IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1383 OF 2020

Rajendra Ganpat Motirale, Age 52 years,
Occ.Service, R/o.Rundhati, Tal.Amalner,
Dist.Jalgaon, presently residing at Flat No.4,
`E' Apartment, Thakkar Street,
Gangapur road, Nashik   Petitioner
Versus
The State of Maharashtra   Respondent

Mr.Niranjan Mundargi i/by Mr.Vikrant B.Shinde, Advocate for petitioner.
Mr.A.R.Patil, APP, for the respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st July 2022

PC :

1. The petitioner is prosecuted vide RCC No.2088 of 2008 arising out of CR No.739 of 2007. The offences were registered u/s.467, 468, 471 420 r/w 34 of Indian Penal Code.

2. The petitioner preferred application for discharge before the Court of learned Judicial Magistrate, First Class, 1st Court, Pune. The said application was rejected by order dated 14th February 2018. Thereafter petitioner approached Sessions Court by preferring Criminal Revision Application No.145 of 2018. Learned Additional Sessions Judge, Pune rejected said application vide order dated 10th February 2020.

3. This petition was admitted by this Court vide order dated 25th August 2021. Subsequently the petitioner preferred interim application

No.280 of 2022 seeking early hearing of this petition. The said application was allowed vide order dated 25th January 2022 and this Court had directed that petition be listed at the end of admission board on 28th February 2022 under the caption `for final hearing'. Pursuant to said order, the petition is listed for final disposal.

4, The brief facts of the prosecution case are as under:-

(a) The complainant has alleged that he is running his own stationery shop business at Rahul Agency, 208, Somwar Peth, Pune. His friend Shri Shrikrishna Narayan Vaidya resides at Rajendra Nagar, Pune. Both of them have Farm Land in Gat No.21 and 22 admeasuring 23 and 30 R respectively situated at Mauje Manjari, Taluka Haveli, District Pune. The said land is in the possession and occupation of Shrikrishna Narayan Vaidya complainant;

(b) On 21st and 22nd October 2007 the complainant read news in Sakal newspaper about fraud committed in respect to certain land and that his own land falls in the same vicinity at village Manjari. Hence he visited Anti Extortion Cell, Crime Branch, Pune and perused certified copies of registered document Dast No.Haveli/4/7255/2007 and found that Amrut Runwal Multi Housing Pvt.Ltd, First Floor, Runwal Plaza, 41/42, Karve Road, Pune and IDBI Trustship Services Ltd; Ashian Building, Ground Floor, 17 R, Kamani Marg, Vhales East, Mumbai-400 001 have executed a mortgage deed. The said mortgage deed has first schedule having page no.7255/39/64/2007 at Sr.No.03 bearing registered Gat No.22 admeasuring 30R situated at Mauje Manjari, Tal.Haveli, Dist.Pune. This land is owned by complainant and the same is executed in mortgage as additional security without the consent of the complainant. Mr.Mahesh Dattatray Deshmukh, owner of Gat No.404, Dast No.Haval4/5929/2007, Mr.Sandip Bajirao Avhale owner of Gat No.419, Dast registration No.Haval4/5928/2007 and numerous other farmers learnt that their land is also mortgaged without consent. The accused prepared false documents by forgery;

(c) Power of Attorney dated 29th March 2000 of one farmer was made without his consent by forging signatures. Two Power of Attorney dated 30th March 2000 was made with forged signatures and thumb impression of complainant. Forgery of Power of Attorney and sale deeds has been committed by Mr.Ankush Jasraj Prakash residing at Bibavewadi, Pune and Shivaji Chaugule, residing at Parvati, Pune;

(d) Sale deed Haveli/Dast No./6305/07, dated 8th August 2007 was executed by Jaydeep Moreshwar Limaye who is the authorized signatory of sale deed. Amrut Runwal Multi Housing Pvt Ltd in connivance with the Managing Director Mr.Pradeep Amrut Runwal has used above mentioned sale deed as mortgage and availed loan facility;

(e) During March 2000 to 2007 before Sub-Registrar Office, Bhusari Colony, Kothrud, Pune, by making forged documents and forged signatures the accused persons have mortgaged properties which belong to the complainant and other farmers from Pune and thereby availed loans from IDBI Trusteeship Services Limited, Mumbai and hence have committed the offences. Complaint was lodged against eleven persons i.e. 1) Pardeep Amrutlal Runwal, 2) Jaydeep Moreshwar Limaye, 3) Ankush Jasraj Parakh, 4) Shivaji Bhimrao Chaugule, 5) Ravindra Ravindra Ramchandra Daval, 6) Sachin Balasaheb Gavali, 7)

Prakash Barku Jadhav, 8) Dilip Ratnakar Amolik, 9) Gangadhar Mahajan Pupale, 10) Rajendra Ganpat Motirale, 11) Sanbjay Shantilal Raysoni u/s.467, 468, 471, 420, 34 of Indian Penal Code;

(f) After recording the statements of witnesses and on completing investigation, charge sheet was filed against accused including the petitioner.

5. Learned advocate for petitioner submitted that Trial Court as well as Sessions Court have committed error in rejecting application for discharge. The petitioner is a public servant and had acted within his official duty. The petitioner was working as Sub-Registrar. It is not in dispute that post of Sub-Registrar is included within the definition of public servant under Section 197 of Cr.P.C. Section 197 of Cr.P.C debars the Court from taking cognizance of an offence, except with previous sanction of the Government. The alleged act was committed while discharging official duty. There is no evidence to frame charge against petitioner. He is not involved in any forgery or the offence of cheating. Section 84 of Indian Registration Act contemplates that every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of Indian Penal Code. If the prosecution is taken at its face value, it is apparent that the prosecution has failed to obtain necessary sanction under Section 197 of Code of Criminal Procedure to prosecute the petitioner. There was no sanction u/s.197. Perusal of the entire charge sheet does not reveal any material against petitioner. There is no evidence to show that petitioner is involved in preparation of bogus documents. There is no evidence or material to suggest that petitioner in any way involved in commission of crime. The petitioner after registration of sale deeds starting from 14th

June 2007 to 27th June 2007 had forwarded `A' extract report to Tahsildar on 3rd July 2007 and received acknowledgement from Tahsildar's office on 7th July 2007. The said report was submitted within stipulated period of three months. Thus, observation of the Sessions Court that Extract-A was not sent by due date by Sub Registrar (petitioner) to Tahsildar and that it appears from the documents that information regarding execution of sale deeds was not provided in stipulated time as per Section 150 of Maharashtra Land Revenue Code, is devoid of merits. As per Indian Registration Act and Rule 44(1) of Maharashtra Registration Rules, 1964, before accepting any document for registration, the registering officer may not concern himself with its validity, but shall ascertain that it is properly stamped, presented within prescribed time, in proper office, presented by competent person. If it relates to immovable property, it is not open to objection u/s.21 or 22. Any interlineations, blanks, erasures or alterations appearing in the document are attested by the signature or initials of the person or persons executing the same as required by Section 20. The dates of execution of the document, if written according to more than one calendar, tally with each other; and that registration of such document has not been declared as opposed to public policy under Section 22-A of the Act. The petitioner has followed the rule as stated above and discharged his official duty. The petitioner in no way involved in forgery. Thus, the Courts below ought to have discharged the petitioner from the proceedings. The Act of sending a patrak is an official duty of applicant and not sending a patrak is not an offence. The applicant is required to see that documents submitted for registration complies with provisions of the Registration Act. 95 documents were registered on the said date in respect to agricultural land. Out of 95 documents, 46 documents i.e. sale deeds were registered before petitioner. Out of 46 documents, in 8 documents, allegedly the declaration was not in proper format. In one declaration instead of typing `sale deed', the date was mentioned and in two declarations, the date at the bottom was not mentioned. All the acts allegedly committed by the petitioner were in the course of his official duty and prosecution ought to have obtained sanction to prosecute petitioner.

6. Learned advocate for petitioner has relied upon following decisions:-

(i) **Indra Devi Vs. State of Rajasthan and another** (2021)8-SCC-768;

(ii) **D.Devaraja Vs. Owais Sabeer Hussain** (2020)7-SCC-695

7. Learned APP submitted that at this stage it is not necessary to delve into roving enquiry. Prima facie case is made out against him. The evidence on record discloses the lapses on the part of petitioner, which shows that he was acting in connivance with the co-accused. Although petitioner is public servant, there is no requirement of Section 197 of IPC to prosecute him. The act is not covered by official duty. Hence learned Magistrate has rightly rejected application for discharge. Learned Sessions Judge has confirmed the order of learned Magistrate. There is no infirmity in the said orders. A patrak was not forwarded by petitioner. The petitioner did not ensure proper filing of declaration forms. The decisions relied upon by learned counsel for petitioner are not applicable in the present case.

8. The petitioner was working as Sub-Registrar at Haveli No.19, Pune. The prosecution case is that accused no.1 in connivance with

others prepared bogus power of attorneys and executed sale deeds. These sale deeds were mortgaged for obtaining finance from the bank. The learned JMFC while rejecting the application for discharge has observed that `A' patrak was not sent within stipulated tie by petitioner, as provided under Section 150 of Maharashtra Land Revenue Code. This act was done by petitioner to help other accused and he acted in collusion with co-accused. The act was beyond his official duty and hence sanction under Section 197 of Cr.P.C is not necessary. The Sessions Court while rejecting revision application has observed that the petitioner while working as Sub-Registrar had not obtained necessary declaration. Date was not mentioned on declaration. Photocopy of identity card was not obtained and contravened the circular. As per circular dated 29th January 2007, if a document is required on the basis of power of attorney, the registering authority has to obtain declaration along with power of attorney. Therefore, the alleged act is done in collusion with other accused and the act does not fall within the scope of public servant discharging his duty in official capacity.

9. I have perused the documents in the form of declarations which were allegedly produced by concerned parties at the time of registration of documents. Several documents were produced before petitioner and it appears that in some documents, it is alleged that, there were infirmities as stated above. It is alleged that the applicant who was working as Sub Registrar, had not obtained necessary declarations. There is no evidence to show that petitioner was acting in connivance with the co-accused. It is not the case of prosecution that petitioner is involved in forgery of documents. The alleged not forwarding a patrak which does not per se amount to any offence, is an official duty. Registration of documents is an official duty.

10. In the case of D.Devaraja Vs. Owais Sabeer Hussain (supra) it is held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the present case petitioner was acting as Sub Registrar. The documents were produced before him for registration. Petitioner is not involved in forgery. There is no evidence against petitioner to show that he was party to crime committed by main accused who were involved in obtaining loan by using sale deeds. Evaluation of charge sheet indicates that there is no evidence to show that the petitioner had conspired with co-accused or acted in furtherance of common intention. Even otherwise, in the facts of this case, sanction u/s.197 of Cr.P.C was necessary.

11. In the case of Indra Devi Vs. State of Rajasthan and another (supra), it was held that Section 197 of Cr.P.C seeks to protect officer from unnecessary harassment, who is accused of offence committed while acting or purporting to act in discharge of his official duties and, thus, prohibits Court from taking cognizance of such offence except with previous sanction of competent authority.

12. In the facts of this case, the petitioner cannot be prosecuted for the alleged offence.

ORDER

(i) Criminal Writ Petition No.1383 of 2020 is allowed and disposed of;

(ii) The impugned order dated 14th February 2018 passed by learned Judicial Magistrate, First Class, Pune, below Exhibit-263 rejecting application for discharge preferred by petitioner in R.C.C.No.2088 of

2008 and order dated 10th February 2020 passed by learned Additional Sessions Judge, Pune rejecting Criminal Revision Application No.145 of 2018 preferred by the petitioner are quashed and set aside and the petitioner is discharged from proceedings in R.C.C.No.2088 of 2008 pending before the Court of Judicial Magistrate, First Class, Court No.1, Pune.

(PRAKASH D. NAIK, J.)

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