshwar and his uncle Prabhakar under sale-deed dated 10.04.1975. It was followed by relinquish deed executed by Prabhakar in favour of Dnyaneshwar Paraskar. There is no dispute in between the parties regarding Dnyaneshwar becoming the owner of a portion of land ad-measuring 8H 22R out of Gat no.104. The real dispute is about remaining portion ad-measuring 7H 94R out of land Gat no.104. Admittedly, it was owned by grandfather of Dnyaneshwar and Rajeshwar namely Kashiram Paraskar. The informant contended that during lifetime, Kashiram executed a gift-deed dated 10.05.1976 in his favour. On the basis of said gift-deed, mutation entry no.57 was carried on 03.01.1983 entering his name (Rajeshwar) as an owner on the strength of gift-deed. On the other hand, it is the case of Dnyaneshwar that grandfather Kashiram has gifted land ad-measuring 7H 95R in his (Dnyaneshwar) favour under gift-deed of the same date i.e. 10.05.1976.

5. Learned Counsel appearing for the applicant Dnyaneshwar would submit that mutation entry no.57

was carried at the instance of gift-deed dated 10.05.1976 executed by Kashiram in favour of applicant Dnyaneshwar. However, mistakenly mutation was carried in the name of Rajeshwar (informant) instead of Dnyaneshwar. Therefore, applicant Dnyaneshwar has applied for correction of revenue entry. It is submitted that the Naib Tahsildar vide order dated 24.05.2021 has directed to correct the revenue record by replacing the name of Rajeshwar by Dnyaneshwar. Therefore, according to Dnyaneshwar, he has neither misrepresented to the revenue authority nor fabricated the documents.

6. Learned Counsel for applicant Dnyaneshwar would submit that the order passed by the Naib Tahsildar dated 24.05.2021 was challenged by Rajeshwar on which, it was cancelled. He would submit that at present, said revenue dispute is pending before the Divisional Commissioner, Amravati. Learned Counsel for the informant strenuously argued that the gift-deed on the basis of which Dnyaneshwar sought for correction, itself is fabricated one. Moreover, it is submitted that Dnyaneshwar falsely represented to the revenue authorities that Rajeshwar and Dnyaneshwar are one and the same.

7. It is not in dispute that mutation entry no.57 is about entering the name of Rajeshwar to the disputed land on the basis of gift-deed dated 10.05.1976. The informant Rajeshwar is unable to produce concerned gift-deed to primarily satisfy that

entry was in accordance with gift-deed executed in his favour. On the other hand, applicant Dnyaneshwar has produced original gift-deed showing that disputed land was gifted to him by grandfather Kashiram on 10.05.1976. Apparently, said gift-deed is unregistered document, however, I am not inclined to express about the legality of said document. Obviously, it is a domain of Civil Court to decide the legality and title of either Rajeshwar or Dnyaneshwar in the appropriate proceeding.

8. Though the informant alleged that Dnyaneshwar misrepresented to revenue authorities that Rajeshwar and Dnyaneshwar are one and the same. However, correction application filed by Dnyaneshwar does not say so. Paragraph 2 of the application filed in the month of January, 2021 says that Dnyaneshwar applied to the revenue authorities stating that his name was wrongly mentioned as Rajeshwar and therefore, it be corrected. Likewise, supporting affidavit does not speaks that Dnyaneshwar says that Rajeshwar and Dnyaneshwar are one and the same. Therefore, at this stage, *prima facie* there is no material to indicate that Dnyaneshwar has misrepresented to the revenue authorities by stating that Rajeshwar and Dnyaneshwar are one and the same.

9. The learned Counsel for the informant submitted that correction order passed by the Naib Tahsildar dated 24.05.2021 bears a reference that

both Dnyaneshwar and Rajeshwar are one and the same as per the report of Talathi. He further produced a report of Talathi Sheetal Atal , who reported that both are one and the same. According to the informant, Talathi Sheetal Atal by joining hands with Dnyaneshwar gave false report and by skipping prescribed procedure, falsely mutated name of Dnyaneshwar. However, it is a matter of record that by virtue of order passed by Naib Tahsildar, Talathi has corrected revenue record. So far as, the allegations of not following prescribed procedure, while effecting correction, that cannot fasten criminal liability unless demonstration of intentional act. Merely because, Talathi failed to follow prescribe procedure, she cannot be held criminally liable on *prima facie* basis.

10. In substance, the revenue dispute is going on in between the parties. Already, the mutation entry has been cancelled and the dispute is pending at the level of the Divisional Commissioner, Amravati. The question about legality of gift-deed and consequential issue about the title of disputed land, is predominantly of civil nature. Therefore, *prima facie,* there is no material to infer that Dnyaneshwar by joining hands with Talathi Sheetal Atal by way of misrepresentation caused to effect false revenue entry. Moreover, original gift-deed allegedly executed in favour of Dnyaneshwar is tendered on record. In view of that, *prima facie* case is made out to grant pre-arrest protection, hence the following order :

(a) Criminal Applications stand allowed.

(b) Ad-interim order dated 29.07.2021 (in Criminal Application (ABA) No.471/2021) and 27.08.2021 (in Criminal Application (ABA) No.557/2021)are hereby made absolute upon same terms and conditions.

(c) Henceforth, both applicants shall attend concerned Police Station on every Sunday in between 11.00 am to 2.00 pm, till filing of charge-sheet or for the period of 90 days whichever is earlier.

(d) Applicant Dnyaneshwar Paraskar shall handover the original gift-deed to the Investigating Officer within one week from the date of uploading of this order and report compliance.

(e) Applicant (Dnyaneshwar Paraskar) if fails to tender gift-deed to the Investigating Officer within stipulated period, it would give rise to the prosecution to move for cancellation.

JUDGE

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