

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

CRIMINAL WRIT PETITION NO.348 OF 2022

Khamar Chause S/o Badar Chause Aljabri,
Age-42 years, Occu:Business,
R/o-Mandai Chauphala, Nanded,
Taluka and District-Nanded

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) Gulam Mohsin s/o Abdul Hameed,
- 3) Abdul Motalib S/o Abdul Hameed,
- 4) Mohammad Ali Anwar S/o Mohammad Lutfullah,
- 5) Mohammad Nazir Ahmed S/o Mohammad Lutfullah,
- 6) Mohammad Javid Asadullah S/o Mohammad Lutfullah,
- 7) Mohammad Khaleed Ataullah S/o Mohammad Lutfullah,
- 8) Mohammad Sarfaraj Arshad S/o Mohammad Lutfullah,
- 9) Sunil S/o Dharamaraj More,
- 10) S.N. Damoshan,
- 11) C.B. Sawant

...RESPONDENTS

...
Mr.J.M. Murkute Advocate for Petitioner.
Mr.S.P. Deshmukh, A.P.P. for Respondent No.1 - State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 9th JUNE, 2022

ORDER :

1. Present Criminal Writ Petition challenges the Judgment and order passed in Criminal Revision Petition No.66 of 2021 by the learned Sessions Judge, Nanded on 16th November 2021 thereby confirming the order passed below Exhibit-1 in O.M.C.A. No.2586 of 2020 by the learned J.M.F.C. 5th Court Nanded dated 2nd September 2021, by which the learned Magistrate had refused the relief of sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure and the learned Magistrate, after registering the complaint as Regular Criminal Case, had directed that the case should be put up for recording of statement under Section 200 of the Code of Criminal Procedure.

2. Heard Mr.Murkute, learned Advocate appearing for the applicant and Mr.Deshmukh, learned APP appearing for respondent No. 1 – State. It is not even necessary to issue notice to respondent Nos. 2 to 11.

3. The petitioner – original complainant claims that he is a whistle blower and under the provisions of Right to Information Act, he has sought certain information and came to know that so far as certain properties are concerned, accused Nos.1 to 7 have got mutation in their name on the basis of certain forged documents and accused Nos.8 and 9, who are the Government servants, had supported them. The complainant has stated that accused Nos.1 to 7 had filed an application on 26th February 2018 to the Land Records Office for getting those properties mutated in their name on the basis of one Hibanama. That application was supported by other documents and thereafter, as per the procedure, the said Government Office had issued notice but nobody objected and then the Mutation bearing No.17798 came to be allowed. However, the complainant has received information that the said Hibanama, which is stated to have been prepared on 12th August 2013, is a false document and was never brought to light for about five years. Thereafter the person who allegedly executed the Hibanama, Haji Mohammad Lutfullah, expired on 7th September 2013 i.e. twenty six days after the alleged Hibanama and therefore, if at all it would have been a genuine document, it ought to have been brought to the light immediately thereafter, yet the application was given in

2018. The complainant describes as to how the document is forged and then he also stated that by the said act, revenue worth Rs.60,00,000/- of the Government has been duped. Therefore, he has filed said application for sending it for investigation under Section 156(3) of the Code of Criminal Procedure, contending that the accused persons have committed offence punishable under Sections 420, 409, 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code.

4. After hearing the applicant i.e. present petitioner, the learned Magistrate, taking into consideration that the application can be entertained if it is making out prima facie case and it would be the discretionary power of the concerned Court, thought that the case is not made out for sending it for investigation. But, still the Court took cognizance of the same and decided to proceed under Chapter-XV of the Code of Criminal Procedure. Accordingly, the said orders were passed. Those orders have been challenged in the said Criminal Revision Application No.66 of 2021, which has been rejected by the learned Sessions Judge, Nanded.

5. At the outset it is to be noted that the petitioner – original complainant is neither a beneficiary nor aggrieved by the alleged Hibinama. The learned Sessions Judge has rightly observed that anybody can set criminal law in motion. However, it is required to be considered as to why person is showing so much of interest. In fact as per the Muslim law, the person can give his property by way of Hiba, which can be oral also. It is not even necessary that it should be in writing. Under such circumstance, even if that document is coming to light after about five years, as none of the legal representatives who could be said to be beneficiaries have any kind of objection, then whether it can be said that the accused are cheating anybody or there is any fake or preparation of false document. Now the petitioner says that by showing that document to be true, revenue worth Rs.60,00,000/- of the Government has been duped. It is to be noted that when Hiba can be oral, where is the question of revenue that can be generated. If at all that document is in the supporting form, then it may even liable to be registered. Further, it was the discretionary power of the Magistrate whether to refer the case for investigation under Section 156(3) of the Code of Criminal Procedure. Taking into consideration all those facts, it appears that the Magistrate was of the opinion that it is

not necessary to send it for investigation but the Magistrate felt that she is competent to take further steps as contemplated under Chapter-XV of the Code of Criminal Procedure. The complaint of the present petitioner has not been disposed of. It is still pending and the petitioner can still show to the Court that the accused persons have committed offence.

6. The discretion has been used by the concerned Magistrate judiciously and therefore, the revisional Court has rightly abstained itself from interfering. Under such circumstance, there is no question of exercise of constitutional powers of this Court under Article 226 and 227 of the Constitution of India for setting aside those orders and Writ Petition deserves to be dismissed.

7. Accordingly, the Writ Petition stands dismissed.

[SMT. VIBHA KANKANWADI , J.]